

**PREPARING FOR BLUE WATER CLAIMS—
VA STATUS UPDATE ON IMPLEMENTATION**

HEARING

BEFORE THE

SUBCOMMITTEE ON DISABILITY
ASSISTANCE AND MEMORIAL AFFAIRS

OF THE

COMMITTEE ON VETERANS' AFFAIRS

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WEDNESDAY, OCTOBER 30, 2019

U. S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND
MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
Washington, DC.

The subcommittee met, pursuant to notice, at 2 o'clock p.m., in room 210, House Visitors Center, Hon. Elaine Luria [chairwoman of the subcommittee] presiding.

Present: Representatives Luria, Cisneros, Allred, Underwood, Takano, Bost, Bilirakis, Steube, and Roe.

OPENING STATEMENT OF ELAINE LURIA, CHAIRWOMAN

Ms. LURIA. I call this oversight hearing to order.

Without objection, the chair is authorized to declare a recess at any time.

Good afternoon and welcome to the subcommittee on disability assistance and memorial affairs hearing. I will note that several of our colleagues are in other committee hearings and briefings right now, so we anticipate that they will join us. But I think we will go ahead and kick off with the opening statements from both the chair and ranking member as well as those who have come here to testify. Hopefully they will filter in a timely manner for us to be able to include them in the questioning part.

I would like to start by welcoming the veterans, both at home and here in this room who have joined us for this hearing today. Caring for veterans is a top priority of this subcommittee and today we are here to ensure that Blue Water veterans receive the benefits and care that they are entitled to under the law.

Our Vietnam era veterans waited for too long for the VA and for Congress to provide the critical disability and health benefits that are due to them as a result of Agent Orange exposure. Thankfully, that wrong was righted with the bipartisan unanimous passage of the Blue Water Navy Vietnam Veterans Act of 2019, which I co-sponsored. That act goes into effect January 1st, 2020.

I am holding this hearing now to make sure that the VA is planning for success and doing everything it can in the meantime to help veterans covered by this law. I invited Dr. Paul Lawrence, the Under Secretary for Benefits at the Veterans Benefits Administration to this hearing to address VA's progress and planning for Blue Water Navy implementation.

Disappointingly, the Under Secretary declined to attend and did not give a reason for his inability to attend. I would say that his absence is notable and concerning today, and it would have been helpful for Dr. Lawrence to have been here today to answer our questions, address our concerns, and let us know what, if any, additional resources the VA needs to implement this law on time for our veterans.

We have also heard from our Veteran Service Organization (VSO) partners that the Department is failing to fully collaborate and share information with them. They identified a stonewall at high levels of the Department that reduces transparency and ultimately hurts VA programs and veterans. I am sorry that Dr. Lawrence is not here today to personally address at this hearing those concerns of our VSO partners who we will hear from later today.

One common objection from veterans' advocates is the secretary's stay on all claims covered in the Blue Water Veterans Act, including Blue Water claims, children of Thailand veterans, and Korean Demilitarized Zone (DMZ) veterans. I am concerned that this stay is overreaching and causes undue delays.

While I appreciate the Department's efforts toward preparation, including the mapping tool that they have created using naval deck logs, I question the need for a blanket stay.

I know that we spoke earlier, Mr. Clark and Ms. Murphy, and perhaps there is a misunderstanding between that and the VSOs, what they are observing and what you are implementing. Perhaps we can clear that up as part of the questioning today.

I am also troubled with the news that VA has not accounted for submarines when deploying the mapping tool for Blue Water. The law in the committee report clearly outline that veterans who served on any vessel within offshore waters is presumed to have been exposed to Agent Orange. The committee reports State that vessels below the water are also included, but even so, submarines often surface and would have done so within the offshore waters of Vietnam.

VA has made some progress in preparing for implementation of this act, but I hope that we will hear some more today about the VA's plans going forward. For example, how will VA implement training for newly hired raters; how will VA utilize the hub processing centers. Indications to this subcommittee are that some regional offices and medical centers remain unaware about the upcoming changes to the law; and will the VA adjust the employee production standards to account for complicated Blue Water claims which could potentially entail reviewing decades of medical files.

The committee has many questions and we believe the VA has much work left to do. This work is far too important to veterans and to the country. We see this as an opportunity for our VA representatives here today to let Congress know what, if any, additional resources and support that you need to successfully implement the Blue Water Navy Veterans Act as of January 1st, 2020.

I now recognize Ranking Member Mr. Bost for his remarks.

OPENING STATEMENT OF MIKE BOST, RANKING MEMBER

Mr. BOST. Thank you Chair Luria and thank you all for being here today to discuss the VA's implementation of the Blue Water

Navy Vietnam Veterans Act of 2019. This law extended the presumption of exposure to the Blue Water Navy veterans. Now these veterans will qualify for the same benefits as their boots on the ground and Brown Water Navy comrades.

The Blue Water Act took years of hard work from members on both sides of the aisle to finally get this bill through Congress and to the president's desk. Our work did not stop when we did that, when we got it signed into law. As congress, we have a responsibility to ensure that the VA successfully implements the Blue Water Act on January 1, 2020. Between now and January the VA has a lot of work to do. Rest assured, I am committed to working with the VA and the VSOs to ensure that the veterans who file a claim under Blue Water Act receive timely and accurate decisions.

Accordingly, for today's hearing I would like to discuss the efficiencies VA is developing that will help it process these claims more efficiently so that these veterans can finally receive their benefits that they had earned so long ago.

For instance, the Veteran Benefits Administration (VBA) is creating an IT tool that will help claims processors determine if the veteran served in the offshore waters of Vietnam. That being said, this tool is not a replacement for having well trained claimed processors. Sometimes technology fails us, which is why employees need accurate guidance to avoid any potential pitfalls, IT or otherwise. It is important the Blue Water Navy veterans and the veterans receive correct decisions the first time. And it is imperative that the VA personnel are adequately trained by January 1.

Therefore, I would also like to hear about the training the VA is conducting on Blue Water claims and, finally, I am interested also in receiving an update on VA's progress executing the additional provisions in the Blue Water Act that would extend the presumption to veterans who served in or near the Korean DMZ beginning on September 1st, 1967, provide benefits to certain children of Thailand veterans who were exposed to Agent Orange, require VA to identify the U.S. military bases located in Thailand where Agent Orange was used and when it was used, and also to provide an update on the current research on the potential in-service toxic exposure of Gulf War veterans.

I am so glad that we are quickly approaching the day when VA will be able to start granting claims to Blue Water Navy veterans. These veterans have been waiting decades to finally hear the VA acknowledge that their health challenges were, in fact, caused by the time these warriors were serving in the defense of our Nation.

Again, thank you all for being here. I am looking forward to having a productive discussion on the VA's implementation of the Blue Water Act. With that I yield back.

Ms. LURIA. Thank you, Mr. Bost.

For our first panel we have Mr. Willie Clark how is the Under Secretary for Field Operations at the Veterans Benefits Administration and Ms. Beth Murphy, Executive Director of Compensation Services at the Veterans Benefits Administration.

So I would like to start with allowing you, Mr. Clark, 5 minutes for comments.

STATEMENT OF WILLIE CLARK

Mr. CLARK. Good afternoon, Chair Luria, Ranking Member Bost, and members of the committee. Thank you for the opportunity to come before you to speak today on Veterans Benefits Administration's plan to implement Blue Water Navy or BWN Vietnam Veterans Act of 2019.

Joining me today is Beth Murphy, as you mentioned, Executive Director of Compensation Services.

Today I will provide an update on how VBA is preparing to process disability compensation and survivors' claims as a result of the new law and what resources will be required for implementation. The new law provides that a greater population of veterans are now presumed to have been exposed to herbicides such as Agent Orange and may be entitled to service connection for conditions related to their exposure.

VA appreciates the authority Congress provided to stay pending BWN claims until the law takes effect on January 1st, 2020. The stay is enabling VA to operationalize the new law to ensure proper resources are in place to meet the anticipated work load demands, develop appropriate policies and procedures, and create the necessary tools to adjudicate claims timely and accurately under the new law.

One of the tools we are developing under the stay is called the ship locator tool. This tool which will mitigate risks associated with developing these cases will enable our claims processors to shave months off of the normal development time. I will speak more to this special tool later.

The VA is committed to ensuring all veterans and beneficiaries covered under the BWN Act receive the benefits they have earned in a manner that honors their service. This is particularly important for our ailing and aging BWN Vietnam era veterans. I am confident that awarding these claims will begin on January the 1st, 2020.

The VA is committed providing priority processing for claims of veterans who are homeless, experiencing a financial hardship, terminally ill and age 85 and older. VBA is executing a comprehensive project management plan to process BWN claims timely and accurately. VBA has issued interim guidance to the field for the handling of existing and incoming BWN claims. We continue to refine policies and procedures which will be finalized prior to January 1st, 2020.

Mandatory training will be delivered to experienced claim processors at eight Regional Offices (ROs) by December 13th. We have chosen to limit processing to these eight ROs because they experience working Agent Orange claims and with retroactive benefits aspect of dealing with those types of claims. It is vital that we get the funding requested to implement this new law so we can hire claims processors with adequate time to provide training so they can backfill behind the experienced employees.

We have developed a robust communications plan for both internal and external stakeholders. This includes partnering with the VSOs who we meet with monthly and who have provided great feedback and advice on our comms plan. We are publicizing the act through press releases, newsletters, media, and other digital plat-

forms. As part of this effort we recently sent targeted outreach through direct mailings to over 77,000 veterans and survivors who submitted claims that were previously denied.

VBA's deck log scanning effort will provide VBA claims processors with tools to efficiently identify vessels that meet the definition of the new law. Along with the Navy history and heritage command, VBA collaborated with the National Archives and Records Administration which has entrusted VBA with the care of their archival records in the form of deck logs. We are managing a contract to scan and extract pertinent data from deck logs created over a 13-year timeframe.

These data are being incorporated into the electronic ship locator tool which will be utilized by claims processors. These deck logs are comprised of millions of images and scanning them up-front will save claims processors from having to submit individual case by case requests for these records.

In cases where the tool does not confirm eligibility, such as for classified missions, service on submarines, fire related records that have been lost, a special team will do deeper records research to confirm eligibility.

VA appreciates congress's consideration and appropriating funding which will enable VA to successfully implement the BWN Act. Beyond funding for benefits payments, VA needs resources to hire, train, and support additional claims processors, scan deck logs and veterans records, and modify IT systems.

VA is committed to ensuring all BWN Vietnam veterans and their survivors receive the benefits they have earned under the BWN Act. We understand the gravity of this initiative and are committed to getting it right. We have a comprehensive implementation plan to operationalize the requirements of the new law and we are currently on track to begin awarding benefits on January the 1st.

VA appreciates the support of Congress and this committee, and continue to care for our Nation's veterans and family members.

This concludes my testimony. I will be happy to entertain any questions from members of the committee.

[THE PREPARED STATEMENT OF WILLIE CLARK APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Clark.

Also joining us today, we have Dr. Roe who is the ranking member of the full Veterans Affairs Committee, and I will recognize you, Dr. Roe, for 5 minutes for an opening statement as well.

**OPENING STATEMENT OF DAVID P. ROE, RANKING MEMBER,
FULL COMMITTEE**

Mr. ROE. Thank you. I want to thank the chair and Ranking Member Bost for holding the hearing, and I would like to say that I think the Nats got a lousy call last night down the first base line.

[Laughter.]

Mr. ROE. As a veteran, as a Vietnam era veteran who served in Korea today's topic is very near and dear to my heart. Passing the Blue Water Navy Act was the right thing to do for our Nation's veterans. Now we must ensure that VA implements the law the right way. A lot of our Blue Water Navy Vietnam veterans are suffering

from conditions known to be associated with exposure to Agent Orange. Their benefits are long overdue and they are looking at us to make sure that our country does not fail them a second time.

As Ranking Member Bost stated earlier, we are committed to ensuring that VA does not wrongfully deny these veterans the benefits they have earned, so I would encourage VA to work with Congress and stakeholders on this matter. VA has tremendous work ahead of it and we are here to lend a helping hand.

That being said, we will closely be monitoring the implementation of the Blue Water Act as it proceeds. I am especially focused on VA's plan to analyze deck logs that will allow the Department to determine which veterans served in the offshore waters of Vietnam.

And just having said that, I think back to my own experience with boots on the ground. I do not know that I could prove where I was in Korea.

I think I—well, I know where I was stationed. We were in the field. We were out—it would be very difficult.

On a ship, thank goodness I was never on a ship, Mr. Clark, but—I like the ground. You know, floating around where you can not see land does not do me any good. And I think it is—if you are relying on those logs is extremely important to prove because if you are in a submarine, and I have spent one weekend in a submarine—that was enough for the rest of my life—you do not know where you are. You are relying strictly on that. Fortunately, the Navy keeps great records and hopefully you will tell us in your question and answer period, do we have access to all of those records. It should be—if we do, that should be fairly easy to nail down, I think.

That being said, successfully confirming that the particular ship entered the offshore waters of Vietnam is only one piece of the puzzle to award benefits to our Blue Water Navy veterans. These veterans still have to meet the same other eligibility criteria as boots on the ground and Brown Water Navy veterans; that is, the ship being in the right spot is one part. Showing that the veteran was on that ship is another part.

One of my concerns is how VA will address any challenges that may arise from records that were destroyed in the 1973 fire at the National Personnel Records Center that might have provided the information needed to establish that a veteran was on a particular ship while it was in the offshore waters of Vietnam.

I hope that today VA will provide us with assurances that no veteran will be denied benefits without proper development of their claim. Additionally, many of the Blue Water Navy claims will be particularly complicated because of the potential retroactive benefit involved.

As a doctor, I know that conditions change and evolve over time, and frequently patients develop secondary conditions. VA will need to account for a veteran's changing disability picture as it assigns evaluations including ratings that have increased as time has passed.

Last, I fully expect on January 1, 2020 the secretary will lift the stay. Consequently, I would like to get VAs commitment that it will have the information technology training and guidance necessary

to begin awarding benefits for Blue Water Navy claims on 1 January 2020. I think we have.

I would also like to renew the inquiry in the letter that Chairman Isakson and I sent to Secretary Wilke on September 19th, 2019 asking whether there are any exceptions to the stay for veterans in extreme circumstances such as veterans diagnosed with terminal and aggressive Agent Orange related diseases who may not have the luxury of time. These veterans are undergoing an unfathomable hardship and deserve recognition from VA during their final moments that their illnesses may have been caused by their military service.

However, we must not forget the concerns of other Vietnam era veterans who are worried that they may have been exposed to Agent Orange. For example, we know that the Department of Defense sprayed herbicides in Thailand. The extent of that spraying is unclear. For that reason, we included a provision in the Blue Water Navy Act that instructs the VA to work with DOD to determine exactly when and where Agent Orange was used and then report back to Congress with results.

We have a lot of Thailand veterans who need answers about their potential exposure to herbicides. I would like for VA to confirm that this review has started and confirm that it will meet the 180 deadline in the reporting.

Again, thank you Chairwoman and Ranking Member for holding this hearing. I look forward to discussing the current status of VA's implementation of the Blue Water Navy Act, and I yield back.

Ms. LURIA. Well, thank you, Dr. Roe, and thank you for joining us today.

We will now move on to questions and I will first recognize myself for 5 minutes.

I would like to start with Mr. Clark. We are only 63 days away from January 1st when we will implement the Blue Water Navy legislation. Earlier you mentioned that you hope to process Blue Water claims using specifically eight hubs, but have not yet determined those locations.

You also told me that you are still, you know, finalizing the training for employees which, to me, infers that it has not yet started to be delivered to those employees.

Considering the complexity, the volume of these claims and the short time, 63 days remaining between now and January 1st, how do you plan to finalize these locations, conduct the training, ensure you have the right personal on hand to be successful in the roll out starting January 1st?

Mr. CLARK. I will begin and then I will ask my colleague to join in. We, again, appreciate the opportunity for the stay. The stay is enabling us, and we are on schedule, to be ready on January the 1st.

What we are doing right now is several things, myriad things and many, the first of which is we have got 28 million records of these deck logs that have to be scanned and placed in this tool so we can use that as a confirmation that veterans were in the 12 mile nautical area seaward.

That tool, and it is not done, we are still doing load testing on it and the like, but that tool is not used to deny individuals bene-

fits. It is used only to get to yes, to confirm. Any cases that we cannot definitively say using a tool, then we have a group of individuals that will undertake development to go through and look through records which we do now for other types of places, other Agent Orange related cases for boots on the ground and the like. That is one of the things that we are doing.

We have got to finish policies and procedures. My colleague here, her team is working on that aspect of it. Training is slated to begin and be finished the first 2 weeks of December. Once we get that training, which comprises or consists of about 2 days of specialized training because understanding we are limiting the individuals doing this work to eight regional offices. Those eight offices are offices that we used to or are currently working Agent Orange type claims, number one, and they have experience with dealing with retroactive aspect of benefits for Agent Orange claims. That is why we—

Ms. LURIA. With these—

Mr. CLARK.—selected those eight.

Ms. LURIA. Just to clarify a little bit more, then these eight particular locations already have specialized teams that have been more focused on this type of claim than the wider range of over 50 offices across the country?

Mr. CLARK. Well, all 50 offices are working Agent Orange type claims and a multitude of other type claims. These offices have individuals that work retroactive aspect of AO claims—

Ms. LURIA. You have done an—

Mr. CLARK.—underneath.

Ms. LURIA.—analysis to find the people—

Mr. CLARK. We have done an analysis.

Ms. LURIA.—you think are the best suited for these complex claims.

Mr. CLARK. That is why we selected those eight regional offices.

Ms. LURIA. Okay. Great. We are a little bit limited on time, so I wanted to make sure—

Mr. CLARK. Yes.

Ms. LURIA.—Ms. Murphy had time to comment on—

Mr. CLARK. Yes.

Ms. LURIA.—this question as well.

Ms. MURPHY. Yes. If I could add to the list of sorts of activities that need to be synchronized all brought together during this stay period, we have—in addition to the policies, there are the parallel procedural elements in our manual that tell the claims processors how to track the claims, what end products for routing and tracking, reporting are assigned to each claim. We mentioned the training. We also have a service center manager conference twice a year where we bring together all of the heads of the claims processing divisions from all over the country for training and best practice sharing.

We have one of those already scheduled for the week of December 8th, so we will have all of our claims processing leadership in one place to have a deep dive refresher and get ready for this January 1st.

We have had to develop communications, press releases, website information, frequently asked questions, all of this that is avail-

able. We had to draft the outreach letters. We worked closely with the veteran service organizations. We sat down with them and asked them to help us review the letters, make some wordsmith changes, make sure we did not miss anything because the veterans and the survivors who read these letters, they are working closely with them. You know, they know what they need in these letters. We made some improvements based on that. I think the outreach is very important because the law requires folks come in and file a claim to be eligible for these benefits. We want to make sure that we are using our time to get the word out as well so folks come in.

Other than that, hiring, research, getting the call center scripts for phone agents prepared, a lot of risk assessment, dashboard reporting analysis preparation. There are a lot of things that are coming together in a short period of time. Based on our integrated project plan and all the different work groups that have different pieces of this that they are working on, it is coming together and we are on track for January 1st.

Ms. LURIA. Well, thank you. I just wanted to reiterate, pick out a piece of what you said for anyone who might be watching this hearing at home specifically, is that a veteran will have to submit a new claim under—

Ms. MURPHY. Correct.

Ms. LURIA.—the new law. There are veterans. I think you referenced earlier somewhere around 70,000 who have previously submitted claims for this and been denied.

Ms. MURPHY. Yes, ma'am.

Ms. LURIA. They should be receiving a letter in the mail.

Ms. MURPHY. The letters have been going out this week to the 77,000 previously denied veterans or the surviving spouses who have claimed these benefits with the appropriate form in the letter so that they return that to us.

Ms. LURIA. If anyone watching this perhaps—

Ms. MURPHY. Absolutely.

Ms. LURIA.—is in that circumstance, maybe they have moved, maybe they do not get the letter in a timely manner, they can reach out to the VA or through a VSO to get all of this information because they should be able to submit claims. You have also estimated that—

Ms. MURPHY. Right.

Ms. LURIA.—from our previous conversation there is roughly 400,000 people. There is a lot more people who may have never submitted a claim who also should know about this change in the law.

Ms. MURPHY. Absolutely.

Ms. LURIA. You are making efforts to get that word out to everyone.

Ms. MURPHY. Yes. We rely on you and your offices and the VSOs and our other partners in the veteran community to get that word out because it is important. We want to make sure we make whole and pay everybody that we can that is eligible, but they do have to come in and make themselves known to us.

Thank you.

Ms. LURIA. Okay. Thank you.

I know that I ran over on my time, so I will now recognize Mr. Bost, the ranking member, for 7 minutes since that is how long I took.

[Laughter.]

Mr. BOST. Mr. Clark, we know, and I want to thank you first off in your testimony where you said that you are not going to be using the tool to get to know. The tool is just to firm, and so obviously there is going to be times that that tool does not work either because the records are not in or some kind of problem that could have happened.

If the claim can not be granted through that verification tool prior to the denial of the claim, will the VA contact the veteran, inform them of additional evidence that they can find and get together, and what might that evidence be that they can search out? I know we have had this conversation about how hard it is sometimes with our records.

Mr. CLARK. Great question. Thank you for that.

The answer is, yes, we will contact the veteran survivor and let them know that while we continue to do additional development to go back to places that have records, military records stored which we typically do when we can not corroborate whether a veteran was at a particular place where they had said that they were at, Dr. Roe spoke to that earlier.

In addition, though, to our doing development, we do go back to the veteran and ask, if you have any buddy statements we call them, lay statements legally or anything else that you can send to us that will help us get you to yes. What we are trying to do is to grant as many of these as we can. The tool will shave off months of what would typically take maybe upwards of 9 months or so to get—do this development typically.

With the scanning of the deck logs, 28 million of these, once they are in the tools and this ship locator tool we are confident that that is going to address the lion's share of the BWN veterans coming in.

Mr. BOST. Okay. And—

Mr. CLARK. If that does not work—

Mr. BOST.—then you would explain to them at that time all the items that they could—it is kind of like the checklist of things, would you have a letter, would you have a buddy, would you have someone that can verify you were there—

Mr. CLARK. Yes.

Mr. BOST.—correct?

Mr. CLARK. We will do that. Again, we look for our VSO partners. You know, these letters that we are talking about, we have worked with our VSOs to say, take a look at what we are doing and certainly receive any advice and consult assistance in getting that word out. We specifically go to each of them and let them know what is needed to help them develop their claim.

Mr. BOST. We know the turn up date is January 1. Do you know what date you are going to start testing and have everything loaded in the tools so you can start getting it tested and online?

Mr. CLARK. The tool is slated to be done the first week in December. We will have training done not later than the 13th of December.

Mr. BOST. What is your back up plan if it does not work?

Mr. CLARK. The tool?

Mr. BOST. Yes.

Mr. CLARK. Well, it is working.

Mr. BOST. Okay.

Mr. CLARK. We are looking. We are putting data in, but we do not have all of the date in yet.

Mr. BOST. Okay.

Mr. CLARK. We will use is, is what we currently use, these 800 people that we are hiring, and I did not get to say that as part—what we are also doing as part of the stay, we are hiring processors to backfill the experienced processors that we are using to work these BWN claims. That is what we use, the old fashioned way of going back and requesting records to try to help veterans place them where they say they were, or to find records that corroborates their story to help service connect them.

Mr. BOST. I was a little concerned with what the chair actually said in her opening statement about, are we going to get the problem straightened out on the subs. The subs were not in the original tool; is that correct? I think that statement was—

Mr. CLARK. Submarine records are not, but we are working to get those in. But what we are doing is, is as part of that development action that I spoke to, if someone is not in the tool—fire related cases, they may not be—those records may not be in the tool. We have a construct that says if this is a fire-related case, these are the steps that we go through to try to help corroborate those stories, which, again, speaks to buddy statements, lay statements, and several other things that we use to help get to yes.

Mr. BOST. So while you are in the stay, are you—is there any cases that are actually being worked on at all in advance?

Mr. CLARK. No, because our folks are not trained to do this work. What we have, we have 12 individuals that are working on this ship locator tool. We are getting the records scanned. We are doing tests to see that checking the load of the system, making sure that the few million records that we have in there right now that if we can extract data, that the system does not fail on us and the like. All of that is part of the procedures and policies that Ms. Murphy's team is working on because, again, we want to make sure that we get it right.

We have learned historically speaking that we have rushed sometimes possibly to start doing things and we just cannot afford that with these individuals. They are aged and we want to get it right the first time.

Mr. BOST. Yes. We want to make sure you get it right because—and this is me speaking, just because I have been here 5 years and there has been many a thing that has come before us, not only on this committee, but on different committees that I serve on, and we are promised a date and the date comes and all of a sudden there is not the delivery. This is not one that we want to see that happen with. Your team understands how vitally important this is. These people have waited too long. We have finally got the legislation in place and we need to be moving forward with it.

With that I will yield back.

Ms. LURIA. Thank you, Mr. Bost.

I will now recognize the chair of the full Veterans' Affairs Committee, Mr. Takano, for 5 minutes.

Mr. TAKANO. Thank you, Chairwoman Luria, for holding this very important oversight hearing.

Mr. Clark, you said in your written testimony that VA has adopted an evidence based approach for verifying the locations of Navy ships and determining the veterans' eligibility under law. You know, many veterans like those whose records were destroyed at the fire at the National Personnel Record Center, those records may not be available.

How do you plan to develop these claims or claims that might arise from veterans whose records were burned there?

Mr. CLARK. We have a protocol and I will let Ms. Murphy speak to what that is. We have these types of claims for other veterans as well that—because that fire unfortunately destroyed many veterans' claims. We have to—we have a reconstruction protocol which, again, goes back to the veteran that asks him and her on dates, times, individuals, anything that we can to help corroborate them. We can go and, Ms. Murphy, I will let you speak to the other things, but we do have a protocol.

Ms. MURPHY. Yes. Mr. Clark is spot on. There are standard operating procedures to reconstruct records to the extent we can, find out who the veteran may have served with. We can use other records, lay statements, to place people in different locations. I also wanted to mention that as far as the process of loading the data into the tool, Mr. Clark mentioned the 28 million records that need to be scanned. These records are unavailable to us right now. They are on trucks to high speed scanning locations so that they can be ingested into the tool, extraction done from the necessary data points, the latitude and longitude elements on those records. That populates the tool.

In many cases the development we need to do we can not even put our hands on those deck logs until the scanning is done. We have scanned about 4 million of those records so far of the 28 million. The first are the hardest because you have to set the machines up and work through the paper issues. We are scanning about a million a day. We are on track to make sure that is available.

As far as some of the other records, the unavailability of records, sir, that you are mentioning, there are classified records. Most of the submarine records are classified. We have individuals amongst our employees who have top secret clearances. We go to them on a regular basis for information and help us to research these. These will be treated as special cases. The bulk of the claims processors will be working on the bulk of the cases. We would be able to say, yes, they were there, yes, they have the condition and, yes, we can pay them. We will treat these unavailability type records specially.

Mr. TAKANO. Well, thank you.

Mr. Clark, as you know, Blue Water claims will take significant work, especially as the VA considers staged ratings and retroactive payments.

Are you planning to—plan on augmenting the production standards in order to ensure that these complicated claims are adjudicated correctly?

Mr. CLARK. Mr. Takano, the answer is yes. Now—

Mr. TAKANO. I am very please to hear that. I had a follow up if you said no, but—

[Laughter.]

Mr. CLARK. No. No. I will not say no. The thing is, is that what we do for all types of claims is to take a look at our employees and the amount of work that they do for the types of claims. If we see that these claims are taking longer we will give more credit. Now that is not something that we can do in a day or two. Once we see—and this, again, is part of a process that we have in reviewing the output for our employees.

Mr. TAKANO. Well, as I said, I am glad to hear it. You know, you said Veterans Health Administration (VHA) would provide updated guidance to enrollment stuff and how to verify service in Vietnam. What training and guidance was given to healthcare staff and can you verify that all healthcare facilities have received it?

Mr. CLARK. I would have to take that for the record.

Mr. TAKANO. For the record.

Mr. CLARK. Yes, because—

Mr. TAKANO. Okay.

Mr. CLARK.—VHA, I would like for them to speak to that.

Mr. TAKANO. Okay. Well, I appreciate that. I hope you will get that answer back to us. I appreciate your coming in today and answering our questions.

Mr. CLARK. Thank you.

Mr. TAKANO. Thank you.

I yield back.

Ms. LURIA. Thank you, Mr. Takano.

I would now recognize Dr. Roe for 5 minutes.

Mr. ROE. Thank you.

Mr. Clark, my understanding is that Blue Water Navy veterans who may be eligible for retroactive benefits under the law are encouraged to file a supplemental claim. In contrast, Blue Water Navy veterans who have never applied for benefits related to Agent Orange should file an initial claim.

How will VA handle any Blue Water Navy claims that are filed on the incorrect form?

Mr. CLARK. We will correspond back to said veteran and let him or her know, either the veteran and/or the survivor that this is the proper form that you should use for your particular case. If we have previously denied a case of which we sent out, as Beth mentioned a second ago, over 77,000 outreach letters and, in fact, that just for individuals that were previously denied. In that letter we said these are the type—this is the type form that you should use to come back into us.

Again, working in concert with VSOs to try to get that information out, working with your offices. If they call the call centers, our call center agents have scripts that they understand how to tell or instruct one to—what form to use.

We are prepared to be ready on 1 January. We will be ready without fail.

Mr. ROE. You have answered part of the next question. You know, some veterans may not remember. It has been so many years that they even filed a form. For those veterans who filed an initial form, I can see how that confusion could occur pretty easily and cause a little hiccup in getting their claim adjudicated. So I think paying attention to that because many have—I am not sure how many actually provide, and you all may know those numbers, of how many have applied previously. I do not know whether you do or not.

I guess the question I have, if I come in and put my claim in. I file the claim and then you are going to take this ship locator to it so you can figure out where that ship was, and then you have got to figure out was I on that ship; am I correct, did that ship get inside the statutory requirements of the law? Then were my feet actually on that ship or submarine. It could be a submarine. I can assure you that they do not—if you were riding around in the submarine I had no clue. I was under the polar ice load. That is all I knew in the North Atlantic. That may be all the crew knows at the time because it is a need to know basis where you are.

If you can get that information, then how long should it take after that because that seems, if that tool works and you can prove you were on that ship, that should be a fairly—and you have a presumption, a lymphoma or—

Mr. CLARK. Right.

Mr. ROE.—Type II diabetes, whatever the 12, 13, 14 presumptions are, how long should that take?

Mr. CLARK. Dr. Roe, that is a great question. This is why we love this took so much and this is why, again, the stay which we are appreciative of you allowing us to have the stay. Once we get all these records in, if we can place an individual that says I was once on the U.S.S., you know, whatever the ship was, the deck logs contain the coordinates, where that ship was. All deck logs record this at 3 different times a day, 8 a.m., 12 p.m. and then 8 p.m. Once we go through and we set up like a, what they call a paragon that actually is an area that says this ship was in this particular location, they are in. Once they are in, and you adequately explained this during your initial brief, that gets you in that says you were in and we are going to concede exposure.

Next, now you have to have medical evidence that establishes that you have a condition, a diagnosis for one of those presumptive conditions. Once we do that, we have promised and our boss has said, we are going to rate these claims just like we do the others. No more than 125 days. Presently we are less than 100 days. We are working feverishly. We are going to have all of our employees working on the 1st. Both Beth and I will be working as well, the 1st of January I am talking about. They will be working overtime because we will be ready on the 1st. We will be issuing decisions on the 1st. We will be serving veterans on the 1st.

Ms. MURPHY. Dr. Roe, just if I could quickly add, the more complex cases that you eluded to earlier that go back over periods of time for potential retroactive benefits, those can be a little more complicated because we have to go look for some of the decades of records, medical records that may be relevant, including from private providers. We have a contract that supports turning those

round and about 10 to 12 days. That helps. Then we also need the personnel records, the service treatment records, sometimes we have those in the file, because then we say, Okay, the service member in their military records shows that they were on this ship. We go to the tool and say, yes, type in the day and the coordinates. They were—the ship was where it was supposed to be. Then, do they have the condition, how long have they had it, and how has it progressed over time.

Yes, sir.

Mr. ROE. Two other things very quickly is, one, I think it is also important to get that report on Thailand out. I had one of my best friends I will ever have on this earth die of a very rare lymphoma that the perimeter of his base was sprayed with Agent Orange.

Then just last an editorial comment is that I remember when our battalion commander came in. I had just gotten in Korea and he said, if an all out war breaks out here today, there will be 80 percent casualties. I held my hand up and I said, sir, where are we. I did not even know where I was.

A lot of veterans are out there. They do not know were they placed or not, and I think your ship locator is going to be a great tool to be able to verify, much easier for the Navy than for the Army, I think.

Okay. Thank you. I yield back.

Ms. LURIA. Well, thank you, Dr. Roe. As a follow on, Mr. Clark, I would like a follow up and perhaps you can provide this information to me after the hearing.

If I am understanding you correctly, out of all of these deck logs you are only taking position reports from 8 o'clock and 12 o'clock reports? Those are the only positions that you are taking as far as the navigation of the ship during the course of these 13 years?

Mr. CLARK. Under our present guidelines it is three, 8 a.m., 12 p.m. and 8 p.m. So it is three coordinates off of the deck logs.

Ms. LURIA. Not 12 a.m. when they start a new deck log for the new day and have a position report?

Mr. CLARK. It will be 8 a.m. the following day. Again, this is another reason that we are still working through this. You know, we were asked if we are ready. We are not because, again, this—now you bringing this to the forefront, we have got a team that—

Ms. LURIA. Because I certainly know that a ship navigating within 12 miles of land takes a position report more than 3 times a day.

Mr. CLARK. We can take that back up for the record. I will let Ms. Murphy speak to that. That is the procedures that we were using, three coordinates three times, 8 a.m.—

Ms. LURIA. That is an internal VA policy that you have established?

Ms. MURPHY. Well, that is the data that is available on the top of the deck logs so that is what—

Ms. LURIA. You are only using the header on the deck logs. You are not—

Ms. MURPHY. Yes.

Ms. LURIA.—using all of the data contained therein?

Ms. MURPHY. Both. For the big picture plotting where the ship was, the movement of the ship, we are primarily using those lat longs at those 3 points in the day. That will get a bulk of the folks

in to yes. A pdf of the whole deck log is included and embedded in the tool as well.

If the—if those coordinates will not answer the question, we can bring up the actual pdf and read the narrative in the deck log as well. That is why we will go fast as much as we can on the ones that are based on those 3 times a day coordinates. If we have to go deeper, we will go deeper and do all of the additional development before we say no.

Ms. LURIA. Okay. Then last I wanted to follow on again to Dr. Roe's comment because we have gotten feedback from the VSO specifically that people, veterans who are trying to submit these claims are just very confused. Do we really need to quibble over whether they are using an old form or a new form or having them resubmit forms multiple times. I mean, what can we do to make this as smooth as possible?

When you have a veteran walk in and they do not remember if they submitted a claim 20 years ago or perhaps someone did it on their behalf at a VSO quite a while ago, and they submit the wrong form, do you really think the burden needs to be on them to go through the process of you mailing them a letter back, they fill out a different form, mail it back in. I mean, at what point and level of frustration after 40 years do people need to actually get these benefits?

Ms. MURPHY. Right. We do acknowledge that that can be complex. I mean, our whole claims process can be complex. We are delivering a wide variety—

Ms. LURIA. Can you say—

Ms. MURPHY.—of benefits—

Ms. LURIA.—can you just say that you can look at your policy and let—get back to us. Is it possible to take either form for these claims?

Ms. MURPHY. Ma'am, it is based on the changes that came from the Appeals Modernization Act. Those requirements were built into that act and it flows from there. That is why we did the risk mitigation of sending the letters to the previously denied with the appropriate form to make sure that we had the best opportunity to get the right form in.

If they do send in the wrong form, we have a standard operating procedure in place to go back to them, send them the right form, ask them to send it back within 30 days. They can call the call centers if they have any questions, reach out to VSO—

Ms. LURIA. Basically you are putting it back in the veteran's lap because they submitted the wrong form and they do not know any better?

Ms. MURPHY. Ma'am, we are following the law. And—

Ms. LURIA. Are you telling me that the Appeals Modernization Act (AMA) tells exactly which form, number, version, series, date—

Ms. MURPHY. Yes, ma'am.

Ms. LURIA.—that the person has to submit?

Ms. MURPHY. Yes, ma'am.

Ms. LURIA. Okay. I would like to see that—

Ms. MURPHY. We would be happy to—

Ms. LURIA.—as soon as possible—

Ms. MURPHY. We would be happy to talk to—

Ms. LURIA.—because I seriously doubt that in the law we spelled out versions of VA forms. I think those—

Ms. MURPHY. Well—

Ms. LURIA.—are internal forms that you create for administrative purposes.

Ms. MURPHY.—there were different categories of claims created. If someone had been previously denied and comes back in, then there is a requirement for a different form. We would be happy to go into—

Ms. LURIA. A requirement for a different form or a requirement for you to be tracking them differently so putting the tracking burden on the veteran rather than you to just say this goes in this pile rather than this pile?

Ms. MURPHY. Good point, ma'am. We would be happy to talk further about it.

Ms. LURIA. Okay. My goal in all of this and the feedback we have gotten from VSOs and, you know, I went to a Veterans of Foreign Wars (VFW) in my district and heard frustration from veterans about very similar things is that they feel like the burden is always put back on them. They are just the end user. They do not know that there is different forms out there.

Ms. MURPHY. I hear you, ma'am. We understand.

Ms. LURIA. We just want to—

Ms. MURPHY. We do not want to make it any more—

Ms. LURIA.—make it as simple as possible.

Ms. MURPHY.—complex either.

Mr. CLARK. Right. We will take that back for the record.

Ms. LURIA. Okay.

Ms. MURPHY. Thank you. We will take it back.

Ms. LURIA. Yes. Thank you both for that.

Ms. MURPHY. Thank you.

Ms. LURIA. To my colleagues, I apologize. I ate up a little bit of extra time. Now we will be moving on and, Mr. Cisneros, I recognize you for 5 minutes.

Mr. CISNEROS. Thank you, Madam Chair.

Mr. Clark, I just want to follow up on what you said when you—what you stated earlier about the getting the information out there or starting this. You said it was going to be in eight hubs or eight regional offices where there is initially going to be happening.

Are they going to handle claims for the entire country, these eight hubs, or is it only specifically for their regions?

Mr. CLARK. No. These are, as called for in the law, there are a certain number of hires that we stated through Congress that we would need to process these claims. We are in the process of hiring 800 individuals to do that.

Now we are limiting—we are using experienced people to do this work, 800 experienced people. The ones we are hiring are back-filling. We will start with that number. We have got a universe potentially of 400 people that may file claims. It is not the thought that many will come in, but if they—

Mr. CISNEROS. Wait. Only 400 people you expect—

Mr. CLARK. No. I said 400,000. Did I say 400 people? Oh, my goodness. Yes. Yes. 400k, not 400 people, so sorry about that.

We have data that shows that much less than that will come in. What I am doing is limiting that to a small number of regional offices so that if we glean that we are making errors, if we feel that there are some changes that need to be made, rather than contacting every regional office and having those individual to do that work, we are limiting it to eight people.

Now we re mindful of timeliness. We will meet or exceed the same timeliness. I spoke to this a little earlier, right now we are averaging less than 100 days to get claims completed. Once we get an affirmation from the tool, if we can not get an affirmation, then it goes and we do some additional development. Once we get an affirmation, we will be able to just go pretty quickly because we need a diagnosis and we need medical evidence.

Mr. CISNEROS. The answer I am looking for is if you have these eight regional offices who are handing claims, if I do not live in this specific area of these offices, is my claim still going to be handled?

Mr. CLARK. Of course, because, see, our claims, we deal in electronics. What happens, we send digits to regional offices. We do not send paper. When we send the claim, we send it in an electronic format. Those individuals—and, again, we are monitoring the amount of the inventory, how quickly claims are going out, and if we need to add more resources, we will do so because we understand that we are dealing with a population of individuals that have served this great country that are aged and they are, you know, they are disabled, sick. We know we have to get these claims done quickly.

Mr. CISNEROS. All right. I believe you said the training program will start around December 13th.

Mr. CLARK. We will be finished on December 13th.

Now these are trained individuals, Mr. Cisneros, that they already know how to—

Mr. CISNEROS. Handle a claim.

Mr. CLARK.—complete Agent Orange claims.

Mr. CISNEROS. Great. Got it.

Mr. CLARK. Believe it or not, I did them back in the day.

Mr. CISNEROS. Right.

Mr. CLARK. I will not go back to when, but I did them.

Mr. CISNEROS. The only additional training they really need is on this—

Mr. CLARK. Is the retroactive, the tool—

Mr. CISNEROS. The tool.

Mr. CLARK.—and then we need to sure up on the retroactive aspect of paying out because, as Beth said earlier, if an individual was previously denied, we have a situation where an individual may have been married, you know, a couple of times, they may have had cancer that may have regressed and then it came back again. We have got these staged ratings. These decisions can be very complex.

That is the training component we need, 14 hours less than 2 days. We are going to start it on the 2nd of December, be done on the 13th. We have some tests in mind that we are going to do to make sure that they get it. If they do not get it, we are going to pull cases that they rate. We will get the eight ROs together.

Again, now we are talking about, you know, 800 people, but that way these individuals rate enough cases that—

Mr. CISNEROS. Okay.

Mr. CLARK.—they can become very proficient at doing this work.

Mr. CISNEROS. Right. I got 30 seconds left, so I just want to ask this real quick. As far as outreach to the VSOs, do you have a plan to outreach to the VSOs and what is that plan?

Mr. CLARK. That plan is we meet with the VSOs monthly. We have been for the last few months. We continue to work with them, and we are asking them to help get the word out. We have outreach. Our regional office directors, you know, town halls in the community and the like. We have an aggressive and a comprehensive plan to make sure, starting with the outreach letters, the 77,000, to make sure that we get the word out and working in concert with the VSOs to make that happen.

Mr. CISNEROS. All right. Thank you.

Ms. MURPHY. Sir, if I could do a quick public service announcement. I went myself onto the VA.gov website and I just wanted to go in and find the fastest way I could get to this information. I went last night to the VA.gov website. I went to the search box at the top and I typed in Blue Water Navy and the first item that came up, it was right there. There is a lot of information, so I would—

Mr. CISNEROS. Yes. And—

Ms. MURPHY.—encourage people to look there as well.

Mr. CISNEROS. I get it. My father is a Vietnam veteran at 70 years old—

Ms. MURPHY. Understood.

Mr. CISNEROS.—and he does not really use the Internet.

Ms. MURPHY. Right.

Mr. CISNEROS. That is not really going to do him much good.

Ms. MURPHY. He might have a smart son who does and who can help him with that.

[Laughter.]

Ms. MURPHY. We are trying to get the word out any way that we can, sir.

Mr. CISNEROS. Well, he is still looking for that smart son.

[Laughter.]

Mr. CISNEROS. All right. Thank you.

Ms. LURIA. Well, thank you, Mr. Cisneros.

I will now recognize Mr. Bilirakis for 5 minutes.

Mr. BILIRAKIS. Thank you. Thank you, Madam Chair. I appreciate it very much.

Again, what about television? I am from the old school, too. Television, radio announcements, public service announcements for those that do not read their emails or go on the Internet on a regular basis, have you all thought of that?

Ms. MURPHY. Yes. We have a comms team and a subwork group that is considering all of those different options. Twitter town halls, I know, again, those are for the kids of or maybe the grandkids of, but public service announcements certainly, we will have more conversations as it gets closer to get the word out about other modes of delivery of that information. But—

Mr. BILIRAKIS. Okay. Now—

Ms. MURPHY.—no wrong door.

Mr. BILIRAKIS. And you said that you wanted to involve Members of Congress, their staffs as well.

Ms. MURPHY. Yes.

Mr. BILIRAKIS. That is great. Is there a plan to train some of the staff and how far, is there any flexibility as far as how far the staff can go to help the constituent with the forms and all that—

Ms. MURPHY. Certainly.

Mr. BILIRAKIS.—because I know we are limited in some capacity and some areas. Yes.

Ms. MURPHY. We have some toolkit materials that we can provide to all of the offices. I know sometimes you are going back to your districts and you might have a package of information that you could share. We would be happy to share some outreach materials that you could pass along, the tools, the link to the website, any and all of the information.

Mr. BILIRAKIS. Yes. We are going to put it on our Facebook page. That is important, too.

Ms. MURPHY. Yes. That is good.

Mr. BILIRAKIS. Again, you know, I hate the stay, but if it is necessary. You know, our Blue Water Navy veterans have waited too long. I know it was in the legislation, but we want to get it right, obviously.

Let me ask this. In this regard can you tell me how long VBA plans on tracking and reporting the accuracy of the Blue Water Navy claims?

Ms. MURPHY. We have particular tracking mechanisms, different claim labels and end products that we have for all of these different categories, Blue Water Navy being one of many, many that we do. We can do special reviews. We are going to set up a process to do quality reviews as we are getting ready to pay some of the first claims. We will be giving feedback to the stations, holding calls every week, maybe every day at the beginning. We will have the VA pulse page available to the claims processors in case they have any questions as part of the claims processing.

My team, the National Quality Team, will be looking at categories of these, subcategories of these. The local quality teams will be doing targeted reviews. We will be doing this for some time over the years while we are processing these claims as they come in.

Mr. BILIRAKIS. Okay. You are not anticipating any type of a shortage with regard to Full Time Employees (FTEs) until—I know you made a request for new FTEs for Fiscal Year 2020.

Ms. MURPHY. Correct.

Mr. BILIRAKIS. You think you have enough now that will be trained adequately to get these claims submitted. When you go from say January 1st and it is a uncomplicated claim, say an easy claim, what have you, I know in regular claims it is anticipated 125 days. Give me an average roughly how long you anticipate this claim from start to finish, and I mean from when the beginning of the claim, but also when can the veteran go to his or her mailbox and receive the check from start to finish.

Ms. MURPHY. Every claim is different.

Mr. BILIRAKIS. I know that.

Ms. MURPHY. That is part of the complexity. The 125 days—

Mr. BILIRAKIS. Roughly tell me.

Ms. MURPHY. I would say for—it is hard to say. For some of the more—if everything is in the claims folder—

Mr. BILIRAKIS. Yes. Everything is there.

Ms. MURPHY.—and we can go, there is also prioritization. Your claim may be ready to go, but if it is in line behind a terminally ill veteran or a homeless veteran—

Mr. BILIRAKIS. They are priority.

Ms. MURPHY. They are prioritized first.

Mr. BILIRAKIS. That is fine with me.

Ms. MURPHY. They go first.

Mr. BILIRAKIS. Particularly the terminally ill.

Ms. MURPHY. If we have, you know, if you have got like a lot of planes ready to land on the runway, if you have a lot of claims that are ready to go, we will do those prioritized claims first. It may make your claim, your ready to go claim take a little longer. Some of the simpler claims could be done in a couple of weeks. Some of the more complex claims could be many months. If we are in a position to deny a claim, it will take longer because we want to exhaust all avenues to try to say yes on that claim.

Now if a veteran does not have a confirmed diagnosis of one of the Agent Orange conditions, that would end up being a no. Other than going out and affirming whether there is a diagnosis or looking for more medical records, if the veteran does not have one of the presumptive conditions, looking for more records or trying to place them on the ship becomes less relevant.

We will develop, fully develop all of our claims. It is part of our duty to assist.

Mr. BILIRAKIS. We have got to take into consideration that they have been waiting all these years, for—

Ms. MURPHY. Yes, sir.

Mr. BILIRAKIS.—over 40 years. I do not like, as the chair said, placing the burden on the veteran. They file the wrong claim and they need a correct form, or file the wrong form and they need a correct form, but they have 35 days, my understanding, is to get in the correct form. What happens if they do not get it in within 35 days?

Ms. MURPHY. It is an effective date issue. It does not mean that they are out of—

Mr. BILIRAKIS. Right.

Ms. MURPHY. They are out.

Mr. BILIRAKIS. Do you have any leeway with those 35 days, say they get it in 40 days—

Ms. MURPHY. We can—

Mr. BILIRAKIS.—are they going to lose their place?

Ms. MURPHY.—look at postmarks. We can take a look at some things in the system. These are all handled on a case by case basis, sir.

Mr. BILIRAKIS. Okay. All right. Well, thank you very much. I appreciate it. What I do not want to see is a veteran get frustrated and say, the heck with it, it is not worth it—

Ms. MURPHY. We do not want to see that either.

Mr. BILIRAKIS.—because they earned that. We have to—

Ms. MURPHY. Absolutely.

Mr. BILIRAKIS.—go the extra mile.
Thank you.

Ms. MURPHY. Thank you, sir.

Ms. LURIA. Okay. Thank you. We will move into a second round of questions.

Just to clarify the stay, and specifically talking about the Korean DMZ claims, my understanding is that you are still processing those claims for the laws that existed prior to Blue Water Navy Veterans Act being passed; is that true?

Ms. MURPHY. Yes. For Blue Water Navy, boots on ground—

Ms. LURIA. I am specifically asking about Korean DMZ claims.

Ms. MURPHY. Yes. If there is—

Ms. LURIA. Are those still being processed during the 6 month time between June and January?

Ms. MURPHY. It is my understanding, yes, ma'am.

Ms. LURIA. Okay, because I have a copy of a letter here from Secretary Wilke to the Under Secretary for Benefits and it specifically says in paragraph 3 that the board is ordered to stay decisions regarding claims for disability compensation that are based on service in or near the Korean DMZ from September 1st, 1967 to August 31st, 1971. Okay.

There is a period of time, the only thing that changed in Blue Water Navy was we added additional time. From September 1st, 1967 to April 1st, 1968 is the new time. This is saying, stop all claims for Korean DMZ between 1967 and 1971. Are all of them being stopped because—

Ms. MURPHY. So if—

Ms. LURIA.—we only added a new time between 1967 and 1968? I am kind of confused.

Ms. MURPHY.—if that is speaking to instructions to the Board of Veterans Appeals, I would have to go check with them to—I would have to go verify their instructions.

Ms. LURIA. You are saying that the secretary's guidance does not apply to you in this case?

Ms. MURPHY. I was just going from what you read there, ma'am. It is my understanding, and we will double check, we will verify with the claims processing side, but if we can process—

Ms. LURIA. Wait. I mean, this is—

Ms. MURPHY.—the normal case—

Ms. LURIA.—addressed to Under Secretary for Benefits. I believe that that is Dr. Lawrence who we asked to come to this hearing; is that correct? Is that who that person is?

Ms. MURPHY. Dr. Lawrence is our under secretary. Yes, ma'am.

Ms. LURIA. Okay. Well, this says from secretary 00, Code 00, signed by Robert L. Wilke to Under Secretary of Benefits. This is a letter from Secretary Wilke to Dr. Lawrence saying do not process any claims between September 1st, 1967 and August 31st, 1971, during the 6-month period.

Mr. CLARK. We will take that back for the record, ma'am, and get you a response.

Ms. LURIA. Okay. I would—

Mr. CLARK. Yes, ma'am. We will do so.

Ms. LURIA. —like clarification on that because the only thing—

Mr. CLARK. We will do so.

Ms. LURIA.—added in the new legislation is the time period between September 1st, 1967 and April 1st, 1968. That is the only new timeframe.

Mr. CLARK. We will get you a response.

Ms. LURIA. If I am understanding correctly—

Ms. MURPHY. If you are correct—

Ms. LURIA.—everything else related to Korean DMZ claims should have been processed as was already ongoing during the 6-month period. If the case is that it has been stopped for the entire timeframe, I would also like to know how many cases were affected and how many are just waiting in a queue—

Ms. MURPHY. Certainly.

Ms. LURIA.—due to this halt in process.

Ms. MURPHY. We will validate that. Thank you.

Mr. CLARK. We will get that.

Ms. LURIA. Thank you.

Okay. I now ask Mr. Bost if he would like to ask additional questions.

Mr. BOST. Yes. There is just a couple more.

Mr. Clark, can you kind of give a detail on the contractors who are qualified to transcribe the information from the deck logs so it can be used on the ship locator. You have a contracted company for them; is that correct?

Ms. MURPHY. Sir, if I could jump in.

Mr. BOST. Yes.

Ms. MURPHY. We are working with our Office of Business Process Integration or OBPI. They have got the lead on working with their existing scanning vendors who do our normal scanning for any paper that we get in, turning it into electrons so that we can route the work paperlessly.

Mr. BOST. Do you know which contractor that is?

Ms. MURPHY. Off the top of my head I do not know the name of the contractor, sir. It is somebody that I believe that we have worked with—

Mr. BOST. We can get it for the record.

Ms. MURPHY. Yes. We have worked with them for a while. They have existing locations, high speed scanning. We have a relationship with these folks and they have taken the lead on working through the mechanics of that.

Mr. BOST. All right. One other thing I want to follow up on what Dr. Roe asked before he left, you know, the other parts of this legislation. Where are we at on tracking to complete the study to identify the military installations where Agent Orange was sprayed in Thailand during the Vietnam Era? How are we coming along with that and are we getting that information? That is part of the legislation, right?

Mr. CLARK. I will have to take that for the record and get back to you—

Mr. BOST. If you would take it for the record and get it back to us, that would be great.

Mr. CLARK.—because I do not know if we have started, but we will certainly get you a response on it, Mr. Bost.

Mr. BOST. Okay. All right, because we are working on the big picture of the legislation—

Mr. CLARK. Yes, sir.

Mr. BOST.—but we also want to know where we are at with that.

Mr. CLARK. We will get that back to you.

Mr. BOST. Okay. I yield back.

Ms. LURIA. Thank you, Mr. Bost. Thank you both for appearing today and answering questions, and we will look forward to follow up on some of the open ended questions that we had during the hearing.

I would like to now invite Panel Number 2 to come forward to the table. While you are doing that, I will introduce the witnesses on this panel.

We have Mr. Shane Liermann, the Deputy National Legislative Director of the Disabled American Veterans; Ms. Diane Rauber, Executive Director of the National Organization of Veterans' Advocates; and Mr. Ryan Gallucci, Director National Veterans Services for the Veterans of Foreign Wars.

While you are taking your seats we will get ready for questions when you are ready.

[Pause]

Ms. LURIA. Mr. Liermann, we will start with you and I would like to recognize you for 5 minutes for a statement.

STATEMENT OF SHANE LIERMANN

Mr. LIERMANN. Thank you.

Chairman Luria, Ranking Member Bost, and members of the subcommittee, on behalf of Disabled American Veterans (DAV's) more than 1 million members, we thank you for the opportunity to present our views at today's oversight hearing regarding VAs implementation of the Blue Water Navy Vietnam Veterans Act of 2019.

Our written testimony addresses all of our concerns, questions and recommendations, however, my oral remarks will highlight just a few of these.

Madam Chair, we thank you and Ranking Member Bost and all members of the subcommittee for your collective efforts in getting H.R. 299 unanimously passed through the House in May which was approved by the Senate and signed into law by the president on June 25th.

As noted, unfortunately Secretary Wilke, on July 1st, issued a stay that stopped all processing of all benefit claims by Blue Water Navy veterans and survivors. We do not believe it was congress's intention to prevent every single Blue Water Navy veteran from receiving Agent Orange benefits for at least 6 months.

We continue to call on Secretary Wilke and the president to lift or modify the stay on Blue Water Navy claims, especially for those most in need.

Senior VA officials have stated that they will be ready to make decisions and award benefits for Blue Water Navy claims on January 1st. That means they would have developed and prepared these cases in advance, which then begs the question, if VA has cases ready to grant benefits on January 1st, why can not VA grant those benefits now, particularly for those with terminal illnesses and other hardships.

In reference to VAs implementation of Blue Water Navy claims, we have received limited information and little collaboration which leads only to many more questions, such as VA ship locator tool is being created solely with the ship's list provided from DOD. Of those ships, are we certain that every deck log for every ship has been provided; are there ships that served within the determined area offshore of Vietnam that were not included?

DOD has specifically excluded submarines from the ship's list provided to the VA. As diesel powered submarines were used during this time, and they had to surface every 2 to 3 days to recharge their batteries and exchange fresh air. Why were diesel powered submarines excluded from the list of U.S. ships serving in the waters offshore?

We also do not know if the ship's locator tool will be available to the Board of Veterans Appeals, especially for those legacy appeals and Appeals Modernization Act pending appeals that have been impacted by the secretary's stay, and how will this affect the board's prohibition from developing cases.

Madam Chair, in their letters to previously denied veterans, VA is providing the supplemental claim form to reestablish the claims and advising them they cannot file for a new disability on that supplemental claim form and directing them to the website for the new claim. We ask, why is the VA not satisfying their duty to notify and providing the appropriate form designated for new claims to previously denied veterans.

VA regulations State that in order for a claim to be considered, it must be submitted on the appropriate claims form, in this case either the supplemental claim or the application for disability compensation. If a veteran or survivor submits a claim on the wrong form, VA will not take action on the claim. However, VA is required to notify them and provide the correct form. Their effective date will not be protected, which means veterans and survivors can lose months of entitlements to their benefits while waiting for VA to notify them.

Because it is difficult for veterans to recall the claims filed decades ago, VSOs and veterans have no other choice than to file these claims on both forms as to ensure the proper claims are filed without veterans losing entitlements or their effective dates.

Unfortunately, this will create additional work for veterans, VSOs and the VA. This issue, which applies to the entire VA claims process, has been raised multiple times with VA over the past several months. It is clear, VA has no intention of changing this policy. Therefore, Congress should enact legislation to require VA to accept any new claim or previously denied claim being filed on either form.

As former VA administrator, General Omar Bradley stated, "We are dealing with veterans, not procedures, with their problems, not ours."

Madam Chair, this concludes my testimony and I would be pleased to answer any questions that you or members of the subcommittee may have.

[THE PREPARED STATEMENT OF SHANE LIERMANN APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Mr. Liermann.

I now recognize Ms. Rauber for 5 minutes.

STATEMENT OF DIANE RAUBER

Ms. RAUBER. Thank you.

Chairwoman Luria, Ranking Member Bost, and members of the subcommittee, thank you for the opportunity to testify. We appreciate congress's passage of the Blue Water Navy legislation and your leadership in exercising oversight authority over its implementation.

National Organization of Veterans' Advocates (NOVA) members have long fought for the rights of Blue Water Navy veterans and their families, representing them before the agency, the Board of Veterans Appeals, and the U.S. Court of Appeals for Veterans' Claims. We supported Mr. Procopio's original appeal before the Federal Circuit, filing an amicus brief joined by Amvets, NOVA, Paralyzed Veterans of America (PVA), and the veterans and military law section of the Federal Bar Association.

Before outlining specific concerns, we noted it is unfortunate VA has moved away from the more inclusive communications approach used for the AMA and chose not to share its intentions for implementation of this legislation with the broader stakeholder community. Inclusion and collaboration is best for our Nation's veterans.

Turning to VA's implementation, first, VA must not use agency guidance to skirt notice and comment requirements. This legislation permits VA, notwithstanding Section 501 of Title 38, to issue guidance before prescribing regulations. We appreciate this provision is meant to give VA flexibility to adjudicate claims expeditiously. However, this provision does not authorize VA to use its manual provisions to avoid notice and comment rulemaking.

Second, the secretary's stay is over inclusive and harmful. The Federal circuit is reviewing the legality of the secretary's July 1st stay. Regardless of its ultimate decision, the stay is delaying too many 1116 claims and appeals that could be granted on the existing evidence of record.

For example, take the case of Veteran Kiefer R. represented by an OVER member. Mr. R. received an August 2018 Board Veterans' Appeal (BVA) decision concluding he served on the U.S.S. Perry. The ship operated in the waters of Vietnam. He was aboard at the relevant times, and he suffers from multiple Agent Orange presumptive conditions. In court the parties agreed the decision should be vacated under Procopio. Mr. R. has not received his benefits. This is just one example of many cases not filed under the new legislation that have been unnecessarily delayed by the stay.

Holding these cases up is particularly harmful given the age and health of Blue Water Navy veterans. After waiting years for justice, they are now faced with a longer wait for financial relief. Even if some claims and appeals need additional development, the secretary should ensure VBA and BVA adjudicate without further delay pending 1116 claims and appeals that can be granted on the existing record.

Next, VA must ensure adequate quality control and expert assistance for scanning of deck logs. VA is currently scanning deck logs provided by national archives. Ship deck logs are dense and largely handwritten. They consist of critical numbers that can prove

whether a ship traveled in the territorial sea of the Republic of Vietnam.

However, VA's digital transitions are often problematic. Veterans and advocates frequently experience delayed uploads, missing materials, mislabeling and improper ordering when submitting documents for VA scanning. Careless scanning of these deck logs, whether through missed pages, unreadable images or mislabeling will result in denials to deserving veterans. Please ensure VA provides adequate quality control over the scanning process using vendors and staff who are qualified for the task. Likewise, any tool created from scanned deck logs should be developed by people with the appropriate expertise.

In addition, advocates need access to VA ship locator tool. While VA is scanning deck logs, they are unavailable to researchers. Regardless of when access is restored, all accredited attorneys, agents, and VSOs should have access to the locator tool created by VA. Such access is critical to ensure all evidence is considered and properly interpreted so claimants receive all earned benefits.

Finally, VA should ensure the tool is not used to deny claimants. We are happy to hear Mr. Clark today has assured us that this will be the case. We will be following that closely. In its regulations and manual guidance, VA must clearly explain this concept and provide adequate training to the field. To Dr. Roe's earlier point, VA guidance should also ensure that competent and credible lay evidence is given proper weight in deciding these claims and appeals.

I would like to note that National Veterans Legal Services Program (NVLSP), in its written testimony, has advocated for specific methods of contacting veterans when letters are returned, and we would urge you to take a look at those recommendations as well.

NOVA is committed to work with congress, VA and fellow stakeholders to ensure Blue Water Navy veterans receive their earned benefits in a fair and timely fashion.

Thank you again for the opportunity to testify, and we would be happy to answer any questions.

[THE PREPARED STATEMENT OF DIANE RAUBER APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, Ms. Rauber.

I now recognize Mr. Gallucci for 5 minutes.

STATEMENT OF RYAN GALLUCCI

Mr. GALLUCCI. Thank you, Madam Chair, and Ranking Member Bost, members of the subcommittee, thank you for the opportunity to present VFW's views on implementation of the Blue Water Navy Vietnam Veterans Act.

The VFW applauds Congress for passing the act, correcting a horrible injustice for our veterans. We also thank the president for swiftly signing it into law. We are only halfway there. Our next goal is to make sure that VA delivers timely, accurate benefits to those covered by the act.

I will address several facets of VA's roll out in my remarks, such as Secretary Wilke's stay on claims, VA's plan to process claims and the effects of appeals modernization on VA's workload.

First, the VFW strongly disagrees with the stay on processing all claims covered under the act. No sooner had President Trump's sig-

nature dried on the bill that Secretary Wilke unilaterally applied his authority to stay certain claims to any claim that could be covered under the law, even claims that VA could already grant, as Chairwoman Luria pointed out, such as Korean DMZ.

In partnership with Disabled America Veterans, Vietnam Veterans of America and others, we called attention to the effects of the stay in a press conference late last month. To be clear, it is not just about denial of care, but the financial ruin that veterans would face for life-saving care that should have been paid for by VA.

For survivors, months without benefits could mean losing a home or amassing debt to make ends meet. For veterans who stand to lose their battles with these illnesses, as Dr. Roe pointed out, why make them wait any longer.

To the VFW, the stay should have meant that VA should grant what it could under Procopio and current law, but stay any claims that required either further development or denial. Secretary Wilke must lift the stay immediately. We know that certain claims can be granted now. Waiting until January not only harms veterans, but creates an unnecessary backlog for VA at a time we can ill afford it.

Furthermore, the VFW calls on this subcommittee to commission a report on the effects of the stay asking 2 points: How many veterans requested expedited processing due to financial hardship or terminal illness during the stay; and how many veterans died during the stay?

Next, the VFW has tried to work closely with Dr. Lawrence and his team at every opportunity to provide insight into the development of the act. To his credit, Dr. Lawrence has been responsive to the VSOs by offering opportunities to review VAs communication plan explaining the processes to veterans. VA must move aggressively to get this information in front of veterans, and the VFW will assist in any way that we can.

VBA should also be commended for developing its ship locator tool with the national archives and DOD, and we look forward to a demonstration of the tool next month. However, we are concerned about the lack of formal policy guidance. We heard from our field offices that there are different interpretations of what veterans are supposed to do. In Ohio, we were advised to file 3 separate forms for veterans just to be safe. In Maine, we are tracking several veterans who filed supplemental claims only to learn they were never established.

We understand that regulations will not be ready in time for January, but that is Okay, because we think that VA already has the ability to process many of these claims under current authorities. However, we believe that the inconsistencies that we have heard about in the field underscore the critical need for policy guidance both for VA and VSOs. VA must publish and communicate this guidance as soon as possible.

Now before this hearing the VFW believed that VBA was heading in the right direction. As of last week VBA reported that exams were underway and that they intended to queue claims ready for decision while waiting for the stay to expire. I commended VA for this in my submission for the record, but now after the previous

panel I have heard that they are not doing this. I must question the information that we received up to this hearing today.

Now I cannot discuss Blue Water Navy without also discussing unintended consequences of the Appeals Modernization Act. In June, a coalition of VSOs asked Dr. Lawrence to look into concerns over how VA was processing forms for decision reviews as well as the lack of applicability of intent to file for supplemental claims after 1 year, which there was ample discussion about with the first panel.

To their credit, VBA did say that they reviewed the Intent To File (ITF) issue and that we should expect a revision soon. However, VBA has yet to address the standard forms that caught the committee's attention in the previous panel.

We worry that under Blue Water the situation will only be exacerbated when veterans' claims are turned away. This is a self-inflicted wound for VBA. Section 5108 of the Appeals Modernization Act did not direct VA to create a standard form for supplemental claims. It only created a burden for veterans to furnish new and material—I am sorry—new and relevant evidence for VA to review that prior decision.

We see this as only creating bureaucratic barriers for veterans. VA must address this forms issue. Since any action VA takes would only be prospective, VFW further recommends that VA report on how many veterans were affected by the AMA issues and that Congress take up legislation to award retroactive benefits to anyone whose claims were erroneously denied.

A 100 years ago, VFW helped our first veterans access their benefits. Today more than 2,100 professional VFW advocates assist more than half a million veterans in this complex process. We know the issues. We understand the problems, and we are here to help.

We hope the recommendations we presented today will be valuable to the subcommittee and to VA in ensuring we deliver timely and accurate benefits to our veterans.

Madam Chairman, Ranking Member Bost, this concludes my remarks and I am eager to answer any questions the subcommittee may have.

[THE PREPARED STATEMENT OF RYAN GALLUCCI APPEARS IN THE APPENDIX]

Ms. LURIA. Thank you, and thank you to all 3 of our witnesses for your opening statements. I also wanted to remark that Mr. Wideman had planned to be here today from the Vietnam Veterans of America, but due to an illness he was not able to come as planned. I just wanted to make sure that he had intended to participate.

We will now move on to questions and I will shift this up and I will let Mr. Bost do 5 minutes of questions first and then I will follow.

Mr. BOST. All right. Thank you, Madam Chair.

This is a question for the entire panel, just trying to kick it off. Do you believe that the VA is being collaborative and transparent in its implementation of the Blue Water Navy Veterans Act?

Mr. LIERMANN. No, we do not. DAV does not, they have not provided us a copy of their implementation plan. They have not

showed us anything that they are planning to do outside of that one letter and, oh, their communications information.

Ms. RAUBER. No. We have not been communicated with at all. To VA's credit, during the AMA process they were very inclusive, but it is been radio silence on this.

Mr. GALLUCCI. Ranking Member Bost, in our prepared remarks we did give some credit to Veterans Benefits Administration, specifically Dr. Lawrence, for some of the information that we had provided. Unfortunately, after coming into the room today I learned more from this statement about what VA's actual plan is in executing the Appeals Modernization Act than the pointed questions that we have asked in these meetings over the last few months.

I worry that when they keep giving credit about the communication plan that they do not full understand what our organizations do in representing veterans in this benefits process. This is not just about leveraging our infrastructure around the country to tell veterans about VA benefits, but literally advocating on their behalf.

Mr. BOST. Okay. Can I ask, I know, Mr. Liermann, you gave certain suggestions that you believed should be done. Are there other suggestions any of you might have that we could better get the communications open?

Mr. GALLUCCI. Ranking Member Bost, I would like to touch on that because in our testimony, in our prepared remarks I did talk a little bit about how this relationship had worked with VA over the years. It seems to be a stark departure from normal.

Now to Mr. Clark and Ms. Murphy's credit, we have worked with them for a number of years and have seen a lot of transparency from Veterans Benefits Administration. I have to question why we are not receiving the type of information that we used to receive. It becomes very problematic for our folks in the fields who are trying to advocate—

Mr. BOST. Sure.

Mr. GALLUCCI.—on behalf of our veterans.

Mr. BOST. Sure.

Mr. Liermann, I have got a question for you. Your testimony stated the VA's updates to DAV about its implementation of Blue Water Navy are at times contradictory and unclear. Okay. Can you give us examples of where they run clear and also where do they contradict themselves?

Mr. LIERMANN. Oh, absolutely. It goes back to one of the points we have already been discussed this afternoon. Originally in July when we mentioned this issue between a supplemental claim form and the actual claim for applications, what they were going to do, we were reassured at a meeting in July that they would accept any claim from a previously denied Vietnam veteran on any form that they submitted. We were assured that at the meeting we were not the only stakeholder there. VFW was there and several other organizations, and that is where—I mean, it is contradictory.

Now it is as if they never told us that and now they are sticking only to, no, it has to be on the right form otherwise we will not process the claim.

Mr. BOST. Okay. I think I cut you off on—you were wanting to respond back on—

Ms. RAUBER. Oh, well, no. I think previously as we said with the AMA, VA really reached out to a broader group of stakeholders outside of just the big six. Many organizations that are actively involved in representing veterans and we have not seen that kind of collaboration in this area.

I might just also add to what Shane just said, I think if you go back to 2015 and the real intentions behind allowing VA to require specific forms, it was not intended to ding a veteran when he is unable to submit the correct form.

Mr. BOST. Right.

Okay. Do any of you have suggestions on how VA can improve the outreach that they are doing right now?

Ms. RAUBER. I think one of the things that I suggested at the end of the testimony that is also raised by NVLSP is if you are sending out letters to veterans who were denied back in the 80's, 90's, early 2000's, what is happening when those letters come back and they are undeliverable. There needs to be some real intensive look at, are we really reaching the people that have been denied before.

Mr. BOST. Okay. Then I am going to do a follow up because I know each one of your service organizations. I know them well. I have in my office, in my—well, actually, both of my offices I actually have people who were former VSOs processors and it is a great advantage to have that. I have got two disabled veterans that they are like bird dogs on this. It is fantastic.

How can we, our offices, help you to make sure you get the information as quick as possible so we can turn this up? We have worked too long on this. We have worked too long on it not to be able to roll it out and roll it out right.

Mr. LIERMANN. Actually, one of the things that, similar to what Ryan was saying, I learned more information about what was going on with this process from both committee staffs than I have from a lot of the VA and VBA briefings on how this is rolling out. We are in constant communications with both staffs and we have been getting more information from them than we have actually been getting from VBA.

Sharing information with us that is important and relevant to the point Ryan made, instead of just talking about outreach and getting the word out, we were not aware that they were going to have eight VA regional offices handle these claims. Nobody told us that. We found that out from this committee staff. We were not told what they were and have not been advised any of that information.

I think what it really comes down to is they need to tell us what they are doing. They need to have open, honest conversations instead of just being worried about getting their information out for them on social media.

Mr. BOST. Okay. Thank you. My time is done.

Ms. LURIA. You are welcome to continue if you have a further line of questioning.

Mr. BOST. I will yield back.

Ms. LURIA. Well, I will continue with, you know, I will dovetail off of what Mr. Liermann said is that, you know, I really sense a frustration between the VSOs who are here to help the veterans, our representatives from the VA who I feel are trying to implement

what is technically a complex process of having millions of pages of deck logs implemented and a tool to put all these things together and get all the people in place. It just seems like there is a stone-wall where people are not communicating what efforts are taking place on both sides.

Can you elaborate a little bit more about like what attempts have you tried to make, any of you at the table, to gather this information and what normal lines of communication may have broken down so perhaps we can help facilitate that?

Mr. LIERMANN. Well, we attend regular meetings as has been eluded to before about just Blue Water Navy and how they are implementing it. However, a lot of the suggestions, a lot of the comments, a lot of the information we bring forward is not followed through with. It is not implemented. We made several suggestions on how to improve their letter to veterans. Only one or two were actually made. They disregarded several of the comments that we included. And then just sharing of information, I mean, we are sitting in the room with them, but yet they have not told us a lot of the information we just learned today.

I am not sure where the breakdown is. We are in meetings together, but some of the significant information that was shared today just has not been shared with us. We are not even aware of their plan because we have never seen it nor has it been talked about before prior to the hearing.

Ms. LURIA. Do you have something to add?

Mr. GALLUCCI. I would agree with what Shane said there. It just seems like there is a different mind set. Again, we believe that there are a lot of hardworking advocates at the Department of Veterans Affairs who do want to get this right. Again, we talked to our offices in the field about what they are hearing, and even they are reporting back contradictory guidance. It seems to be coming either from a different level because we are seeing it across other business lines in VA.

As you mentioned before, we are deeply integrated into the Veterans Benefits Administration and their processes to represent veterans in the benefits process, but then other reforms like MISSION Act and the community access standards, things like that, were dropped on organizations at the last minute. We are still not really sure what is happening with Care giver.

The communication just is not—it is not there. Anything that this committee can do to assist in that and bring about more transparency, we certainly welcome it.

Ms. LURIA. Well, just the irony looking here, I mean, you are sitting with your backs to the folks who have the answers to the questions. You know, please take the opportunity while you are here in the room, you know, after the hearing to follow up with each other on some of these concerns because I assume that there might be mutual concerns in the flow of information.

I really appreciate you pointing those out, and I think that we are all on the same team and we want to see this roll out effectively starting January 1st. We want veterans' claims to be handled as expeditiously and accurately.

I think, Mr. Liermann, you mentioned that getting it right the first time as possible because these claims are long overdue and we

want these people who have been effected by this exposure to receive the healthcare and benefits that they deserve, or their survivors in the case, the very unfortunate case that they may no longer be with us.

I had some other questions. I think we have covered the issue of forms. We have brought that up. It is of concern and I think that they have indicated in the first part of the hearing that they will go back and take a look at that.

I was also going to ask a question specifically about submarines, the importance of that, how frequently have you heard that, you know, from people that you interact with and could you just potentially amplify the importance of including, you know, submarines and submarine data in this process?

Mr. LIERMANN. We were not even aware they were being excluded until, again, conversations with the committee staff. We had not been provided the information from VA that submarines were being excluded. We have had conversations with—

Ms. LURIA. Can I actually interrupt for a second?

Just to be clear, and I know you can feel free to answer, you know, from sitting behind the witness table right now for Mr. Clark. I do not feel that they are being excluded. I just think, what if my understanding is because of the nature of the deck logs that they are not initially being included in the tool. If someone submits a claim and they did serve on a submarine, the tool would not contain that data. So then it would go through a separate review.

You can turn around. Mr. Clark is nodding behind you; is that correct?

Mr. CLARK. That is correct.

Ms. LURIA. Okay. I just wanted to make sure that if anybody is watching this hearing and they did serve on a submarine, it is not being excluded. It is just that that data is not in this initial phase being incorporated into the tool. It may take a little bit longer to do the investigating. That person is still entitled to the same benefits, and their claim might just take a little bit longer to process.

Mr. LIERMANN. That is great information and we are glad to hear it because, again, nobody has shared any of this information with us prior to the hearing.

Ms. LURIA. Well, thank you.

Mr. Bost, do you have any additional questions for our witnesses?

Mr. BOST. Yes. What is NOVA's position, as far as the importance of VA providing adequate control over the deck logs and the scanning process, in your—

Ms. RAUBER. What we have seen in the past with all kinds of scanning procedures of the VA is that often they are not as good as they should be. There is problems. There are issues. We want to be sure that there is adequate oversight over the scanning process. We believe that advocates who are properly accredited should have access to this tool that they are creating. Those deck logs for all the time that they are out being scanned are not available to researchers. We know some of our members who are working on behalf of Blue Water Navy veterans are being told, you know, these records are not accessible to you for this period of time.

We really feel that VA's electronic processing issues are well known and need to be carefully looked at.

Mr. BOST. Okay. All right. Then just kind of a follow up to that. It is, and I feel good about this. I hope your organizations do, too, that when Mr. Clark said that but they are not using the tool to get to know.

Ms. RAUBER. Yes. They had said that at a few meetings and we are glad to hear him confirm that.

Mr. BOST. Okay.

Ms. RAUBER. We appreciate it.

Mr. BOST. Then one last one is can you describe any training that the VA has provided to your organizations so far for Blue Water Navy?

Ms. RAUBER. None.

Mr. BOST. Okay. I yield back. Thanks.

Ms. LURIA. Well, and also looking to this a little bit further, it appears that this partnership between the national archives and the VA that will result in the scanning of these deck logs, that they will actually now be more accessible to people afterwards because the national archives will be making them available digitally.

I know that there is a time window just because of the logistics of physically taking these deck log books to a scanning facility where they are not available. I do get the impression that longer term this data will now be readily available to the general public in a much faster and easier way.

I think there might be a delay right now for some people trying to do this research, but in general in the future I think it will be very accessible. I just wanted to point that particular thing out.

I do not have any further questions for the panel. I want to thank you again for taking time to come speak to us today. You know, also thank Mr. Clark and Ms. Murphy for being here, and, really, just look forward to the ongoing and continuing dialog as we move forward to January 1st and then after January 1st to have the ability to, you know, visit and interact with one or more of these eight sites where this processing is taking place because I think that would be useful for the members and our committee staff.

Let us see if there is any other additional things that we should include.

Mr. Bost, would you like to make any closing remarks?

Mr. BOST. No. I just want to thank everyone for being here. I think, you know, it has been productive. We do, I mean, I can not say it enough. We want this done right. We want—it has been too long. Thank you.

Ms. LURIA. I just want to reemphasize again that these veterans have waited for decades to get these benefits and, you know, the goal of this hearing is to make sure that the VA has the resources, the personnel, conducts the training and all of the other pieces that are required for successful implementation so that we can get this right. We want veterans who submit their claims to get an accurate review and a positive response in the case where they are entitled to these benefits the first time around.

Thank you all for being here to be part of that discussion.

I would like to remind all members that they have 5 legislative days to revise and extend their remarks, and include any extraneous material.

This hearing is adjourned.

A P P E N D I X

PREPARED STATEMENTS OF WITNESSES

PREPARED STATEMENT OF WILLIE CLARK

Good afternoon, Chair Luria, Ranking Member Bost, and Members of the Committee. Thank you for the opportunity to speak today on the Veterans Benefits Administration's (VBA) plan to implement the Blue Water Navy (BWN) Vietnam Veterans Act of 2019. Joining me today is Beth Murphy, Executive Director of Compensation Service. Today, I will provide an update on how VBA is preparing to process disability compensation and survivors' claims as a result of the new law and what resources will be required for implementation.

Background

Public Law (P.L.) 116-23, the BWN Vietnam Veterans Act of 2019 (referred hereafter as BWN Act), was signed into law on June 25, 2019. The law provides that Veterans aboard a U.S. military vessel offshore of the Republic of Vietnam between January 9, 1962, and May 7, 1975, are presumed to have been exposed to herbicides such as Agent Orange and may be entitled to service connection for conditions related to that exposure.

VA appreciates the authority Congress provided to the Secretary to stay pending BWN claims until the law takes effect on January 1, 2020. VA executed a stay of pending claims on July 1, 2019. The stay is enabling VA to operationalize the new law to ensure the proper resources are in place to meet anticipated workload demands, to develop appropriate policies and procedures, and to create the necessary tools to accurately adjudicate claims under the new law.

VA is committed to ensuring all Veterans and beneficiaries covered under the BWN Act receive the benefits they have earned in a manner that honors their service. Through the various activities discussed today, VBA is confident that awarding these claims will begin on January 1, 2020. VBA will provide priority processing for claims of Veterans who are homeless, experiencing financial hardship, terminally ill, and age 85 and older, in the same manner as other claims that receive priority processing.

Implementation Plan

VBA is executing a comprehensive project management plan to process BWN claims timely and accurately. The Under Secretary for Benefits established a Tiger Team comprised of senior leaders and other subject matter experts who drive the progress. Also, an Integrated Project Team (IPT) was established that collaborates across VA organizations and partners and regularly reports statuses, issues, and risks to the Tiger Team. Finally, three sub-workgroups are preparing key program deliverables for field stations. These workgroups address policy and procedural matters, training and communications, and deck log scanning and Information Technology (IT) systems.

Policy and Procedures

The BWN Act authorizes VA to implement the law prior to publishing regulations. Under this authority, VBA has issued interim guidance to the field in the form of USB Policy Letters for the handling of existing and incoming BWN claims. Meanwhile, we are currently working on publishing proposed regulations to codify certain aspects of these policies through the formal rulemaking process (with public comment) by the third quarter of this fiscal year. VBA continues to work through other policies and procedures, which will be finalized prior to the effective date of the law. The Secretary has adopted an evidence-based approach in verifying the locations of Navy ships for determining eligibility under the BWN Act that will result in greater consistency and uniformity across its regional offices.

Training and Communications

BWN Training materials are currently being finalized and will be delivered nationwide to field employees in early December 2019. Further, as additional claims

processors are hired to address the increased demand anticipated from the new law, VBA will deliver Challenge training for new hires.

VBA has developed a robust communications plan for both internal and external stakeholders. A coordinated public outreach campaign is currently in development and designed to reach those claimants who are potentially eligible under the new law. This includes partnering with Veterans Service Organizations and other interested stakeholders to publicize BWN Act provisions through press releases, newsletters, media, and digital platforms (i.e., internet, email, social media, etc.). As part of this effort, VA recently sent targeted outreach through direct mailings to Veterans and survivors who submitted claims that were previously denied. In the outreach letters, VA provided the appropriate form and information necessary to receive consideration under the new law. VA is equipping employees with detailed policy and procedural guidance and call scripts for National Call Center agents.

Deck Log Scanning and Development of IT Systems

This effort provides VBA claim processors with tools to efficiently identify vessels that traveled within 12-nautical miles seaward from the Vietnam water demarcation line as defined in the law. Along with the Naval History and Heritage Command, VBA collaborated with the National Archives and Records Administration, which has entrusted VBA with the care of their archival records in the form of deck logs. VA is managing a contract to scan and extract pertinent data from deck logs for over 1,800 ships created over a 13-year timeframe. Upon completion of this scanning effort, VA will return the paper deck logs as well as provide the deck log image files to the National Archives to incorporate into its digital catalog. VA is ingesting the data into an electronic tool, which will be utilized by claims processors to determine whether a ship operated in the offshore waters during the prescribed timeframe after consideration of all evidence of record. Furthermore, VBA is modifying its current corporate IT systems to allow for the accurate tracking and processing of BWN claims.

Claims Processing

VBA will be ready to process these claims and begin awarding disability benefits on January 1, 2020. VBA has identified subject matter experts with extensive experience in reviewing and researching military service and other records from the field who have provided valuable insight to help inform policies and procedures, along with anticipated workload needs. VBA will have dedicated resources that will process these claims, including these specialized experts who will make the determination that Veterans had qualifying offshore service. As noted previously, VBA will provide priority processing for claims of Veterans who are homeless, experiencing financial hardship, terminally ill, and age 85 and older, in the same manner as other claims that receive priority processing.

Resources

Considering that the BWN Act was signed into law in June 2019, after the 2020 budget process concluded, the 2021 budget process would be the first opportunity for VA to formally request resources to support the implementation of this law. In addition to funding to make benefits payments to Veterans who qualify under the provisions of the law, as described in this testimony, VA needs resources to hire, train, and support additional claims processors, to scan deck logs and Veteran records, and to modify IT systems. VA appreciates Congress' consideration in appropriating funding, which will enable VA to successfully implement the BWN Act and provide these Veterans and their Survivors the benefits and services they are newly entitled to receive.

Conclusion

VA is committed to ensuring all BWN Vietnam Veterans and family members receive the benefits they have earned under the BWN Act. VBA has a comprehensive implementation plan to operationalize the requirements of the new law, and we are currently on track to begin awarding benefits on January 1, 2020. VA appreciates the support of Congress and this committee to continue to care for our Nation's Veterans and family members. This concludes my testimony. I would be happy to address any questions from Members of the Committee.

PREPARED STATEMENT OF SHANE LIERMANN

Madame Chair, Ranking Member Bost and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at today's oversight hearing on "Preparing for Blue Water Claims – VA Status Update on Implementation."

DAV is a congressionally chartered national veterans' service organization (VSO) of more than one million wartime veterans, all of whom were injured or made ill while serving on behalf of this Nation. To fulfill our service mission to America's injured and ill veterans and the families who care for them, DAV directly employs a corps of more than 260 National Service Officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every VA regional office (VARO) as well as other VA facilities throughout the Nation. Together with our chapter, department, transition and county veteran service officers, DAV has over 4,000 accredited representatives on the front lines providing free claims and appeals services to our Nation's veterans, their families and survivors.

We represent over one million veterans and survivors, making DAV the largest VSO providing claims assistance. This provides us with an expert understanding and direct knowledge in navigating the VA claims and appeals process.

Lift the Stay

We continue to call on Secretary Wilkie and the president to lift the stay placed on all Blue Water Navy claims issued on July 1st. 480,000 of our over one million members are Vietnam veterans. Achieving justice for Blue Water Navy veterans and their families is of vital importance to DAV, our membership, and the thousands of veterans suffering from Agent Orange linked illnesses and diseases.

Our testimony will address the decision by the U.S. Court of Appeals for the Federal Circuit in *Procopio v Wilkie*, the Secretary's stay and our concerns and recommendations for VA and Congress on the implementation of the Blue Water Navy Vietnam Veterans Act of 2019.

Procopio v Wilkie

On January 29, 2019, the U.S. Court of Appeals for the Federal Circuit, in *Procopio v. Wilkie*, held that the intent of Congress is clear from its use of the term "in the Republic of Vietnam," which under all available international law includes both its landmass and its territorial seas. This decision overruled VA's previous misinterpretations and determined that service in the Republic of Vietnam includes service in the territorial waters within 12 nautical miles of the baseline.

This was true in 1991 when Congress adopted the Agent Orange Act, and the government has pointed to no law to the contrary. It is important to note that none of the Federal Circuit Judges determined the veteran should have been denied benefits. It has been well established that Blue Water Navy veterans were considered exposed to Agent Orange prior to the VA General Counsel Opinion of July 23, 1997. As noted by the Federal Circuit, the 1997 VA General Counsel Opinion was not based on any subsequent change of law, it was solely an interpretation of a regulation that was not specific to Agent Orange exposure.

It seemed that justice for Blue Water Navy Vietnam veterans was within our grasp. DAV reached out to the Under Secretary for the Veterans Benefits Administration (VBA) and provided our recommendations for processing claims and appeals impacted by *Procopio*.

However, the Administration continued to submit motions to the U.S. Supreme Court to extend the time for filing an appeal to their jurisdiction. These actions placed a stay on claims pending due to a possible appeal. In late May, the Administration announced they would not pursue an appeal to the U.S. Supreme Court. The Board of Veterans' Appeals lifted their stay on these cases and adjudicated 200 Blue Water Navy appeals. However, the Administration's actions resulted in 4 months of delays on all pending Blue Water Navy claims within VA.

The Secretary's Stay

Madame Chair, we thank you, Ranking Member Bost and all members of the subcommittee for your collective efforts in getting H.R. 299, the Blue Water Navy Vietnam Veterans Act of 2019, unanimously passed through the House in May. Subsequently, the Senate passed H.R. 299 unanimously and on June 25th, the entire veterans community celebrated after President Trump signed H.R. 299 (P.L. 116-23), into law. This will correct the decades-long injustice for Navy veterans who had been blocked from receiving Agent Orange benefits because their service was in the waters offshore of Vietnam.

However, our joy turned to dismay when VA Secretary Wilkie, on July 1, issued a "stay" that stopped all processing of all benefit claims by Blue Water Navy veterans, including those already eligible to receive Agent Orange-related benefits based on the *Procopio* decision from January.

In response, DAV and our VSO partners wrote to Secretary Wilkie on July 24th calling on him to lift or modify the blanket stay placed on all Blue Water claims, and immediately begin processing, adjudicating, granting and paying veterans for Agent Orange-related claims. We appealed on behalf of thousands of aging and ill Vietnam veterans and their survivors, many of whom have waited decades for the recognition that they too were exposed to Agent Orange and suffered negative health consequences as a result. We specifically asked the stay to be modified to address those claims of veterans and survivors with terminal illnesses, over the age of 85 or impoverished.

Our pleas were left unanswered. On September 24, DAV, VFW, VVA and our fellow VSOs stood with House Veterans' Affairs Committee Chairman Takano and Senate Veterans' Affairs Ranking Member Tester, calling on President Trump to meet with us and to overrule the Secretary's choice to delay these earned benefits to the veterans and their families. As of today's hearing, we have not had any response from the White House.

We do not believe it was Congress' intention to prevent every single Blue Water Navy veteran from receiving Agent Orange benefits for at least 6 months. Although the law does include a provision stating that, "the Secretary may stay a claim..." it clearly does not state that the Secretary "must" stay all pending Blue Water claims. The reality is that this deeply flawed action delays, and in some cases, denies, benefits for veterans who will pass away before we reach January 1. Further, there are widows whose spouses have died this year – after the Court's ruling and after the law was enacted – who have no certainty whether they will receive survivor benefits.

Robert "Bobby" Daniels, from Missouri, served in the Navy from 1960 to 1964, including service onboard the USS Lexington, an Aircraft Carrier deployed to Vietnam. It was there, while serving as a Machinist's Mate that he was exposed to Agent Orange in the offshore waters. Bobby says that he has the ship logs to prove it.

In 2011, Bobby was diagnosed with prostate cancer and diabetes, diseases that many of his former shipmates have also suffered from. Unfortunately, since 1997, VA has not provided the Agent Orange presumption of exposure for Blue Water Navy veterans like Bobby who served only in the waters offshore Vietnam without ever setting foot on the land. As he began this new battle, Bobby was blessed to have his wife of more than 50 years, Judy, a former school teacher, by his side. Over the years, Bobby and Judy have struggled through tough times together, including taking out a second mortgage to help pay for his medical expenses. Last year Bobby was told that his prostate cancer had reached a terminal stage with no cure possible. Although he had not previously sought benefits due to his prostate cancer or diabetes, he was now worried about how his wife would get by after he was gone, and filed new claims in January and February of this year so that his wife might be eligible for survivor benefits.

It is unacceptable to force them to wait for life-changing benefits when VA has the authority to grant their claims right now. We call for immediate action on claims by Blue Water Navy veterans who already have sufficient evidence of record to grant benefits based on the Federal Circuit's Procopio decision, as well as those veterans who are terminally ill, of advanced age or impoverished.

It has now been 275 days since the Procopio decision and 122 days since the Secretary chose to place a stay on all Blue Water Navy claims. How many more days will Bobby and the thousands like him be left to suffer and possibly die without access to VA benefits?

VA's Implementation of Blue Water Navy Claims: Concerns & Recommendations

Since the Secretary chose to stay all Blue Water Navy claims and appeals, VA has included DAV and our fellow VSOs in several meetings regarding the stay and their implementation of the Blue Water Navy Vietnam Veterans Act of 2019. We have been provided updates and at times contradictory or unclear information. To date, we have not been provided with any written plan on VA's implementation or their oft-referenced operational action plan.

On several occasions, VA has indicated that they planned and were developing Blue Water Navy claims during the entire stay. We have been advised that they plan to start requesting VA examinations for those cases requiring them. Senior VA officials continue to make statements that on January 1, 2020, VA will be prepared to make decisions and award benefits. This is indicative of VA having cases essentially pre-adjudicated and are only waiting for January 1 to grant benefits. We have a question, if VA has cases ready to grant benefits on January 1, why can't VA grant

those benefits today, especially to those suffering without medical care, from terminal illnesses and those who are impoverished?

Below are DAV's questions, concerns and recommendations regarding VA's implementation of the Blue Water Navy Vietnam Veterans Act of 2019.

1. Priority Cases. On several occasions VA has advised they will prioritize cases for adjudication on January 1. Previously they noted that those veterans and survivors with terminal illnesses, over the age of 85 or impoverished would be their priority in adjudicating these cases. However, recently we have reviewed documents that indicate VA will only prioritize claims from veterans or survivors with terminal illnesses or over the age of 85, but not those suffering financial hardship or homelessness. We are concerned why these veterans and survivors have been left out of VA's prioritization of Blue Water Navy claims.

VA's adjudication manual, M21-1 III.ii.1.D.1.a, updated on October 15, 2019, lists the types of claims that require priority processing:

- claims from any claimant who is a participant in the Fully Developed Claim Program
- homeless
- terminally ill, or
- a survivor of a former prisoner of war (FPOW)
- disability compensation claims from any claimant who is experiencing extreme financial hardship, or
- more than 85 years old

38 C.F.R. § 20.902(c), the Board of Veterans Appeals Rule 902, Order of consideration of appeals, notes, a case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. "Other sufficient cause" shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case, administrative necessity, or the advanced age of the appellant. For purposes of this Rule, "advanced age" is defined as 75 or more years of age.

Recommendation. VA should place a priority on all Blue Water Navy cases for veterans and survivors when there is a known terminal illness, severe financial hardship to include homelessness and those at risk, and those of advanced age.

As noted, VA's adjudication manual notes that advanced age is 85. However, the Board of Veterans' Appeals defines advanced age as those of 75 or older. We recommend that VA should adopt the Board's Rule 902 as priority for those with Blue Water Navy claims.

Thousands of veterans and survivors have been denied these benefits for decades based on VA's own misinterpretation of law and in contradiction to the actual intent of Congress. Justice has been delayed far too long and VA should give priority to those veterans and survivors suffering from terminal illnesses, those with financial hardship to include homelessness, and those of 75 years of age or older.

2. Cases handled by only eight VA Regional Offices. In an effort to provide consistent rating decisions and correct promulgation of awards with potential staged ratings and retroactive effective dates, VA has stated it will process pending Blue Water Navy cases at eight specific VA Regional Offices. We have been advised that initially, only 50 employees will be provided the specific training to process and adjudicate these claims.

We agree with VA's decision to have claims handled with specific trained expertise to properly and consistently adjudicate and promulgate these decisions. However we do have some concerns and questions:

- Will these eight specific VA Regional Offices, with initially only 50 employees processing these claims be able to keep up with the current pending 8,000 cases or will it cause a delay in processing and create another backlog of cases? Do they have sufficient resources at the eight locations?
- VA has recently sent out approximately 77,000 letters to previously denied veterans and survivors. Will these potentially forthcoming claims create a processing back log?
- Currently, VA processes all survivor benefits claims at only three VA Regional Offices: Philadelphia, Milwaukee and St. Paul. Will these three locations be

part of the eight VA regional offices handling Blue Water Navy claims? If not, will there be sufficient expertise, training, and resources at those eight locations?

3. VA Ship Locator Tool. VA, in concert with the Department of Defense (DOD) and the National Archives and Records Administration (NARA), has developed a tool that will track the locations of U.S. Navy ships that served in the waters offshore of Vietnam during the war. VA has received a list of ships with deck logs that DOD states were in the Vietnam waters. Millions of these deck logs with the ship's coordinates are being scanned, manually verified and logged into their tool.

The tool will determine if the ship was within zone defined by the Blue Water Navy Vietnam Veterans Act of 2019. If the ship's location is not verified by the tool within the specific locations, VA will not deny the claim for that reason but VA will continue to develop for additional information to try to verify the ship's location.

When the claims are being developed for the locations, VA will be taking screen shots of the tool's determinations and those images will be added the veteran's or survivor's electronic file in the Veterans Benefits Management System (VBMS). This information will then be accessible via VBMS to those VSOs, agents, and attorneys, who are the appointed accredited representatives.

VA has stated that the tool will not be available to VSOs nor will it be public facing for veterans to use for their own claim development. However, it is our understanding that NARA may publish ship locations via their own website.

None of the VSOs, to include DAV, have seen or will have access to this tool. We would like to note that tentatively, VA has scheduled a demonstration on November 18, 2019. We have several questions and concerns regarding the tool and its downstream impact of the claims and appeals process.

- The information used by VA to create the tool is only the information as provided by the DOD. Are there ships that served within the determined area off shore of Vietnam that were not included or specifically excluded? Additionally, of those ships noted, are we certain that every deck log for every ship has been provided?
- DOD has specifically excluded submarines from the list provided to VA of ships that served in the waters offshore of Vietnam. While nuclear powered submarines can stay underwater for up to 90 days, diesel-power submarines had a limit of several days submerged. They couldn't run the air-breathing engines while fully submerged and had to rely on battery power and electric motors when underwater. They would have to surface and use the snorkel mast for air for the diesel engines to recharge the batteries and exchange fresh air. The last diesel-powered submarine was decommissioned in 1990. However, they were used throughout the Vietnam War. Why were diesel-powered submarines excluded from the list of U.S. ships serving in the waters offshore?
- The tool only tracks U.S. ships and not the veterans who served aboard. This information can be gleaned from a veteran's DD-214 or separation document, service medical records and service personnel records. What actions are VA undertaking for those veterans whose records have been determined to be destroyed by the 1973 fire at the National Personnel Records Center in St. Louis or destroyed in other ways?

When records are determined to be lost or destroyed, the U.S. Court of Appeals for Veterans Claims in *O'Hare v. Derwinski*, 1 Vet. App. 365, 367 (1991), held that VA has a heightened duty to consider the applicability of the benefit-of-the-doubt rule, to assist the veteran in developing the claim, and to explain the reasons and bases for its decision.

Recommendation. VA needs to have a specific policy identified, trained and enforced regarding records for Blue Water Navy veterans that may not be available due to no fault of the veteran or survivor. This heightened duty to assist and application of the benefit of the doubt doctrine must be adhered to by VA decision makers to ensure that veterans and survivors are not being denied their benefits due to the Federal Government's inability to protect or locate Federal records. To ensure VA properly follows the Court in *O'Hare* for all veterans cases to include Blue Water Navy, Congress should codify the Court's holdings.

- Will the ships locator tool be available to the Board of Veterans' Appeals for those legacy appeals and Appeals Modernization Act (AMA) pending appeals that have been impacted by the Secretary's stay?

The Board is prohibited from developing cases under its jurisdiction; will this include using the ship locator tool? Will this require the Board to remand legacy

appeals? How will this impact AMA appeals as they can only be returned to the VA Regional Office of jurisdiction if there is a development error?

4. Letters to those previously denied. Although VA did engage VSOs in reviewing draft letters to previously denied Blue Water Navy veterans and survivors, none of our concerns, noted below, were included in the final letter.

- **Duty to Notify.** These letters advised previously denied veterans and survivors that if they intended to refile for those previously denied benefits, they needed to complete VA form 20-0995, Decision Review Request: Supplemental Claim, which was provided. However, it was noted that if the veteran wanted to file a new disability claim related to Agent Orange exposure, VA form 20-0995 could not be used and only directed them to VA's website.

Recommendation. In accord with VA's duty to notify, VA must provide VA form 21-526EZ, which is required for new claims, and VA should provide one with the letter.

DAV is extremely concerned about the lack of information and clarity provided by VA's letter to those previously denied and therefore we will be sending our own letters to over 8,000 veterans and survivors represented by DAV, who were previously denied.

5. Forms Issue. Currently, VA regulations State that in order for a claim to be considered it must be submitted on the appropriate claims form. If the veteran or survivor provides the wrong form, VA will not consider the claim, but will advise that the wrong form was used and not honor that submission or effective date. If the veteran or survivor responds with the correct form, the effective date will be the date the correct form is received.

If a veteran submits a claim to refile for a previously denied Blue Water Navy claim on 20-0995 with a new disease related to Agent Orange, VA will not accept that new claim and will eventually advise the veteran of the need to file a 21-526EZ. The reverse is true if a veteran attempts to claim a previously denied issue on a 21-526EZ. It is difficult for a veteran to remember what was filed many years in the past. Therefore, VA should accept Blue Water Navy claims, whether new or previously denied, on either form.

If VA does not change this policy, VSOs and veterans have no other choice than to file these claims on both forms as to ensure the proper claims are filed without veteran losing entitlements and effective dates. We acknowledge that this will create additional work for veterans, VSOs and the VA.

This issue, which also applies to the entire VA process, has been raised multiple times with VA over the past several months. However, it is clear VA has no intention of changing this policy.

Recommendation. Congress should enact legislation to require VA to accept any new claim or previously denied claim being filed on either VA form 20-0995 or VA form 21-526 EZ.

As former VA Administrator, General Omar Bradley once said, "We are dealing with veterans, not procedures; with their problems, not ours."

Madame Chair, this concludes my testimony on behalf of DAV. I would be happy to answer any questions you or other members of the Subcommittee may have.

PREPARED STATEMENT OF DIANE RAUBER

Chairman Luria, Ranking Member Bost, and members of the Subcommittee, the National Organization of Veterans' Advocates (NOVA) thanks you for the opportunity to testify on the topic of "Preparing for Blue Water Navy Claims - VA Status Update on Implementation." We appreciate the Subcommittee's leadership in exercising its oversight authority over VA's implementation of the Blue Water Navy Vietnam Veterans Act of 2019.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents over 600 attorneys and agents assisting tens of thousands of our Nation's military veterans, their widows, and their families seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for all persons seeking VA benefits. NOVA members represent veterans before all levels of VA's disability claims process, and handle appeals before the U.S. Court of Appeals for Veterans Claims (CAVC) and U.S. Court of Appeals for the Federal Circuit

(Federal Circuit). In 2000, the CAVC recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award.

OVERVIEW

NOVA members have long fought for the rights of Blue Water Navy veterans and their families, representing them in individual claims and appeals before VA, BVA, and the CAVC, as well as advocating for the outcome achieved in *Procopio v. Wilkie*, 913 F.3d 1371 (2019). NOVA filed an amicus brief on behalf of Mr. Procopio before the Federal Circuit, and was joined by AMVETS, Military Officers Association of America, Paralyzed Veterans of America, and the Veterans and Military Law Section of the Federal Bar Association.

In *Procopio*, the Federal Circuit reversed its prior holding in *Haas v. Peake*, 544 F.3d 1306 (Fed. Cir. 2008), found 38 U.S.C. § 1116 was unambiguous, and held those who served in the 12 nautical mile territorial sea of the "Republic of Vietnam" are entitled to the presumption of service connection for diseases associated with herbicide exposure. 913 F.3d at 1381. Approximately 5 months after that decision, Congress passed the Blue Water Navy Vietnam Veterans Act of 2019. This legislation added to title 38, among other provisions, new section 1116A entitled: "Presumptions of service connection for veterans who served offshore of the Republic of Vietnam."

We detail below concerns regarding implementation of this legislation that should be addressed to ensure Blue Water Navy veterans receive all the benefits to which they are entitled in a fair and timely manner.

POINTS OF CONCERN

DEVELOPMENT OF REGULATIONS AND AGENCY GUIDANCE

VA Must Not Use Agency Guidance To Skirt Notice And Comment Requirements.

The Blue Water Navy Vietnam Veterans Act of 2019 permits VA, "[n]otwithstanding section 501" of title 38, to issue guidance before prescribing regulations. NOVA appreciates that this provision was intended to give the Secretary flexibility to adjudicate claims for Blue Water Navy veterans in an expeditious fashion. However, particularly given the Secretary's decision to issue a blanket stay as discussed in more detail below, this Subcommittee should ensure VA follows notice and comment requirements when issuing its regulations and does not issue permanent substantive guidance in the form of agency manual provisions. In other words, VA should not be permitted to hide behind this legislative provision and use its M21-1 manual provisions to avoid notice-and-comment rulemaking.

PENDING STAY ON BLUE WATER NAVY CLAIMS AND APPEALS

The Secretary's Implementation Of A Stay On All Blue Water Navy Claims And Appeals Is Overinclusive and Harmful, And VA Should Lift It Immediately To Resolve Claims and Appeals That Can Be Decided Based On The Existing Evidence Of Record.

On July 1, 2019, Secretary Wilkie issued a memorandum entitled "Stay of Pending Claims Under the Blue Water Navy Vietnam Veterans Act of 2019." He relied on the stay provision included in Public Law 116-23, to be codified at 38 U.S.C. § 1116A(c)(3)(A): "The Secretary may stay a claim described in subparagraph (B) until the date on which the Secretary commences the implementation of such section 1116A." A claim under subparagraph (B) is a claim for disability compensation "relating to the service and diseases covered by such section 1116A; and that is pending at the Veterans Benefits Administration or the Board of Veterans' Appeal on or after the date of the enactment of this Act and before the date on which the Secretary commences the implementation of such section 1116A."

The validity of this stay has been challenged in the Federal Circuit. See *Procopio, et al., v. Wilkie*, No. 19-2184 (Fed. Cir. appeal docketed July 24, 2019; oral argument scheduled for November 8, 2019). Regardless of the Federal Circuit's decision, the Secretary's blanket stay on Blue Water Navy claims and appeals is overinclusive, unnecessary, and harmful.

Specifically, the *Procopio* decision addressed the right of veterans to recover for benefits under the provisions of 38 U.S.C. § 1116. The stay found in the new legislation addresses only § 1116A claims. There simply is no reason for the agency to hold up pending § 1116 claims and appeals. In many of these actions, the veteran has a diagnosis of a qualifying presumptive condition and the evidence of his Blue Water Navy service is already of record or relatively easy to determine. For example, if a veteran has a diagnosis of diabetes and has already produced deck logs of

service on a ship within the 12 nautical mile zone, the claim or appeal can be granted without delay.

In fact, after the Federal Circuit decided *Procopio*, BVA lifted its pending stay predicated on that litigation in April 2019. See Memorandum No. 01–19–02, *Stay Lifted On Adjudication of Appeals for Compensation Based on Alleged Exposure to Herbicide Agents In The Offshore Waterways Of The Republic Of Vietnam* (April 1, 2019). From April until the Secretary’s July stay, BVA proceeded to decide and grant appeals where the evidence of record warranted it under *Procopio*. See, e.g., Citation Nr: 19128696 (April 15, 2019) (BVA granted service connection for Parkinson’s disease based on evidence of service on USS Dunham and *Procopio* decision); Citation Nr: 19137213 (May 14, 2019) (BVA granted service connection for diabetes mellitus, coronary artery disease, and peripheral neuropathy; relying on *Procopio* and finding “Veteran was stationed on the USS Lynde McCormick when it was in the territorial waters of Vietnam”); Citation Nr: 19137582 (May 15, 2019) (BVA granted service connection for cause of veteran’s death based on evidence of service on USS Cochrane and USS White Plains and *Procopio* decision); Citation Nr: 19148388 (June 20, 2019) (BVA granted service connection for diabetes mellitus; veteran served on USS Capacon and “even if the Veteran did not step foot in the Republic of Vietnam, his ship certainly was within 12 nautical miles of such and he is presumed exposed to herbicide pursuant to *Procopio v. Wilkie*”). It is likely there are other cases such as these that could be decided with no need for additional development.

Denying these veterans through a blanket stay is particularly harmful given the age and health of Blue Water Navy veterans. Many are eligible for priority processing at VBA or advancement on the docket at BVA due to their advanced age, financial hardship, or terminal illness. Even those who do not fall into these categories suffer from serious service-connected illnesses that have long limited or precluded their ability to work. After waiting years for justice, they are now faced with a longer wait for financial relief. Even if some claims and appeals must wait for additional evidentiary development and official VA guidance, the Secretary should lift the stay and allow VBA and BVA to dispatch - without further delay - all pending claims and appeals that can be decided based on the existing evidence of record.

DEVELOPMENT AND USE OF A SHIP LOCATOR TOOL

In August 2019, the National Archives and Records Administration (NARA) entered into an agreement with VA to digitize U.S. Navy and Coast Guard deck logs dated from 1956 through 1978. Digitization Partnership Supports Veterans Claims, Access to Records, <https://www.archives.gov/press/press-releases-3> (August 21, 2019) (logs previously digitized are found at <https://www.archives.gov/research/military/logbooks/navy-online>). According to NARA’s press release, the current scanning project will include “more than 20 million images.” Id. Furthermore, NARA stated it “will begin the process of making digitized records available on [archives.gov](https://www.archives.gov), after images are transferred by the VA and the images are screened for privacy concerns.” Id. Based on this digitization process, VA plans to create a tool for use by its adjudicators to consider Blue Water Navy claims and appeals.

VA Must Ensure Adequate Quality Control And Expert Assistance For Scanning Of Deck Logs.

VA’s digitization processes are often problematic. For example, veterans and advocates experience problems with mail, forms, and evidence being properly scanned into VBMS through VA’s Evidence Intake Center. These problems include delays in uploading, missing materials, mislabeling, and improper ordering. The CAVC noted “grave concerns regarding VA’s implementation and oversight of its conversion to a paperless claims process,” and concluded “the Secretary would be well served by reexamining both his records retention policies and his contracts with the vendors tasked to digitize veterans’ records.” *Robinson v. McDonald*, 28 Vet.App. 178, 191 (2016). Recent articles indicate that problems are not isolated to the scanning of veterans’ claims files. See, e.g., VA’s Health Records Digitization Backlog Is 5 Miles High, <https://www.nextgov.com/it-modernization/2019/08/vas-health-records-digitization-backlog-5-miles-high/159383/> (August 22, 2019).

Ship deck logs are dense and largely handwritten. As noted by NARA, these logs contain “information regarding movements (heading and speed), and the ship’s location, and in some cases have information on combat operations, accidents, injuries, and other personnel events.” Digitization Partnership Supports Veterans Claims, Access to Records, <https://www.archives.gov/press/press-releases-3> (August 21, 2019). In other words, these documents consist of critical numbers that will prove whether or not certain ships traveled in the territorial sea of the Republic of Viet-

nam. Sloppy scanning - whether through missed pages, unreadable images, or mislabeling - can result in denials to deserving veterans.

Therefore, Congress should ensure VA provides adequate quality control over this scanning process, using vendors and staff who are qualified for the task. Likewise, any "tool" created from scanned deck logs should be developed by people with the appropriate expertise.

Advocates Need Access To VA's Ship Locator Tools.

According to NARA's press release, while VA is scanning deck logs, "this group of records will be closed to researchers at National Archives facilities," with access "restored as soon as possible after the paper records are returned." Digitization Partnership Supports Veterans Claims, Access to Records, <https://www.archives.gov/press/press-releases-3> (August 21, 2019). Regardless of when public access to the deck logs is restored, all properly accredited attorneys, agents, and VSOs should have access to the ultimate ship locator and/or mapping tool created by VA. Such access is critical to ensure all evidence is considered and properly interpreted so claimants receive all earned benefits.

VA Should Ensure The Tool Is Not Used To Deny Claimants.

VA has stated at recent meetings that the ship locator tool will not be used to deny claimants. Rather, according to public statements, VA has represented that this tool will be used as a screening tool. If the tool indicates a veteran served on a ship within the designated coordinates, he or she will be deemed to have served in Vietnam for purposes of the presumption. If the evidence is inconclusive based on the tool, the veteran will not be denied but rather the claim will undergo additional development. In its regulations and manual guidance, VA must clearly explain this concept and provide adequate training to the field. VA guidance should also ensure that competent and credible lay evidence is given proper weight in deciding claims and appeals.

Other questions and concerns related to use of the tool include the following: (1) what assurances will the claimant have that the ship locator tool is not used to deny claims and appeals; (2) what information will VA and BVA be required to include in its decisions to indicate that it has fully developed each claim, particularly in light of AMA requirements; (3) will VA and BVA notify the claimant as to additional information necessary to substantiate the claim when notice under the Veterans Claims Assistance Act (VCAA) has been waived such as, for example, is permitted on VA's Supplemental Claim form (VA Form 20-0995, box 16); and (4) what additional guidance will be available to adjudicators beyond the ship locator tool or lists to grant claims.

VA COMMUNICATION AND ADJUDICATION

VA Should Contact All Those Whose Claims Have Been Previously Denied With Instructions On How To Refile.

The legislation does not require VA to automatically readjudicate previously denied claims. It requires VA to conduct certain outreach, i.e., publishing information on its website and notifying VSOs about the right to refile. However, blanket outreach is ineffective if does not reach the intended recipients. Therefore, it is critically important that VA develop clear and appropriate materials, to include notice to those previously denied, explaining their right to refile their claim. Otherwise, deserving veterans stand to miss the opportunity to obtain their benefits. NOVA understands some VSOs have had the opportunity to review and comment on VA's intended communication, which currently does include such a letter; however, VA should continue to communicate with the broader group of stakeholders included in discussions of the AMA.

VA Must Ensure That Claims And Appeals Entitled To Priority Processing or Advancement On the Docket Are Handled In An Expedient Manner.

As previously noted, many Blue Water Navy veterans are very ill, unable to work, and in great need of the benefits they have earned. VA's regulations and guidance should ensure that those entitled to priority processing or advancement on the docket are handled in the most expedient manner possible.

CONCLUSION

NOVA is committed to continue working with this Subcommittee, VA, and fellow stakeholders to ensure Blue Water Navy veterans receive all the benefits to which they are entitled in a fair and timely fashion. We again thank the Subcommittee for allowing us to provide our views on implementation of this critical legislation,

and we would be happy to answer any questions the Subcommittee members might have.

For more information:

NOVA would be happy to assist you with any further inquiries you may have regarding our views on this topic. For questions regarding this testimony or if you would like to request additional information, please feel free to contact:

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Diane Boyd Rauber is the Executive Director of the National Organization of Veterans' Advocates, Inc. (NOVA) in Washington, DC. NOVA is a not-for-profit 501(c)(6) educational membership organization, representing over 600 attorneys and agents assisting tens of thousands of our Nation's military veterans, their widows, and their families to obtain benefits from the Department of Veterans Affairs.

Prior to joining NOVA in September 2015 as Director of Legislative and Regulatory Affairs, Ms. Rauber served as Associate General Counsel for Appeals at Paralyzed Veterans of America (PVA). In this capacity, she oversaw PVA client representation before the Board of Veterans' Appeals (BVA), provided support and training to PVA's service officers, and analyzed cases for potential appeal to the U.S. Court of Appeals for Veterans Claims (CAVC).

She previously worked as of counsel to the Law Office of Wildhaber and Associates and as a staff attorney for the National Veterans Legal Services Program, representing veterans and their families before BVA and the CAVC. She frequently presents at veterans' law conferences, on topics including successful advocacy, legislative reform, and military history research.

She also served as a consultant to the American Bar Association Center on Children and the Law. In this capacity, she collaborated on legal research projects, writing and editing numerous reports and publications on an array of child welfare topics, to include court improvement, education, child custody, parent representation, and judicial excellence.

Ms. Rauber received her B.S. in Communication Disorders from Penn State University, M.Ed. in Special Education from the University of Pittsburgh, and J.D. from the Catholic University of America School of Law. She is a member of the Maryland and District of Columbia Bar Associations, as well as a member of the CAVC Bar Association, the CAVC Historical Society, and the Maryland Bar Association Veterans Affairs and Military Law Section.

PREPARED STATEMENT OF RYAN GALLUCCI

Chairwoman Luria, Ranking Member Bost, and members of the subcommittee, on behalf of the 1.6 million men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our insight on the Department of Veterans Affairs' implementation of the Blue Water Navy Vietnam Veterans Act of 2019.

First, the VFW applauds this committee and your colleagues across the House and Senate for working to pass the Blue Water Navy Vietnam Veterans Act of 2019, once and for all correcting a horrible injustice for our Vietnam veterans. We also thank the President for his swift action in signing this bill into law. This long-overdue legislation has the potential to truly change lives and you should be commended for taking this up and holding VA accountable for its responsible implementation.

The VFW has been following implementation of the Act very closely and we will address several facets of implementation in our written remarks, focusing on VA Secretary Robert Wilkie's authority to stay claims covered by the Act, VA's creation and execution of its plan to process covered claims, how problems with the Appeals Modernization Act may affect VA's plans to responsibly handle the anticipated workload, and the need for comprehensive toxic exposure reform.

Secretary's Authority to Stay Certain Claims

In light of last week's publication in Military Times of correspondence between former VA Secretary David Shulkin and officials within the Trump Administration

on continuing to delay new presumptive conditions for Vietnam veterans exposed to Agent Orange, the VFW has a different perspective on some of the challenges we have seen in VA over the past year in implementing reforms like the Blue Water Navy Vietnam Veterans Act (BWN Act) and the Appeals Modernization Act (AMA). Sadly, some of the roadblocks we have seen over the past year now appear to be deliberate in complicating the process and delaying certain benefit reforms as ways to save money. These earned benefits are not charity — they are a cost of war. As VFW National Commander William “Doc” Schmitz said last week:

“We cannot, and will not, stand by and allow another veteran to lose their life because of the bureaucracy of Washington. The time for waiting is over.”

This sentiment holds true not only for expansion of Agent Orange presumptive conditions, but also to the sense of VA toward Blue Water Navy expansion.

After the landmark *Procopio v. Wilkie* decision earlier this year, we continued to hear VA Secretary Robert Wilkie comment that the science did not support expanding presumption to Blue Water Navy (BWN) veterans — a position of his that helped to sink the BWN Act in the previous Congress. Subsequently, Secretary Wilkie directed his department to delay processing any claims and appeals authorized under *Procopio* until the courts ordered VA to start processing its pending BWN workload.

Fast forward to the passage of the BWN Act — no sooner had President Trump’s signature dried on the bill that Secretary Wilkie took the drastic step to exercise his authority to stay certain claims and applied it unilaterally to any claim that could be covered under the law — even claims that VA could already grant, like Korean DMZ claims between April 1, 1968 and August 31, 1971.

VA continues to assert that the stay was designed to allow VA the time to create systems to properly process BWN claims. The VFW understands this to an extent. Given the specificity of the law in outlining the geographic boundaries for ships on which eligible veterans must serve, we know that VA needed the time to build a tool for verification.

To his credit, Dr. Paul Lawrence, VA Under Secretary for Benefits, and his team should be applauded for their work on this system in concert with the National Archives and Records Administration (NARA), aggressively scanning Navy deck logs to ensure they have the ability to get to “yes” for certain BWN veterans.

The timeline in developing this tool was very aggressive, and VBA has shared that it is already operational. We look forward to a scheduled demo for VSOs on November 18.

However, aside from this new tool, not much should need to change in the benefits administration process for BWN veterans and other covered veterans under the BWN Act. VA has been processing Agent Orange presumptive claims for years and already has the systems in place to evaluate the extent of these presumptive conditions and to even award retroactive benefits. This is why the VFW and our partner VSOs were so vocal about the blanket stay after the signing of the BWN Act.

In partnership with Disabled American Veterans, Vietnam Veterans of America, and others, we called attention to the effects of the stay in a press conference earlier this month. Unfortunately, VA tried to obfuscate the effects of the stay on veterans by asserting that these veterans were not necessarily denied care or implying that survivors could wait a little longer. To the VFW, it was not just about the potential denial of care, but more about the financial ruin that veterans would have to face for their life-saving care that should have been covered by VA all along. For survivors, months without benefits for the loss of their loved ones could mean losing a home or amassing debt to make ends meet. Moreover, for veterans who stand to lose their battles with these illnesses, why would we want them to wait even longer?

With these scenarios in mind, the VFW calls on this Subcommittee to commission a report from VA on the effects of the stay, asking the following questions:

- How many BWN covered veterans requested expedited processing due to financial hardship or terminal illness during the stay?
- How many BWN covered veterans died during the stay?

Next, the Secretary asserted that the bill did not take effect until January 1, 2020. This is only partially true. While the expansion of certain programs like Spina Bifida benefits for Thailand dependents and an earlier presumptive date for certain Korean DMZ claims do take effect in January, VA was already compelled by the courts to grant benefits for BWN veterans under current law through *Procopio*. The only change that we see in the BWN Act is the specificity on geographic boundaries for certain BWN veterans and comprehensive reporting requirements for VA. Otherwise, we view the law as simply a clarification of current laws, compelling VA to grant benefits for a long-overlooked class of Vietnam-era veterans.

The stay was particularly egregious when applied to Korean DMZ claims. While it may have been reasonable to consider staying Korean DMZ claims between September 1, 1967 and March 31, 1968, the Secretary instead decided to halt all work on all Korean DMZ claims — even those that were routinely granted under current authorities.

When looking at the stay authorized in the BWN Act, the VFW has a very different perspective from the Secretary. We believe that the stay did not give him the authority to stop processing all claims possibly covered by the act, but instead gave the Secretary the space to stay claims that required further development under certain authorities of the new law. To the VFW, the stay under the BWN Act should have meant that VA should grant what it could in the interim under Procopio and other current VA policies, but stay any potential covered claims that either required further development or would have resulted in denials.

One of our service officers in Virginia, Ken Wiseman, who this Subcommittee knows worked as an architect of this legislation when he served on the VFW National staff summed up the stay in very poignant manner:

“Veterans are dying and that is not a theatrical claim. Their benefits waiting are a slap in the face as the surviving spouse will get the [Dependents Indemnity Compensation] but what about the debts from health care that would have been covered otherwise? Anything that you can get after death is just a benefit that should have been granted in life. VA has no leg to stand on as this is not a new program to implement, just an expansion of the number of people eligible for the benefits. We saw a similar growth in use of the GI Bill but I do not know that there was a stay on new enrollments into the Montgomery [G.I. Bill] after September 11, 2001.”

With this in mind, the VFW recommends that Secretary Wilkie lift the stay on processing these benefits immediately. We know that certain claims can be granted right now. Waiting until January not only harms veterans, but creates an unnecessary backlog for VA at a time we can ill afford it.

VA's Plan to Process Covered Claims

The VFW has worked closely with Dr. Lawrence and his team at every opportunity to provide insight into their aggressive deployment of new policies and procedures. To his credit, Dr. Lawrence has been responsive to the VSOs by offering opportunities to review letters to veterans and, most recently, VA's communications plans to explain the processes to veterans. Despite the stay, our assessment is that Dr. Lawrence and the dedicated staff at VBA have taken this charge very seriously and want VBA to be in the best possible position to grant benefits as soon as possible.

Just last week, we were offered the opportunity to comment on VA's frequently asked questions, training presentations, and decision making scenarios that will end up communicating to veterans what to expect from the process. Our initial assessment is that these were generally well thought out, and that veterans should easily understand that VA expects previously denied BWN veterans to file a supplemental claim on VA Form 20-0995 and BWN veterans filing for the first time to file on VA Form 21-526EZ.

VA must move aggressively to get this information in front of veterans and the VFW stands ready to leverage our networks to make sure that our members, our service officers, and the veterans we represent are fully informed of the process.

However, we are concerned about the lack of formal policy guidance on how BWN and other covered claims are to be handled at the VA Regional Office level. To VBA's credit, they have been transparent with the VSOs that formal regulations will not be proposed before January, but that interim policy guidance would be available in mid-October.

Today is the last day of October and we are not tracking on the policy guidance, and neither are our representatives in the field. This is worrisome for two reasons: First, it is very difficult for us to provide our accredited field staff with the training they require in the absence of formal VA guidance. Second, VFW is concerned that the interim policy guidance may differ from the final promulgated regulations, meaning that VA would again need to readjudicate certain covered claims.

To prepare for this hearing, VFW solicited the feedback of our global network of accredited service officers who work with veterans every day to understand their benefits. What we received demonstrated inconsistency across VA.

In Ohio, one of our service officers told us that he was instructed to complete three forms for any BWN claimant — VA forms 20-0995, 20-0996, and 21-526EZ “just to be safe.” This highlights another issue that the VSOs have tried to resolve related to AMA, recognizing that it would have dire consequences for veterans covered under the BWN Act.

In Idaho, one of our State partners was tracking a BWN claim that was actually granted in September in spite of the stay, only to discover that the veteran was given an improper effective date.

Finally, in Maine, our service officer reported two veterans whose claims related to BWN were never properly established, even though they were filed on the prescribed 0995 form.

We believe that these examples underscore the critical need for policy guidance in the field for both VA staff and VSO advocates. VA must work aggressively to approve, publish and communicate this guidance as soon as possible.

Despite the lack of policy guidance, the VFW believes that VBA is generally heading in the right direction. VBA informed the VSOs that they planned to start scheduling exams in October, and we do see this happening. As of last week, VBA reported that exams were underway and that they intend to queue claims as “ready for decision,” while waiting for the stay to expire. This is positive and commendable for VBA, but VFW believes this again underscores the unnecessary nature of Secretary Wilkie’s stay on benefit grants.

Appeals Modernization Implications

We cannot discuss BWN implementation without also discussing certain unintended consequences of AMA implementation. Earlier in our testimony, we pointed to an example of how AMA is impacting VA’s workflow in the field, establishing claim review actions for veterans who were previously denied a benefit.

Just before AMA went live, VFW and DAV called VBA’s attention to a problematic interpretation of the AMA and VA’s plans to only accept claims for reopened conditions on VA Form 20–0995. At the time, we warned VA of a hypothetical scenario where a veteran would meet with one of our advocates for the first time and would not know whether or not they previously filed a claim for a certain condition.

Since we would not have access to the veteran’s claim file at this time to verify whether or not a claimed condition was previously adjudicated, our normal, good-faith business practice would be to file a Power of Attorney on VA Form 21–22 and submit a claim on the veteran’s behalf on VA Form 21–526EZ.

However, once VA receives this claim, they may determine that some conditions were previously adjudicated by VA. At this point, VA closes out the claim for any previously denied conditions, and generates a “Request for Application” letter to the veteran, inviting them to file a supplemental claim on a different form.

In our understanding of AMA and VA’s own regulations under 38 CFR 3.160, the 526EZ contains all of the information required by VA to establish the claim on a standard claim form prescribed by the Secretary. However, VA makes the arbitrary choice not to establish, creating more bureaucratic hurdles for the veteran.

Though we raised this as a hypothetical in February, we started to see these scenarios play out with real claims over the next couple of months, resulting in lost benefits for veterans. In June, a coalition of many of the largest VSOs with VA-recognized benefits assistance programs asked that Dr. Lawrence look into our concerns over the new forms as well as the lack of applicability of Intent to File (ITF) for supplemental claims after the 1-year review period.

To his credit, Dr. Lawrence and his team did review the ITF issue and we expect a revision to this in the coming months. However, VBA has not addressed the forms issue. We worry that under BWN, this situation will only be exacerbated when veterans’ claims are turned away.

Though this is not a fatal flaw for BWN veterans, since they will be entitled to an earlier effective date regardless, we still believe that this creates unnecessary confusion and delay for veterans and unnecessary work for VA at a time when VA’s resources are already limited.

The confusion over standard forms is unnecessary and we compel VBA to take a hard look at this. We believe it does not require a regulatory change, and in fact, is in direct contradiction to the intent of Congress under AMA.

Finally, even though there are certain actions VA can take to correct this moving forward, any action VA takes would only apply to veterans who apply for future benefits. The VFW is worried about veterans who have already been harmed by these inconsistencies in AMA. To remedy this, we recommend the following: First, VA should report on how many veterans were affected by the ITF and standard forms issues since February 19, 2019. Second, Congress should consider legislation to award retroactive benefits to this select group of beneficiaries affected by this unintended consequence of AMA. The VFW stands ready to work with this Subcommittee on how to best address this issue.

Based on our daily interactions with VBA and the long-standing relationships VFW has built over our first century of advocating for veterans’ benefits, we believe that VBA has many hard working and dedicated professionals who want to get this

right. The problem, however, comes at other levels of the bureaucracy who seem more interested in political maneuvering than helping veterans.

Historically, when VA implements major reforms, like the BWN Act, they work in close consultation with VA-recognized Veterans Service Organizations like the VFW who interact with veteran clients of VA benefit programs every day. In the meetings I have had with VBA on this, I almost sense a palpable frustration among many VA leaders they cannot share more with the VSOs that help their system function.

Dr. Lawrence has tried to keep VSOs apprised of what VA is thinking in developing its policies — so much so that he personally sought out ideas from the VSOs on how to handle the potential influx of BWN claims from the time the Procopio ruling came down. Unfortunately, we still see a stonewall that is seemingly out of Dr. Lawrence's control. After all, this stonewalling seems pervasive across other VA business lines, such as the delayed implementation of the Caregiver expansion or the failure to properly study the health marketplace before implementing MISSION Act access standards - which VA released only days before implementation.

What we ask for as VA-recognized organizations that provide legal representation for our clients in the benefits process is transparency and collaboration. We have been promised time and again that VA will improve in this area and to their credit, we have seen improvement but not consistently. That seems to be hard to find under Secretary Wilkie's leadership. In order for our advocates to properly represent the best interest of our veterans, VA should welcome our feedback in stress testing their systems and providing input on how to best serve our shared constituency.

Comprehensive Toxic Exposure Reform

Finally, the VFW calls on Congress to take up comprehensive toxic exposure reform that proactively addresses the likelihood of presumptive conditions and necessary care for past, current, and future conflicts. In a century of advocating for veterans' benefits, the VFW sees little consistency in how we identify toxic exposures, then offer care and benefits to those affected. We should not need an Agent Orange Act or an Honoring America's Veterans and Caring for Camp Lejeune Families Act each time we verify a new hazard to military duty. Veterans instead deserve a consistent, proactive process to address toxic exposure concerns that history clearly shows us will emerge in every conflict.

We should not be debating in 2019 whether or not the use of Agent Orange more than 50 years ago was harmful for our veterans. We know it was and so does VA. We worry that this same scenario is already playing out for today's veterans exposed to open air burn pits and other toxins on the modern battlefield. Congress should take up legislation to establish a process for granting care and benefits for verifiable toxic exposures, and the VFW stands ready to work with this Subcommittee to make this a reality.

One hundred years ago this month, the VFW National Veterans Service helped our first veterans navigate a complex veterans' benefits landscape. Ever since, our interest has been to work collaboratively with Congress and VA on ways to improve the process. Today, our cadre of 2,100 professional advocates assist more than half a million veterans in understanding and accessing their benefits. We know the issues, we understand the problems, and we understand the affects these programs have on the lives of our veterans and their loved ones. We hope that the comments and recommendations we have presented today will be valuable to this Subcommittee and to VA leadership in ensuring we deliver timely and accurate benefits to our Vietnam-era veterans who were exposed to Agent Orange.

Madame Chairman, this concludes our remarks and I am eager to answer any questions this Subcommittee may have.

PREPARED STATEMENT OF RICK WEIDMAN

Good afternoon Chairwoman Luria, Acting Ranking Member Bost, and other Representatives of this distinguished subcommittee. On behalf of the VVA National President, John Rowan, and the membership of Vietnam Veterans of America, I thank you for affording VVA the opportunity to testify today on the Blue Water Navy Vietnam Veterans Act of 2019 ("BWN Act").

The passage of the BWN Act, shortly after the landmark Procopio decision, was a long time coming for tens of thousands of sailors and Marines afflicted by the toxic substance, Agent Orange, which was so liberally sprayed in South Vietnam during the years of our war there. The BWN Act recognizes those Vietnam veterans who served within 12 nautical miles seaward from the demarcation line of the waters

of Vietnam and Cambodia between January 9, 1962 and May 7, 1975. Like their boots-on-the-ground counterparts, they are now presumed exposed to Agent Orange.

The new law also expands the recognized exposure dates from April 1, 1968—August 31, 1971 to September 1, 1967—August 31, 1971 for those veterans who served in or near the DMZ in Korea. Recognition of claims for children with spina bifida whose parents served in Thailand is now covered as well. Many have waited more than half a century to receive life-saving medical support, and disability compensation for Parkinson's disease, prostate cancer, ischemic heart disease, Type 2 diabetes, and other conditions associated with exposure to Agent Orange.

Time is of the essence to swiftly and respectfully implement the life-saving provisions of the BWN Act. Unfortunately, the VA has failed to demonstrate any real recognition of the urgency of the new law's provisions. The VA initially issued an overly broad and thoughtless stay that has resulted in denying health care benefits to terminally ill "Blue Water Navy" veterans. VA leadership seems unwilling to clarify in its disseminated information just what the BWN Act does and does not do, which could have the unfortunate effect of confusing eligible veterans, their family members and survivors whether or not they even qualify for benefits in the first place. VA has also been resistant to resolving identified form issues for new and previously denied claims, which will likely create additional roadblocks for eligible veterans and family members receiving the maximum benefits they are entitled to under the law.

Much still can be done to ensure that those entitled to benefits under the new law receive benefits as expeditiously and accurately as possible. VVA fully supports VA's request for additional funding to ensure that they have sufficient staffing and support to properly adjudicate claims under this law.

Here are the issues as we see them:

The VA Secretary's 1 July 2019 Stay Is Overly Broad and Is Harming Eligible Veterans, Their Families and Survivors.

At the forefront of all policy decisions, the VA must consider the specific population that is affected by the law. Today, the average age of a Vietnam Veteran is 73 years; hence, time is of the essence as a grant of benefits can mean obtaining life-saving health care. Under Procopio, the VA has the authority to grant claims now, as adjudicators had been doing for several months prior to the stay. Indeed, the Veterans Benefits Administration, the VBA, had the process and procedures in place to apply Procopio since June 4, 2019.

Nevertheless, the VA decided, in a 1 July 2019 memorandum, to issue an unnecessarily broad and arbitrary stay on all Blue Water Navy claims, Korean DMZ claims, and all claims for children with spina bifida whose parents served in Thailand. VVA recognizes that the BWN Act and Procopio are not identical and that VA will need time to prepare to implement the nuances that the BWN Act brings. Still, what is VA's rationale for staying decisions for those veterans who were along the Korean DMZ between April 1, 1968 and August 31, 1971, inasmuch as VBA raters had been adjudicating these claims for years prior to the stay? What is VA's rationale for staying claims for children with spina bifida whose parent served in Thailand? What is VA's rationale for staying claims that they can grant under Procopio?

This broad, overarching, and completely unnecessary stay is harming veterans. In one case, for example, the VA decided to stay a terminally ill veteran's appeal despite the fact that they had already conceded exposure to Agent Orange prior to the stay. There is a bit of hypocrisy here. The VA touts its mission of fulfilling President Lincoln's promise: "To care for him who shall have borne the battle, and for his widow, and his orphan." Right now, the VA already has a pile of claims it is ready to grant on January 1, 2020. We wonder - as we trust you will as well - just how many veterans in this stack of claims will die before January 1st? Why does the Secretary refuse to lift the stay and grant these claims immediately? The mission of the VA, after all, is to care for those who have served in uniform and not delay delivery of benefits so that VA can issue a press release on January 1st touting how much money they managed to award in a single day.

The VA's Continual Misstatement of Just What the Law Establishes Threatens the Delivery of Benefits to Veterans.

VVA is concerned over some of the messaging thus far concerning the stipulations in the BWN Act. The law does establish that certain veterans who served offshore of the Republic of Vietnam and in or near the Korean Demilitarized Zone during specific time periods shall be presumed to have been exposed to an herbicide agent. The law, however, does not indicate that a claimant is only eligible for benefits if he or she has a disability that is recognized as a disease associated with exposure to certain herbicide agents noted in 38 C.F.R. § 3.309(e). Indeed, a veteran may pro-

vide a medical nexus to prove a health condition not enumerated in Section 3.309(e) is caused or aggravated by exposure to an herbicide agent. This is particularly relevant for veterans suffering from bladder cancer, hypothyroidism, Parkinson's-like symptoms, and hypertension, as these disabilities have not yet been added to the recognized list of presumptions to service connection.

Nevertheless, and despite VVA and other VSOs clarifying this point on multiple occasions, the materials that have been released by the VA thus far seem to suggest that veterans will be eligible under the BWN Act for benefits only if they can provide evidence that they have a presumptive disability pursuant to Section 3.309(e). (See, e.g., VA Letter to Previously Denied Compensation Claimants [With No EP-335 Pending]).

The VA's Vietnam Blue Water Navy Veterans Fact Sheet (7-5-2019), which is available online, also states: "To be entitled to disability compensation benefits, these Veterans **must have one or more of the conditions associated with Agent Orange exposure that are listed in 38 Code of Federal Regulations section 3.309(e).**" (Vietnam Blue Water Navy Veterans, <https://www.va.gov/BWN-one-pager-7-5-2019-V4.pdf> [emphasis added]). We are concerned that the VA is failing to make this important distinction, thereby effectively deterring otherwise eligible claimants from filing a claim. The VA would do a lot better by listening and incorporating VSOs' feedback and advice, so that all eligible beneficiaries are made aware to apply for benefits due to them under the law.

VVA is also concerned about the messaging to eligible survivors and dependents. VVA urges VA to pay special attention to the messaging and outreach to eligible survivors, as awareness of the benefits available and how to access these benefits must be prioritized. Unfortunately, proper recognition of the sacrifices of our veterans took multiple decades to be realized; we now have a responsibility to the families who also sacrificed so much. Accurate, helpful, and targeted messaging to eligible survivors and dependents is necessary and must be also prioritized.

The VA's Rigid and Harmful Policies Concerning Previously Filed Claims Threatens the Delivery of Benefits to Veterans.

VVA fears that new VA form requirements, as required pursuant to the Appeals Modernization Act (AMA) through regulations, will create additional barriers to eligible beneficiaries who seek to reopen previously denied benefits claims. Specifically, for veterans who previously filed for a "same or similar benefit on the same or similar basis," must file for such benefit on VA Form 20-0995. Veterans filing for a new benefit, however, must file on VA Form 21-526EZ.

VVA believes that it is an unreasonable expectation for a veteran to determine how the VA will interpret "same or similar" when he or she seeks to file for a benefit. This is particularly true for those veterans who have applied for benefits many years ago. To ensure that a veteran or family or survivors do not lose any benefits, VVA's current practice requires veterans service representatives to often submit both Form 20-0995 and Form 21-526EZ; this creates unnecessary paperwork and administrative burdens for the VA as well.

Because VA Form 21-526EZ contains all of the same information VA would collect through VA Form 20-0995, VVA believes that the VA should accept any claim, original or supplemental, on the same form — VA Form 21-526EZ — after the 1-year appeal period has elapsed. This would be particularly helpful for Blue Water Navy veterans.

Although the VA has pledged to amend its regulations so that ITFs — Intent To File — will also be accepted for supplemental claims, they have not made the same commitment to fix the form issue. VVA is thankful for the willingness of the VA to address the ITF issue; nevertheless, it is important to note that accepting ITFs for supplemental claims does not address the fundamental problem with the form issue.

For many BWN veterans who have previously submitted claims, perhaps even decades ago, VVA urges the VA to immediately address the form issue to ensure that veterans may be permitted to receive their maximum earned benefits. Notably, VVA believes that this issue may be further exacerbated due to VA's failure to include the 21-526EZ form in letters to BWN veterans with previously denied claims or to even mention or properly explain when a different form may be needed.

VVA is thankful that Congress has recognized at long last the sacrifices of Blue Water Navy veterans and veterans who served in or around the Korean DMZ and in Thailand. Much can still be done to ensure that these veterans and their families who should benefit by this law are treated with respect and dignity. VVA therefor calls on the VA to immediately lift the stay and adjudicate the "pile" of claims they already have "ready to go." VVA urges the VA to genuinely collaborate with the VSOs to help ensure that the messaging of what the BWN Act does and does not

do is accurate, so that those who are eligible under the new law are not deterred from applying. Finally, VVA implores the VA to address the form issue so that these veterans and their families/survivors are not penalized unjustly for not correctly identifying "same or similar" benefits that they may have applied for decades ago.

VVA is committed to supporting the VA's request for additional funds from you in Congress. And we stand ready to work in partnership with the VA and our fellow VSOs to ensure that the Blue Water Navy law is implemented in a timely and respectful manner.

We thank the Subcommittee for the opportunity to testify here today, and we will of course respond to any questions members may ask of us.

Vietnam Veterans Of America Funding Statement

The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any Federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For further information, contact:

Executive Director for Policy and Government Affairs
Vietnam Veterans of America
(301) 585-4000, extension 127

RICK WEIDMAN

Richard F. "Rick" Weidman serves as Executive Director for Policy & Government Affairs on the National Staff of Vietnam Veterans of America (VVA). As such, he is the primary spokesperson for VVA in Washington. He served as a 1-A-O Army Medical Corpsman during the Vietnam War, including service with Company C, 23d Med, AMERICAL Division, located in I Corps of Vietnam in 1969.

Mr. Weidman was part of the staff of VVA from 1979 to 1987, and from 1998 to the present, serving variously as Membership Services Director, Agency Liaison, Director of Government Relations, and now Executive Director for Policy & Government Affairs. He left VVA to serve in the Administration of Governor Mario M. Cuomo (NY) as statewide director of veterans' employment & training (State Veterans Programs Administrator) for the New York State Department of Labor from 1987 to 1995.

Rick has served as Consultant on Legislative Affairs to the National Coalition for Homeless Veterans (NCHV), and served at various times on the VA Re-adjustment Advisory Committee, as a consumer liaison on the Secretary's Advisory Committee on Serious Mental Illness at VA, the Secretary of Labor's Advisory Committee on Veterans Employment & Training, the President's Committee on Employment of Persons with Disabilities—Subcommittee on Disabled Veterans, Advisory Committee on veterans' entrepreneurship at the Small Business Administration, and numerous other advocacy posts in veteran affairs. Weidman has been honored with awards for his work in veterans' employment at the local, State and national levels many times over the last forty years. He is currently Chairman of the Veterans Entrepreneurship Task Force (VET-Force), which is the consortium of most of the major veterans' service organizations and military service organizations regarding expanding opportunities for veterans, particularly disabled veterans to create, own, and successfully operate their own small business.

Mr. Weidman was an instructor and administrator at Johnson State College (Vermont) in the 1970's, where he was also active in community and veterans affairs. He attended Colgate University (B.A., 1967), and did graduate studies at the University of Vermont.

He is married and has four children.

STATEMENTS FOR THE RECORD

STATEMENTS FOR THE RECORD

PREPARED STATEMENT OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO

Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 700,000 Federal and District of Columbia government employees, 260,000 of whom are dedicated VA employees, we appreciate the opportunity to provide our views on today's hearing titled, "Preparing for Blue Water Claims—VA Status Update On Implementation."

AFGE membership includes the Veterans Benefits Administration (VBA) claims processors who will be the workers responsible for processing Blue Water Navy (BWN) claims once the VA allows BWN claims to proceed. Because of the expertise these employees have in processing veterans' claims of all levels of nuance and complexity, AFGE makes the following recommendations to the Subcommittee on how VBA can change its internal policies to improve all compensation claims processing, each of which will especially affect the imminent BWN claims: 1) Reinstate a specialized lane for highly complex claims, and 2) Stop the reductions in eligibility for "excluded time" raised in VBA's "#BestYearEver Availability Improvement Project" memo. Both of these changes will better allow claims processors to perform their duties and serve veterans.

Reinstating a Specialized Lane for Complex Claims Including "Blue Water Navy" Claims

Like all VA compensation claims, BWN claims go through a process where they are evaluated by both Veteran Service Representatives (VSRs) and Rating Veteran Service Representatives (RVSRs) to ensure that veterans get the benefits they have earned. While all claims go through a similar process, different types of claims require different amounts of attention and time based on their complexity. Relative to other claims, BWN claims are highly labor intensive and require specialized attention.

BWN claims take significantly more time to process than most claims because of the significant amount of time that has elapsed since the Vietnam and Korean Wars and the specificity of evidence required to corroborate an entitlement to benefits, including the exact time and geographic coordinates of when and where a particular service member was on duty. However, as a result of the way VBA currently assigns cases, VBA does not consider the complexity and meticulous nature of claims handled by VSRs and RVSRs. As a result, VSRs and RVSRs have been unfairly penalized for handling complex claims. While VSRs and RVSRs are qualified and capable of processing these claims, the system of evaluating these employees should take into account the complexity of BWN claims and the time and attention needed to accurately process and evaluate them for the benefit of both employees and the veterans they serve.

AFGE urges the Subcommittee and VBA to consider re-instituting specialized lanes that have existed in the past for BWN claims and appropriately adjust the production standards for the employees working in those lanes.¹ This change will allow the VSRs and RVSRs chosen in each of the eight Regional Offices where BWN cases will be processed to gain familiarity with the nuances of this large subset of

¹ Prior to the implementation of the NWQ, VSRs and RVSRs were in designated lanes that handled similar types of cases repeatedly, giving those employees the opportunity to develop an expertise in certain types of claims. This made them more accurate and efficient in their performance, which both benefited them in their own performance evaluations and allowed them to better serve veterans, particularly those with rarer or more complex claims. Presently, VSRs and RVSRs do not work in lanes, and are expected to process all cases without developing any beneficial specialization. The Office of the Inspector General (OIG) released a report in 2018 (VA OIG 17-05248-241 : August 21, 2018) supporting the use of specialized lanes for certain complex claims.

impending claims and enable them to efficiently provide these veterans with the benefits they have earned while meeting fair production standards.

Preventing Problems in the “#BestYearEver Availability Improvement Project” and Preserving Excluded Time

In a memo issued on October 11, 2019 by the VBA Office of Field Operations (OFO) - Operations Analysis, the OFO said “To improve production and achieve the #BestYearEver, while also onboarding new staff and countering the known impacts of presumptive claims from [BWN] veterans, VBA is implementing new strategies to manage available time.”² The plan does this by attempting to limit “excluded time,” which is the time that can be deducted from an employee’s expected production quota under certain circumstances (ex: if an employee uses 8 hours of leave, the employee’s expected production is reduced by 8 hours).

The first section of this memo describes OFO’s limitations on “Special Projects,” and the OFO announcing that it will severely limit what percentage of time a VSR or RVSR can spend on “Special Projects” that in the past would have earned excluded time. Specifically, the memo limits the individuals who can grant excluded time for a special project to the Veterans Service Center Manager/Pension Management Center Manager or designee. Additionally, the memo states that an employee may not spend more than 1.5 percent of their time annually on special projects, which can increase to 2.0 percent when approved by the District Director.

Eliminating the use of “Special Projects” could negatively affect the ability of claims processors to perform their duties within the prescribed performance standards. Currently, managers assign “Special Projects” to grant excluded time to a VSR or RVSR working on a claim that would otherwise prevent them from meeting their quota. Examples of claims meriting a “Special Project” assignment could include a particularly difficult and time-consuming claim, a claim that had to be remanded and thus reduced or denied the employee production credit, or a claim that categorically does not generate credit for the employee. Some BWN claims, which are highly complex and likely require more time to complete than other claims, could easily be classified as a “Special Project” and are worthy of excluded time. AFGE strongly urges the VBA to rescind this proposal to limit the use of “Special Projects,” particularly for BWN claims.

The OFO memo also limits the amount of excluded time that VSRs and RVSRs can use for training. This proposal reduces the total number of hours for training that can be used for excluded time from 80 hours annually to 40 hours annually, a 50 percent decrease with certain exceptions to grant more hours in certain situations. The memo then specifically uses BWN claims as an example of a need for extra training, but only authorizes an additional 2 hours of training for VSRs and RVSRs when processing BWN claims. With an exorbitant number of complex BWN claims expected, budgeting only 2 hours of training for this type of claim while reducing the overall amount of training will make it extremely difficult for the VSRs and RVSRs to learn the new processes associated with these new claims. AFGE urges the OFO and VBA to rescind this planned change and allow VSRs and RVSRs to continue to gain the necessary training and expertise required to effectively serve veterans.

Conclusion

AFGE thanks the House Committee on Veterans’ Affairs Subcommittee on Disability Assistance and Memorial Affairs for considering the potential problems arising from the processing of BWN claims. We look forward to working with the Committee and Subcommittee to address these problems facing VSRs and RVSRs, and ensuring that veterans receive the benefits they have earned in an accurate and efficient manner.

Thank you for the opportunity to provide input on this important issue.

PREPARED STATEMENT OF THE NATIONAL ASSOCIATION OF COUNTY VETERAN SERVICE OFFICERS

Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee on Disability Assistance and Memorial Affairs, on behalf of the National Association of County Veterans Service Officers (NACVSO) and our 1,766 members located in local governmental and tribal offices across the Nation thank you for the opportunity to

² “#BestYearEver availability Improvement Project.” VA Office of Field Operations Memo—Operations Analysis. October 11, 2019.

provide a statement regarding the status of the preparation for, and implementation of, Blue Water Claims for Vietnam veterans.

Blue Water Vietnam veterans have fought for decades in an effort to convince the U.S. Government to acknowledge that they, too, were exposed to hazardous toxins from Agent Orange while serving in the waters around Vietnam. NACVSO, and its accredited members, have seen the long-term detrimental health impacts of Agent Orange exposure (i.e., prostate cancer, Parkinson's disease, and respiratory cancers) as we meet face-to-face with these veterans and their survivors in County offices across the United States.

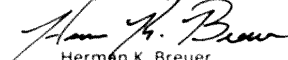
Considering the decades long fight for their recognition, NACVSO believes that as we approach January 1, 2020 the VA should do everything in its power to ensure that it is fully prepared to receive, administer, and adjudicate Blue Water claims, to combat any preventable delays in benefit/service delivery.


Unfortunately, to date, the VA has not consulted with NACVSO and our members to help assist with the implementation process or have we been given any guidance on the processes to come. Our County Veteran Service Officers (CVSOs) are local, community-accredited advocates and can be force multipliers for the VA. It is vital for successful implementation that frontline veterans advocates are communicated with in advance on the preparation of, and processes for, filing Blue Water claims. CVSOs across the country are often the only advocate that a veteran will meet with in person to help advise, research, collate, complete, and submit claims. We are uniquely positioned to act as a conduit between the VA and the veterans impacted by the new legislation that takes effect on January 1, 2020.

NACVSO members are governmental partners to the VA, and the VA should utilize us as such. NACVSO believes it would be beneficial to the success of Blue Water Claims implementation if the VA communicated more directly with our organization in advance of January 1, 2020, we can help support your effort; NACVSO can disseminate proper information to our members and ensure they are filing the most appropriate documentation required under the new law to minimize error and maximize efficiency and expeditiously adjudicate these cases.

Chairwoman Luria, Ranking Member Bost, and Members of the Subcommittee—on behalf of NACVSO and its members we appreciate the important work you are doing to support those who have served this great nation. Working together, with the VA, we can ensure this process is a success.

Respectfully,


Herman K. Breuer
Combat Wounded Veteran
NACVSO President


Michael L. McLaughlin
NACVSO Legislative Chair

PREPARED STATEMENT OF THE NATIONAL VETERANS LEGAL SERVICES PROGRAM

The National Veterans Legal Services Program (NVLSP) welcomes the opportunity to submit a statement for the record regarding the October 30, 2019 hearing held by Subcommittee on Disability Assistance and Memorial Affairs of the Committee on Veterans' Affairs of the House of Representatives, "Preparing for Blue Water Claims-VA Status Update on Implementation."

NVLSP would like to thank Chair Luria, Ranking Member Bost and members of the Subcommittee on Disability Assistance and Memorial Affairs for holding this vitally important hearing and for continuing to shine a light on an issue that impacts thousands of our veterans and their families in the United States.

Since 1981, the National Veterans Legal Services Program (NVLSP), an independent, nonprofit veterans service organization, has been dedicated to ensuring that our government lives up to its obligations to provide our 22 million veterans and active service members the VA and military department benefits they have earned due to disabilities resulting from their military service to our country. At NVLSP, we have adopted a uniform code to serve our Nation's veterans with the same vigor and dedication that they have demonstrated in their service to our country.

Background: The Nehmer Class Action Against The VA and Procopio

In considering the impact of The Blue Water Navy Vietnam Veterans Act of 2019 (BWNVVA) and its implementation, it is important to understand at the outset the results of the class action *Nehmer v. U.S. Department of Veterans Affairs*. That landmark class action lawsuit was brought by NVLSP attorneys in 1986 on behalf

of Vietnam veterans and their survivors to challenge the 1985 VA Agent Orange compensation regulation, former 38 C.F.R. 3.311a, that provided, among other things, that chloracne is the only disease that scientific evidence shows is associated with exposure to herbicides like Agent Orange used by the United States in Vietnam.

In 1987, the district court certified the case as a nationwide class action on behalf of more than 2 million Vietnam veterans and their survivors, including those who had been denied VA benefits for a condition allegedly associated with herbicide exposure and those who would be eligible to file a claim for such benefits in the future. *Nehmer v. U.S. Veterans Administration*, 118 F.R.D. 113 (N.D. Cal. 1987). The court also certified NVLSP's lawyers as the counsel for all these class members. In 1989, the district court invalidated the portion of the regulation providing that no condition other than chloracne is associated with herbicide exposure and voided more than 20,000 VA decisions denying benefit claims under that portion of the regulation. *Nehmer*, 712 F.Supp. 1404 (N.D. Cal. 1989).

As noted in the November 2014 report by the congressional Research Service, "Veterans Exposed to Agent Orange: Legislative History, Litigation, and Current Issues, as a result of the *Nehmer* decision, Congress enacted the Agent Orange Act of 1991, 38 U.S.C. § 1116. The Agent Orange Act (AOA) required the VA to contract with an independent agency, the National Academy of Sciences (NAS), to review the emerging scientific studies on the adverse health effects of exposure to this herbicide and to prepare a report for the VA every 2 years with its conclusions. The AOA also required the Secretary of Veterans Affairs to decide within a specified period of time after receiving an NAS report whether to amend VA regulations by according presumptive service connected status to additional diseases.

In 2001, Congress extended the sunset date of the AOA from September 30, 2002 to September 30, 2015. Unfortunately, Congress did not extend the September 30, 2015 sunset date of the AOA despite the fact that NAS issued subsequent reports identifying additional diseases that have a positive association with exposure to Agent Orange. The VA has not approved or added any new diseases to this list since the AOA expired.

In 1991, NVLSP's attorneys negotiated a favorable consent decree with the VA in *Nehmer*. The *Nehmer* consent decree requires VA, whenever it recognizes pursuant to the AOA that the emerging scientific evidence and NAS reports shows that a positive association exists between Agent Orange exposure and a new disease, to (a) automatically identify all disability and death compensation claims based on the newly recognized disease that were previously denied and (b) automatically readjudicate these prior claims under the amended VA regulations recognizing the new disease, and (c) pay disability and death benefits to those claimants who prevail, retroactive to the initial date of claim. See *Nehmer*, 494 F.3d 846 (9th Cir. 2007). Most of the binding *Nehmer* Consent Decree rules are currently codified in 38 C.F.R. § 3.816.

Since the AOA was enacted, the numerous periodic NAS reports that have been issued have persuaded the Secretary of Veterans Affairs to amend VA regulations under the process set forth in the AOA to provide that many serious disabling diseases should be accorded presumptive service connected status because they have a positive association with exposure to the toxic herbicides used in Vietnam, including Agent Orange. These diseases include:

- AL Amyloidosis
- All Chronic B-Cell Leukemias
- Chloracne
- Diabetes-Type 2
- Hodgkin's Disease
- Ischemic Heart Disease
- Multiple Myeloma
- Non-Hodgkin's Lymphoma
- Parkinson's Disease
- Peripheral Neuropathy—Early-Onset
- Porphyria Cutanea Tarda
- ProState Cancer
- Respiratory Cancers including Lung Cancer, Trachea Cancer and Larynx Cancer
- Soft-Tissue Sarcomas

As a result of the *Nehmer* consent decree, over the last two decades, VA automatically readjudicated—without the necessity of filing a new claim—the prior VA denial of the claims of well more than 100,000 Vietnam veterans and their survivors that were based on a newly recognized Agent Orange-related disease. As a result of these *Nehmer* readjudications, VA has paid an aggregate of more than \$4.6 billion in ret-

roactive disability and death benefits to these Vietnam veterans and their surviving family members.

NVLSP's quest for justice for Vietnam veterans has not been limited to serving as class counsel in *Nehmer*. From 2005–2009, NVLSP litigated *Haas v. Peake*, in which NVLSP challenged on behalf of Navy Commander Haas the VA policy limiting the presumption of herbicide exposure to only those who set foot on the land mass of Vietnam or served on its inland waterways. Unfortunately, the U.S. Court of Appeals for the Federal Circuit ruled by a vote of 2 to 1 in *Haas* that the language “served in the Republic of Vietnam” was ambiguous. Due to the ambiguity, the Federal Circuit allowed VA's interpretation to stand and it remained the governing policy for determining Agent Orange disability and death benefit claims for the last 10 years until the Federal Circuit's decision of January 30, 2019 in *Procopio v. Wilkie*. In *Procopio*, all of the active judges on the Federal Circuit convened and explicitly overruled the Federal Circuit's holding in *Haas*, concluding that Congress clearly intended the definition of “the Republic of Vietnam” to include the territorial seas of the Republic of Vietnam.

My statement today is driven by NVLSP's long experience in pursuing justice for the veterans and their families who have suffered due to exposure to Agent Orange during military service, particularly the Blue Water Navy Vietnam Veterans.

To that end, NVLSP urges Congress to ensure that the VA live up to the full intention of H.R. 299 to expedite the payment of claims to Blue Water Navy Vietnam Veterans. Specifically, we recommend that Congress enact the following amendments to the BWNVVA and clarifications to further Congress' intent in passing the BWNVVA.

1. The BWNVVA's Exclusion of Many Blue Water Vietnam Veterans and Survivors Who Were Previously Denied Benefits for An Agent-Orange Related Disease

The BWNVVA contains provisions that clearly reflect Congress' intent to ensure that Blue Water Vietnam veterans and their survivors receive the same retroactive compensation that has already been received by their Vietnam veteran counterparts who set foot on the land mass of Vietnam and their survivors. NVLSP applauds Congress for attempting to provide Blue Water Vietnam veterans and their survivors the same retroactive compensation as other Vietnam veterans and survivors have already received by virtue of the *Nehmer* consent decree. But for many of these Blue Water veterans and survivors, the BWNVVA unfortunately throws them a life-line that is a foot short.

One oversight in the BWNVVA is that it excludes many Blue Water veterans and survivors from the scope of the BWNVVA's provisions providing a right to retroactive compensation. There are two groups of these individuals and they are identified in the margin below.¹

¹ There are two groups of Blue Water Vietnam veterans and their survivors that are excluded from the scope of the retroactive compensation provisions of the BWNVVA. compensation to Vietnam veterans based on a liberal interpretation of what constitutes a disability claim for an Agent Orange related disease. Under the definition of a claim in footnote 1 of the *Nehmer* consent decree, if a veteran files a claim for a noncovered disease, such as knee arthritis, but has a diagnosis of a disease later recognized by VA as associated with Agent Orange exposure, that claim counts for purposes of entitlement to retroactive disability benefits. In other words, that class member would be entitled to disability benefits retroactive to the date of the knee disability claim even though the veteran did not also expressly request benefits for the disease later recognized by VA as associated with Agent Orange exposure. This is important because Vietnam veterans often failed to formally request disability compensation for diseases VA had yet to recognize as Agent Orange-related, because they knew, or VA employees informed them, that it would have been a fruitless exercise. Under the BWNVVA, however, the retroactive compensation provisions in Section 1116A(c)(2) apply only to those who filed a claim “for a disease covered by this section.” VA would likely interpret this language to exclude claims in which the record shows the veteran was formally diagnosed with a covered disease, but did not expressly request benefits for that covered disease. This leads to the following injustice: On one hand, Vietnam veterans who set foot on land in Vietnam are entitled to retroactive benefits based on a claim for a noncovered disability in which the record shows a diagnosis for a disease later recognized by VA as associated with Agent Orange exposure. On the other hand, Blue Water Vietnam veterans might not be entitled to retroactive benefits based on a claim for a noncovered disability in which the record shows a diagnosis for a disease later recognized by VA as associated with Agent Orange exposure.

The second group of Blue Water veterans excluded from retroactive compensation by the wording of the BWNVVA involves Blue Water veterans who were previously denied disability benefits for an Agent Orange-related disease and who died before January 1, 2020. Under the *Nehmer* consent decree, VA must readjudicate the claim of a Vietnam veteran whom VA identifies as having been denied compensation for a disease now recognized as associated with Agent

Continued

A second oversight, which has an even greater impact, is the requirement that to obtain retroactive compensation, the Blue Water veteran or survivor must file a new claim. Under the Nehmer consent decree, the VA agreed to automatically take action to (a) identify through use of its systems of records all Vietnam veterans and their survivors who were previously denied benefits for a newly recognized disease and then (b) readjudicate the prior claim.

The most prominent adverse impact of requiring Blue Water veterans and their survivors to file a new claim in order to qualify for retroactive compensation is that a large percentage of these veterans and survivors will never file new claims because they will never find out that they are entitled to retroactive compensation by virtue of the BWNVVA. Although VA did not see fit to communicate with NVLSP about it, NVLSP has been informed by other veterans service organizations with whom VA consulted that VA plans voluntarily to attempt to identify these veterans and survivors and write them at their last known address to inform them of their right to retroactive compensation under the BWNVVA. NVLSP commends VA for this effort.

Letters mailed to VA-identified veterans and survivors at the address last known by VA certainly helps reduce the number of Blue Water veterans and their survivors who will be excluded from the retroactive compensation contemplated by the BWNVVA. But it is likely that hundreds, if not thousands, of Blue Water veterans and their survivors will still be excluded because these letters will not reach them for reasons such as stale addresses. Many Blue Water veterans and their survivors are not currently receiving VA benefits, and therefore the last address known to VA is many years, perhaps decades, old. For example, consider a letter mailed to the last known address of a surviving spouse who filed for and was denied death compensation in 1993 on the ground that the 1992 death due to larynx cancer of her 42-year-old husband, a Blue Water Vietnam veteran, was not related to service. Although the surviving spouse in this example would be owed 27 years of retroactive DIC if she files a new claim, the letter informing her of this fact will be sent to an address that is 27 years old. In our experience, this is not likely to be the address where this surviving spouse currently lives.

NVLSP believes that there are other reasonable ways to reach a greater percentage of the Blue Vietnam veterans and their survivors who would be entitled to retroactive compensation if they file a new claim. First, Congress could and should require the VA to use the last known address of the VA-identified veterans and survivors that is possessed by the Internal Revenue Service. That is exactly what Congress required the Department of Defense (DOD) to do in the Combat-Injured Veterans Tax Fairness Act of 2016.

Second, Congress could and should require VA to contract with one or more private search firms to locate those Blue Water veterans and their survivors whose VA notice letters are returned by the U.S. Postal Service as undeliverable. This technique has been highly successful in locating the current address of Nehmer class members who are owed retroactive compensation under the Nehmer consent decree and whom VA was unable to locate. VA agreed, pursuant to the district court's privacy protection order, to provide NVLSP, as counsel for the Nehmer class, with the identity, social security number and other personal information of those class members who were owed retroactive compensation, but whom VA could not locate. NVLSP then worked with two private search firms and were able to find the current address of the class member, which NVLSP then forwarded to VA so VA could pay them the compensation VA owed. Using this technique, NVLSP has thus far been able to locate more than 1,200 class members whom VA could not locate, and VA has paid them an aggregate of more than \$21 million in retroactive compensation.

A. Ensuring That VA Expedites Its Decision-Making on Pending Claims Filed by Blue Water Vietnam Veterans and Their Survivors

NVLSP opposes the 6-month stay, effective July 1, 2019, that Secretary Wilkie has imposed on decisionmaking on pending claims filed by Blue Water Vietnam veterans and their survivors. From NVLSP's experience, it is obvious from the evidence in the existing claims file in most of these pending cases that the veteran served

Orange exposure even if the veteran is no longer alive. If the Nehmer readjudication results in a grant of disability benefits, the veteran's survivors are entitled to the veteran's disability compensation from the date of the veteran's claim to the date of the veteran's death. The VA is unlikely to interpret the BWNVVA to require it to pay retroactive disability compensation to the survivors of a Blue Water Vietnam veteran who died prior to January 1, 2020. Thus, the Nehmer consent decree allows the survivors of Vietnam veterans who set foot on land in Vietnam to receive accrued benefits whereas the BWNVVA might not guarantee the same for survivors of Blue Water veterans.

within the territorial seas of Vietnam as defined by BWNVVA. Therefore, Congress should insist that Blue Water claims pending at the Board of Veterans' Appeals be decided by the Board in docket order, as required by current law, without being remanded unless further development is clearly needed. Congress should further insist that each VA regional office (RO) quickly survey those with Blue Water Agent Orange claims pending at the RO to determine if the claimant is seriously ill, is suffering from financial hardship, or is 75 years or older. These pending claims should be decided first, before any other claims pending at the ROs, especially given that their claims have been delayed by Secretary Wilkie's July 1 stay order.

B. Ensuring That the VA Uses A Fair Process for Deciding Blue Water Claims

According to the terms of the BWNVVA, whether the statutory presumption of herbicide exposure applies to a former sailor depends upon the various locations of the ship on which the former sailor served during the Vietnam era. Highly probative evidence of these locations are the Navy deck logs for the ships that served in the waters offshore Vietnam during the Vietnam era. These deck logs have long resided in and been maintained by the National Archives. In recent months, the VA has removed these deck logs from the National Archives so that they can be scanned for use in deciding the Agent Orange claims of Blue Water Vietnam veterans and their survivors. Because the VA literally removed the deck logs from the National Archives, the unfortunate byproduct is that Blue Water Vietnam veterans and their survivors do not currently have access to highly probative evidence on the merits of their Agent Orange claims.

It is fundamentally unfair and a violation of due process to deny veterans and their survivors reasonable access to highly probative evidence in the government's possession. This unfairness is exacerbated if the government were to rely upon highly probative evidence to decide a veteran's claim and, at the same time, deny the veteran reasonable access to that evidence. And this unfairness is further exacerbated if the government were to rely upon this highly probative evidence and, at the same time, shield the evidence from review by the claimant and a reviewing Federal court by keeping the evidence out of the administrative record (i.e., the claimant's VA claims file).

Congress can and should ensure that in implementing the BWNVVA, the VA provides Blue Water veterans and their survivors with a fair process that is consistent with fundamental principles of due process. To this end, NVLSP recommends that Congress provide in legislation that (1) Blue Water veterans and their survivors and the representatives of these individuals have the right to reasonable access to Navy deck logs and that VA must promptly promulgate interim regulations governing the process by which these individuals can gain access to these logs and (2) if VA adjudicators review copies of Navy deck logs in the course of deciding a claim filed by a Blue Water veteran or their survivor, that a copy of the Navy deck logs reviewed must be placed into the claimant's VA claims file so that it is part of the administrative record available to the claimant, the claimant's representative, and a reviewing Federal court.

NVLSP appreciates the work being done by Congress and the VA to correct the injustice that the BWNVVA is designed to remedy—the denial prior to the Procopio decision of the statutory presumption of exposure to herbicides contained in the AOA to those who served in uniform in the territorial waters of Vietnam. NVLSP is committed to working with Congress and all relevant Federal agencies to ensure that Blue Water veterans and their survivors receive the benefits to which they are entitled due to disabilities they incurred as a result of their military service to our Nation. We stand ready to assist on this issue and others that may develop in the future.

Thank you for the opportunity to submit a statement for the record on this critical matter.

PREPARED STATEMENT OF THE AMERICAN LEGION

Chairman Luria, Ranking Member Bost, and distinguished members who proudly serve on this subcommittee; on behalf of our National Commander, James W. "Bill" Oxford, thank you for the opportunity to comment on the important issue of the Department of Veterans Affairs' (VA) preparations to implement Blue Water Navy (BWN) Vietnam Veterans Act of 2019. It is our duty and honor to assist this committee in better understanding this issue, how it impacts our veterans, and provide recommendations for improvement. It is imperative that we address these implementation issues ensuring that long delayed benefits are delivered in the most expe-

ditious manner possible. BWN veterans who are experiencing health issues as a result of herbicide exposure during their service have been suffering for too long without the benefit and assistance warranted by their service. It is incumbent upon VA to ensure that every effort is made to ensure that BWN claims are processed and adjudicated in a swift, fair, and efficient manner.

Update From Previous Hearing

The American Legion last testified before this subcommittee on the issue of BWN on February 27, 2019.¹ Consistent with our long history of championing the cause of veterans harmed by exposure to herbicides in Vietnam, we called for the passage of H.R. 299, “Blue Water Navy Vietnam Veterans Act of 2019” to extend benefits to BWN veterans.

Four months later, on June 25, 2019, President Donald Trump signed into law H.R. 299, which became Public Law (P.L.) 116–23. This law states that veterans who served offshore of the Republic of Vietnam between January 9, 1962, and May 7, 1975, are presumed to have been exposed to herbicides such as Agent Orange and may be entitled to service connection for conditions related to that exposure. To be eligible for presumption of service connection based on herbicide exposure, the veteran must have served in the offshore waters of the Republic of Vietnam not more than 12-nautical miles seaward of a line commencing on the southwestern demarcation of the waters of Vietnam and Cambodia. Additionally, it affords spouses of certain veterans whose death was caused by a service-connected disability access to pension benefits, and expands benefits to the children of veterans of covered service in Thailand who suffer from spina bifida.

On July 1, 2019, VA Secretary Robert Wilkie issued a “Stay of Pending Claims under the Blue Water Navy Vietnam Veterans Act of 2019,” citing authority granted by the law. Secretary Wilkie directed the Veterans Benefits Administration (VBA) and Board of Veterans’ Appeals “to stay decisions regarding claims for disability compensation that are based on service in the offshore waters of the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, and which claim disability resulting from at least one of the diseases listed in 38 C.F.R. § 3.309(e).” The stay also applies to claims for disability compensation based on service in or near the Korean Demilitarized Zone (DMZ) and claims for benefits for spina bifida for children of Veterans who were allegedly exposed to herbicides while serving in Thailand. The stay will remain in place until January 1, 2020.

On July 5, 2019, VA issued a press release titled, “VA Extends Agent Orange Presumption to ‘Blue Water Navy’ Veterans.”² The press release encouraged applicants to “submit disability compensation claims for conditions presumed to be related to Agent Orange exposure,” adding that veterans over age 85, or with life-threatening illnesses, will have priority in claims processing. The press release also called for veterans who were previously denied for an Agent Orange compensation claims to re-submit a claim under P.L. 116–23. However, the invitation to file, or re-submit, was prefaced by the statement that “the bipartisan Blue Water Navy Vietnam Veterans Act gives VA until January 1, 2020, to begin deciding Blue Water Navy related claims” and that “by staying claims decisions until that date, VA is complying with the law that Congress wrote and passed.”

On July 24, 2019, The American Legion and eight other Veteran Service Organizations issued a joint letter to Secretary Wilkie on behalf of the millions of veterans, service members, their families, and survivors asking him to lift the July 1, 2019, stay on BWN claims that were eligible for benefits as a result of the *Procopio v Wilkie* ruling.³ The joint letter echoed calls from a July 15, 2019, letter from the Senate Veterans’ Affairs Committee Ranking Member Jon Tester and nine other Senators calling for similar action by VA.⁴ The American Legion remains concerned for the urgent needs of these vulnerable veterans and continues to urge VA to begin adjudicating those claims made eligible by the *Procopio v Wilkie* ruling immediately.

Current Challenges

VA has estimated that 420,000 to 560,000 Vietnam-era veterans may be considered BWN veterans, not including survivors and dependents. Additionally, VA will undoubtedly receive claims from veterans who believe they were exposed to Agent

¹ <https://docs.house.gov/meetings/VR/VR00/20190227/108928/HHRG-116-VR00-20190227-SD012.pdf>

² <https://www.va.gov/opa/pressrel/includes/viewPDF.cfm?id=5280>

³ <https://www.moaa.org/content/publications-and-media/news-articles/2019-news-articles/moaa-and-fellow-vsos-request-sit-down-with-president-trump-to-help-blue-water-navy-vets/>

⁴ https://www.testersenate.gov/?p=press_release&id=6876

Orange by ships returning from the regions in and around Vietnam, without concern for the offshore zone determined by H.R. 299. This could easily add thousands of applicants to the numbers cited by VA and overwhelm regional offices, healthcare facilities, and the Board of Veterans' Appeals. VA already faces difficulties maintaining proper resources to provide the service, care, and support of veterans without this additional influx of veterans requiring services.

The Government Accountability Office (GAO) cited concerns regarding VA's ability to provide timely access to safe, high-quality health care for veterans.⁵ It also reported that "VA has made limited progress toward addressing information technology (IT) system modernization challenges."⁶ Adding to this, additional claims are being generated while the stay is in effect, further contributing to the already strained VA resource pool. The Undersecretary for Benefits, Dr. Paul Lawrence, has ensured The American Legion that VBA is working to ensure proper resources are in place to meet the needs of BWN veteran community.

The VBA is currently undertaking a massive effort to identify, retrieve, and scan ships logs to determine which ships operated within the 12 nautical miles of the Republic of Vietnam and identify which veterans will be eligible for additional benefits under P.L. 116-23. As a part of these efforts, VA has scanned more than 4 million records to date and will ultimately scan approximately 20 million. Also, they are building a ship locator tool to validate a veteran's service in the offshore waters of the Republic of Vietnam.

These efforts are underway in the shadow of another GAO report challenging the accuracy of Agent Orange testing and storage locations.⁷ According to the report, "While the logbooks GAO reviewed identify when vessels left various ports as they traveled to and from Vietnam, they do not show whether and how much cargo was loaded or unloaded at those ports. [Department of Defense's] official list of herbicide testing and storage locations outside of Vietnam that is posted on the Department of Veterans Affairs' (VA) website is inaccurate and incomplete."

Recommendations to Address Preparation for Blue Water Claims

Internal Repairs

The American Legion supports the plan and effort of VA to ensure the right resources and systems are in place before issuing decisions on BWN claims. However, the blanket stay is an exaggerated reaction that has the potential to result in a self-inflicted resource deficit. The American Legion calls on VA to accede to the joint VSO request to grant BWN claims for those who are currently eligible as a result of the *Procopio v Wilkie* ruling. By doing so, VA will simultaneously prevent additional backlogs and ensure that veterans receive their long overdue benefits as quickly as possible.

The efforts made by VA to ensure that proper resources have been allocated to BWN implementation is commendable and The American Legion urges VA to continue its ceaseless efforts on this front. Additionally, we welcome the use of the ship locator tool and its potential to swiftly and accurately adjudicate claims. This will be integral to ensuring that claims are processed in an expedient manner and resources are not needlessly diverted to backlogged claims.

We urge that VA not use the ship locator tool as the single determinant in denying a veteran's claim. As indicated by the aforementioned GAO report, there are significant information gaps that could result in a veteran being wrongly denied benefits if these lists are perceived to be exhaustive.

We call on VA to remain cognizant of this fact and to ensure that every veteran's claim receives the appropriate due diligence. The ship locator tool should be utilized as an expedient means to validating claims, not disputing them. The American Legion looks forward to the scheduled demonstration of this tool by the VBA on November 18, 2019.

External Repairs

VBA has been hosting webcasts to inform the veteran community about the various projects underway. We encourage VA to adopt more of these types of outreach efforts and to work with The American Legion to host live watch parties at posts across the country. This would bridge the gap between the generation of veterans who embrace mobile technology and those who don't reach a broader audience. VA should develop a more interactive working relationship with VSOs for the wel-

⁵ https://www.gao.gov/key_issues/managing_risks_improving_va_health_care/issue_summary

⁶ <https://www.gao.gov/assets/700/698164.pdf>

⁷ <https://www.gao.gov/assets/700/695560.pdf>

fare of veterans; to include more candid communication about internal challenges and envisioned projects.

The American Legion has and will continue to play a pivotal role in educating and advocating for all veterans and their families. However, it is also incumbent on VA to better educate veterans and family members about H.R. 299 implementation. Specifically, information about qualifications, resources, and the claims process. We encourage VA to take advantage of American Legion town halls and events as a venue to communicate with veterans.

CONCLUSION

The American Legion thanks this committee for the opportunity to elucidate the position of the nearly 2 million veteran members of this organization. It is imperative that VA implement the Blue Water Navy Vietnam Veterans Act of 2019 in the most expeditious and fair manner possible. The American Legion looks forward to hearing from our members who have been affected by these issues and will be closely monitoring the implementation process. For additional information regarding this testimony, please contact Mr. Lawrence Montreuil, Legislative Associate, at LMontreuil@legion.org or (202) 861-2700.

