July 25, 2013

The Honorable Bernard Sanders
Office of U.S. Senator Bernard Sanders
332 Dirksen Senate Office Building
Washington, D.C. 20510
(202) 224-5141

Re: Claims Processing Improvement Act of 2013

Dear Senator Sanders,

We are writing on behalf of the Center for Veterans Advancement (CVA) at Public Counsel to applaud you for introducing The Claims Processing Improvement Act of 2013 (S.928), and your commitment to dismantle barriers veterans face when applying for their benefits.

The Center for Veterans Advancement is a project of Public Counsel Law Center, the largest provider of pro bono legal services in the nation. Public Counsel is a nationwide leader in public-interest advocacy and has received attention from leaders throughout the nation; Congressman Tammy Duckworth, Bill Gates, Nobel Laureate Eli Wiesel, and President Bill Clinton who has described Public Counsel as “...doing noble work.”1 At CVA, our goal is to “uphold our nation’s promise to veterans and their families.”

We believe that S. 928 will contribute to upholding our nation’s promise by supporting Secretary Eric K. Shinseki’s goal adjudicating the majority of VA claims within 120 days. We support the majority of the aforementioned, and respectfully submit recommendations in support of this Act. Notwithstanding, we strongly oppose Section 201 of the Act, as its implementation would lead to a less effective appeals system because it creates a costly and unnecessary review process, as well as a significant risk of perpetuating: “...a negative claims experience preventing a veteran from seeking mental health care or help battling homelessness.”2

Title I, Sections 202, 203, and Title III of S. 928 are a move in the right direction against the VA claims backlog and are in furtherance of what Under Secretary for

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1 PublicCounsel.org, Our Stories, http://www.publiccounsel.org/stories?id=0043
Benefits, Allison A. Hickey called the "...radical overhaul of the way VA does business...."\(^3\) The CVA respectfully proposes the following recommendations:

I. **Section 102(b) should be amended.**

Section 102(b), which addresses the composition of a task force to assess the retention and training of claims processors and adjudicators in the VA, should be amended to require a member of the private bar. Private bar representation may provide an additional legal perspective not possessed by a Veteran Service Organization. For example, at Public Counsel, we have over 60 staff attorneys who specialize in housing, employment, and family law. We partner with over 5,000 pro bono attorneys, most of which are members of the top law firms in the nation.

II. **Section 106 should include “non-final” claims.**

In Section 106, the Act requires the VA to submit quarterly reports to the Senate and House Committees on Veterans’ Affairs detailing its progress in eliminating the backlog. For a more accurate reporting by the VA, and thus more effective oversight by the Committees, the term “pending” should include claims that have been certified for appeal before the Board of Veterans’ Appeals, or where the VA has received a Notice of Disagreement (NOD).

III. **Section 201 must be rejected.**

As to Section 201 of the Act, the CVA joins the Disable Veterans of America,\(^4\) the American Legion,\(^5\) and the Veterans of Foreign Wars\(^6\) in opposing its inclusion. Contrary to the stated intention, this section will further deter expediency of the appeals process by creating an additional level of review, by already overwhelmed Regional Offices, further placing a greater burden on the veteran suffering the consequences of continued delays.\(^7\)

According to GAO testimony, the VA received 121,786 NODS and in response processed only 76,685 Statement of the Cases (SOC).\(^8\) From 2009-2012 the average time to respond to a NOD increased from 293 days to 460.\(^9\) One Regional Office

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\(^4\) *Pending Benefits Legislation: Hearing Before the S. Comm. of Veterans Affairs*, 113 Cong. (2013) (Submission for the Record, Jeffrey Hall, Assistant National Legislative Director, Disabled American Veterans)

\(^5\) *Pending Benefits Legislation: Hearing Before the S. Comm. of Veterans Affairs*, 113 Cong. (2013) (Submission for the Record, Ian de Planque, Deputy Legislative Director, The American Legion)

\(^6\) *Pending Benefits Legislation: Hearing Before the S. Comm. of Veterans Affairs*, 113 Cong. (2013) (Submission for the Record

\(^7\) "...provide veterans and their family members with the timely and accurate claims decisions they deserve." 159 Cong. Rec. S3337 (daily ed. May 9, 2013) (Statement of Sen. Bernie Sanders)


\(^9\) *Id.*
employee has reported that part of the inefficiency is due to the VA employee’s inability to decide if a veteran response is a NOD.\textsuperscript{10} If the delay to adjudicate appeals exists because of the VA’s inability to review NODs expeditiously, then a stricter time requirement placed on veterans will be pointless.

Section 201 places an even more difficult review process at the hands of the VA by requiring “good cause” review. Historically, without oversight or judicial review, the VA has been inefficient when reviewing veterans’ issues on appeal.\textsuperscript{11} Without further guidance, the VA will be left to determine the amount of evidence the burdened veteran will have to provide to demonstrate “good cause;” who would be qualified to determine “good cause;” and all other procedures in the review process for “good cause.” This determination will take time, documentation, and fiscal resources away from both the VA and the veteran, creating the very bottleneck effect the bill is attempting to avoid.

Additionally, adjudication of “good cause” may extend the indignity suffered by our homeless and indigent veterans. Traditionally, these veterans lack access to mail and phones, often making any communication a difficult process. Because of this, they tend to feel discomfited and unmotivated to seek assistance through the VA. Our experience indicates that an additional review process, such as “good cause,” will exacerbate their discomfort and likely lead to more homeless veterans without aid.

IV. The CVA supports a “streamlined” appeals process

We concur with the VA’s desire to streamline the appeals process,\textsuperscript{12} but we disagree with their belief that Section 201 will accomplish this. Given the current pressure on the VA to dismantle their backlog by prioritizing the handling of older claims,\textsuperscript{13} we believe lack of staffing and admitted inefficiencies makes the stricter NOD requirement untenable.

The CVA concurs with the National Organization of Veterans’ Advocates\textsuperscript{14} in suggesting the removal of the two step appeals process currently in place at the

\textsuperscript{10} Why Are Veterans Waiting Years on Appeal?: A Review of the Post-Decision Process for Appealed Veterans’ Disability Benefits Claims: Hearing Before the Subcomm. on Disability Assistance and Memorial Affairs of the H. Comm. Of Veterans Affairs, 113 Cong. (2013) (Submission for the Record Matthew Middlemas)

\textsuperscript{11} See James D. Ridgway, The Veterans’ Judicial Review Act Twenty Years Later: Assessing the New Complexities of the Veterans Benefits System, 66 N.Y.U. ANN. SURV. AM. L. 251, 266-67 (2010) (From a survey of the number of claims being awarded at least one benefit at one regional office rose from 50% to 88% when comparing 1988 to 2008).


\textsuperscript{13} Allison Hickey, VA Expediting Claims Decisions for Veterans Waiting a Year or More, VAntage Point (Apr. 19, 2013, 2:51 PM), http://www.blogs.va.gov/VAntage9217/va-expediting-claims-decisions-for-veterans-waiting-a-year-or-more/

Regional Offices. Today, to appeal a rating decision promulgated by a Regional Office, the standard procedure is to file a NOD, receive a SOC, and then choose either a Decision Review Officer (DRO) review, or file an appeal with the BVA. Essentially, to appeal a Regional Office decision, the veteran must file two separate forms, the NOD and the appeal to the BVA. The Regional Office must review the claim up to three times, submit a SOC, and in the case of a DRO review, submit a supplementary SOC.

This redundant process is unnecessary.\(^{15}\) By eliminating the NOD/SOC system and replacing it with a one-time appeal, with an option of DRO review; time, costs, and wasted resources can be substantially cut for both the VA and the veteran.

V. Conclusion

In summary, CVA believes that the necessary path towards a modern and efficient appeals process is to eliminate the NOD/SOC system. We strongly support the majority of S. 928, and believe that with some revision the Act will fulfill its intent.

Section 201 of this Act, however, will be an expensive and inefficient burden on the appeals process. Delays in filing NODs constantly occur due to the inability of a veteran to receive mail, representatives unable to locate indigent veterans, and various mental and emotional hardships. Limiting the time to file a NOD will undermine these burdened veterans’ access to appeal. Additionally, to implement such a drastic change will drain fiscal and employee resources from the VA.

We strongly encourage the Committee to delete Section 201 from an otherwise effective assault on the claims backlog and delay of benefits to America’s most deserving. Thank you for your consideration and your dedicated commitment and leadership to our nation’s veterans.

Sincerely,

Geoffrey R. Cleveland
Law Clerk,
Center for Veterans Advancement

Barbara Luttenberger
Project Coordinator,
Center for Veterans Advancement

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CC: The Honorable Eric K. Shinseki  
Secretary of Veterans Affairs

The Honorable Allison A. Hickey  
Under Secretary of Benefits

The Honorable Jon Tester  
United States Senator, Montana

The Honorable Mark Begich  
United States Senator, Alaska

The Honorable Richard Burr  
United States Senator, North Carolina

The Honorable John D. Rockefeller IV  
United States Senator, West Virginia

The Honorable Johnny Isakson  
United States Senator, Georgia

The Honorable Patty Murray  
United States Senator, Washington

The Honorable Mike Johanns  
United States Senator, Nebraska

The Honorable Sherrod Brown  
United States Senator, Ohio

The Honorable Jerry Moran  
United States Senator, Kansas

The Honorable Richard Blumenthal  
United States Senator, Connecticut

The Honorable John Boozman  
United States Senator, Arkansas

The Honorable Mazie Hirono  
United States Senator, Hawaii

The Honorable Dean Heller  
United States Senator, Nevada
The Honorable Dianne Feinstein
United States Senator, California

The Honorable Barbara Boxer
United States Senator, California