

NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.



Statement for the Record

Before the

**House Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs**

on

Pending Legislation

June 24, 2025

Chairman Luttrell, Ranking Member McGarvey, and members of the DAMA Subcommittee, thank you for the opportunity to offer our views on pending legislation.

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents over 850 accredited attorneys, agents, and other qualified members practicing across the country and assisting tens of thousands of our nation's military veterans, survivors, family members, and caregivers seeking to obtain their earned benefits from VA. NOVA members advocate for their clients before the Department of Veterans Affairs (VA), Board of Veterans' Appeals (Board), U.S. Court of Appeals for Veterans Claims (CAVC), U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and U.S. Supreme Court. NOVA works to develop and encourage high standards of service and representation for all persons seeking VA benefits.

NOVA advocates for laws and policies that advance the rights of veterans. For example, NOVA collaborated with Veteran Service Organizations (VSOs) and other accredited representatives, VA, and Congress on appeals modernization reform. Those efforts resulted in passage of the *Veterans Appeals Improvement and Modernization Act* (AMA), P.L. 115-55, 131 Stat. 1105, which was signed into law in 2017. At the time of its passage, VA emphasized the AMA would provide claimants with more choice and control over the disability claims and appeals adjudication process by expanding their review options.

NOVA also advances important cases and files amicus briefs in others. *See, e.g., NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013) (addressing VA's failure to honor its commitment to stop applying an invalid rule); *Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019) (amicus); *NOVA v. Secretary of Veterans Affairs*, 981 F.3d 1360 (Fed. Cir. 2020) (M21-1 rule was interpretive rule of general applicability and agency action subject to judicial review); *National Organization of Veterans' Advocates, Inc., et al., v. Secretary of Veterans Affairs*, 981 F.3d 1360 (2022) (Federal Circuit invalidated knee replacement rule); *Arellano v. McDonough*, 598 U.S. 1 (2023) (amicus); *Terry v. McDonough*, 37 Vet.App. 1 (2023) (amicus); *Bufkin v. Collins*, 604 U.S. ____ (2025) (amicus).

A critical part of NOVA's mission is to educate advocates. NOVA currently conducts two conferences per year, each offering approximately 15 hours of continuing legal education (CLE) credit for attendees. Experts from within and outside the membership present and train on the latest developments and best practices in veterans law and policy. NOVA sustaining members must participate in at least one conference every 24 months to maintain eligibility to appear in our public-facing advocate directory. In addition to conferences, NOVA offers webinars, online support, peer-to-peer mentorship, and other guidance to its members to enhance their advocacy skills.

NOVA is happy to provide feedback on the following bills.

H.R. 659, Veterans Law Judge Experience Act of 2025

NOVA supports H.R. 659, Veterans Law Judge Experience Act of 2025, which will require the Chairman of the Board to give priority to individuals with three or more years of legal experience in relevant veterans law for positions as Veterans Law Judges. The expansion of benefits in recent years makes it more important than ever that those who are making benefits decisions on behalf of our nation's veterans, survivors, family members, and caregivers come to their positions, whenever possible, with the requisite knowledge and experience.

H.R. 2055, Caring for Survivors Act

NOVA supports H.R. 2055, Caring for Survivors Act. This bill makes important changes that will provide better support to surviving spouses. NOVA supported similar legislation introduced in the last Congress. The current dependency and indemnity (DIC) benefit is \$1653.07, which is only about 43 percent of what a 100-percent service-connected veteran receives. Benefits for survivors of federal civil service retirees are calculated as a percentage of the retiree's benefits, up to 55 percent. H.R. 2055 would increase the DIC rate to 55 percent of what a totally disabled veteran receives and this increase ensures equity for surviving spouses.

In addition, H.R. 2055 would amend the 10-year rule. Currently, if a veteran is 100-percent service connected for 10 years before his or her death, the surviving spouse is eligible for DIC even if the death is not service connected. This bill will provide a partial DIC benefit for the surviving spouse if the veteran dies five years after being rated totally disabled, with full entitlement at 10 years.

H.R. 3123, Ernest Peltz Accrued Veterans Benefits Act

NOVA supports H.R. 3123, Ernest Peltz Accrued Veterans Benefits Act. NOVA supports the payment of pension due and unpaid at the time of the veteran's death, to the veteran's spouse, children, dependent parents, or estate.

H.R. 3833, Veterans' Caregiver Appeals Modernization Act of 2025

NOVA supports H.R. 3833, Veterans' Caregiver Appeals Modernization Act of 2025, with qualifications. NOVA members represent caregivers in appeals. Our members report extensive problems with appeals being properly docketed and relevant records not being promptly associated with the file, causing lengthy delays in resolution of appeals. NOVA supports efforts to improve this process.

To that end, NOVA supports improvements for VHA and Board employees to access applications and appeals. Without more details, however, we cannot unequivocally support development of a new system when existing programs such as the Veterans Benefits Management System (VBMS) and Caseflow exist. Given VA's challenges with implementing new technological programs and finite resources, it makes more sense to put resources into existing systems to improve and modernize them to support appeals for caregivers.

NOVA fully supports the ability of a family caregiver to receive monthly stipends to which he or she was entitled and were due and unpaid on the date of the death of the eligible veteran, as well as the requirement that VHA employees responsible for these appeals receive the same guidance and complete the same training as a higher-level adjudicator in VBA.

H.R. 3834, The Protecting Veterans Claims Options Act

NOVA supports H.R. 3834, The Protecting Veterans Claims Options Act. First, this legislation would counter the negative result of the recent CAVC decision in *Loyd v. Collins*, __ Vet.App. __, No. 22-5998 (May 8, 2025). Mr. Loyd filed a supplemental claim within a year of VA's denial of his left eye condition. VA denied the supplemental claim, on the basis the veteran had not submitted new and relevant evidence. The Board subsequently denied the appeal on the same basis, never reaching the underlying merits of the appeal. The CAVC affirmed the Board's decision. As noted in the dissenting opinion, however, this holding "seems likely to be the death knell for supplemental claims following AOJ decisions." Slip op. at 30-31. Furthermore, "the majority's endorsement of the Secretary's common contention that there is no prejudice to the veteran because he can always file another supplemental claim fails to appreciate the realities of VA's system. The veteran will never get the Board to review the merits of his claim, notwithstanding his timely efforts, if he cannot gather more or better evidence that the Board deems new and relevant or draw a Board member that does not make the mistakes evident here—the apparent inattention to both the additional evidence considered by the AOJ in adjudicating the supplemental claim and the AOJ's unduly miserly test for relevance." *Id.* at 31 (footnote omitted).

Under 38 U.S.C. § 7104(a), veterans are entitled to "one review on appeal to the Secretary" that "shall be made by the Board." Furthermore, the Board's decisions "shall be based on the **entire record** in the proceeding and upon consideration of **all evidence** and material of record and applicable provisions of law and regulation." 38 U.S.C. § 7104(a) (emphasis added). These are bedrock principles of the veterans benefits system and The Protecting Veterans Claims Options Act will ensure that veterans are not deprived

of their right to have the Board decide the merits of their appeal based on consideration of the entire record.

Second, this bill would allow a veteran, survivor, family member, or caregiver whose case has been remanded by the CAVC to submit evidence to the Board within 90 days following a remand, which the Board would be required to consider in the first instance. This provision promotes efficiency for appellants and the system overall.

H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act

NOVA supports H.R. 3854, Modernizing All Veterans and Survivors Claims Processing Act, with qualifications. NOVA appreciates and supports VA's embrace of automation to decide claims and appeals in a more timely fashion. To be clear, however, Congress should require that existing VA automation tools be analyzed under Sec. 2(c) to ensure these tools meet the mark before they are expanded further throughout VBA. Furthermore, Congress needs to ensure VA has the funding and employees to verify that these automation tools achieve more accurate and timely decisions for veterans, survivors, family members, and caregivers, and that adequate human oversight is exercised in every claim and appeal.

This bill also addresses a critical issue regarding correct labeling of documents. Specifically, the Secretary would be required to create a plan to ensure that documents in VBMS are correctly labeled. This problem has existed since the creation of VBMS and NOVA has long urged VA to correct it, providing feedback and offers of assistance to create accurate labels. For example, VA overuses the label "Third Party Correspondence" to describe a wide variety of documents, e.g., lay statements from veterans, briefs/argument submitted by accredited advocates, and medical opinions. Inconsistent labeling results in VA employees and examiners missing important evidence and information that is necessary to correctly decide claims and appeals. We applaud Congress's efforts to correct this long-standing problem and, should this bill become law, we urge VA to seek input from the accredited stakeholder community to advise on improvements. Furthermore, NOVA recommends an addition to Section 3(b) that would allow accredited representatives to label the documents they submit electronically to VA.

H.R. 3835, Veterans Appeals Efficiency Act

NOVA does not support H.R. 3835 in its entirety as currently drafted.

Reporting Requirements. NOVA generally supports the provisions that require the Secretary to report on the length of adjudication (Section 2(b)) and information on certain claims/notice of certain assignments (Section 2(c)). Congress, however, must ensure that VA has the necessary resources to collect and report such data so as to not interfere with

the Board's primary mission as articulated at 38 C.F.R. § 20.103: "The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal."

Advancement on the Docket. NOVA supports the prescription of guidelines for advancement on the docket at the Board, primarily to ensure consistency in how such rules are applied. Presently, the Board considers 75 years to be the age for automatic advancement on the docket; however, the VA Regional Offices apply the rule at age 85. Congress should institute a set age of 75 for all claimants.

Board Aggregation/Precedential Decisions. NOVA does not support the aggregation provisions as currently written. This bill needs to provide more clarity on the role of the study prior to implementation of actual aggregation. Section 2(d)(1)(A) would amend 38 U.S.C. § 7104(a) to add the following new sentence: "If the Chairman of the Board determines that more than one appeal involves common questions of law or fact, the Chairman may aggregate such appeals to decide such questions of law or fact." That provision takes "effect on the date of the enactment of this Act" but will "apply beginning on the date on which the Secretary of Veterans Affairs completes the developments of policies and procedures required under subsection (g)(4)(A)(ii)." Subsection (g)(4)(A)(ii) provides for the development of policies and procedures to implement the recommendations in FFRDC assessment with respect to the authority of the Board. The language is confusing and the authority bestowed under Section 2(d)(1)(A) appears to put the cart before the horse.

This bill correctly identifies problems with inconsistent Board decisions that hinder efficient and accurate appeals processing. Aggregate action is a powerful tool that, used well, may address these problems. As currently drafted, however, the bill is too broad, provides too much unilateral authority to the Board Chairman, and risks introducing further systemic inefficiency.

Specifically, the only additional guidance regarding aggregation that the bill provides is at section 2(d)(3), defining "aggregate" to encompass "any practice or procedure to collect common issues, claims, or appeals by multiple parties for the purposes of resolving such issues, claims, or appeals," including "the use of joinder, consolidation, intervention, class actions, and any other multiparty proceedings." This broad language allows for the Secretary, acting through the Board Chairman, to unilaterally convene a class of unrepresented claimants and decide—without mention of any right of notice or opportunity to opt out—one or more common questions of law or fact adversely and in binding fashion across the entire class. Statutory restrictions upon VA's ability to provide information regarding a claimant or claim to third parties (intended to protect veterans' privacy) would also pose potentially substantial obstacles against providing notice to

claimants whom the Board Chairman's aggregate action might adversely affect.

Furthermore, the bill, as drafted, leaves in question whether adversely affected claimants even could appeal any such action. The Federal Circuit has ruled that the CAVC has no jurisdiction to review a decision of the Board's Chairman. *See Mayer v. Brown*, 37 F.3d 618 (1994). Based on that precedent, adverse aggregate action by the Chairman could stand absolute, immune to appeal. The bill's commission of such unilateral power and discretion to the Chairman also would be at odds with 38 U.S.C. § 7102(b), which instructs that "[a] proceeding may not be assigned to the Chairman as an individual member," subject to section 7103(a)'s provision that the Chairman may "order[] reconsideration of the decision" and then, pursuant to section 7102(b), participate among a multi-judge panel in that reconsideration.

At this time, NOVA recommends proceeding with the FFRDC assessment that will provide for a broader debate about the potential role of aggregation or other related policies at the Board, to include consideration of use of precedential decisions at the Board.

Ensuring Compliance with Board Remands. It is critically important that the Board ensure substantial compliance with a decision to remand, even though the Board does not maintain jurisdiction in the AMA system upon a remand. This language of this section, however, is confusing as to the role of the agency of original jurisdiction in this process. Specifically, under (f)(2)(B), it is unclear how a determination of "such decision was unnecessary" would be made. This section needs more clarification.

CAVC Jurisdiction. NOVA supports the expansion of the CAVC's class action jurisdiction in the amendments proposed for 38 U.S.C. § 7252(b).

NOVA does not support the amendments proposed for 38 U.S.C. § 7252(c). Existing law permits the CAVC to exercise limited remand authority, which it has done since its earliest decisions. *See, e.g., Gilbert v. Derwinski*, 1 Vet.App. 49, 59 (1990) (Court retained jurisdiction and remanded for the Board to provide adequate reasons or bases for its determinations). This language as drafted seems too rigid. For example, it should not require the CAVC to make a rule defining the amount of time to allow for **every** limited remand because each case is different. Any such "guidelines" can be included in the CAVC's Internal Operating Procedures, but should not be in the Rules of Practice and Procedure.

H.R. 3983, Veterans Claims Quality Improvement Act of 2025

NOVA supports H.R. 3983, Veterans Claims Quality Improvement Act of 2025, with qualifications. NOVA supports policies, procedures, and technological capabilities to

inform VBA employees of avoidable deferrals, as well as a program for quality assurance in Board decisions. In addition, NOVA supports a training program for Board members on timely and correct adjudication of appeals. As previously noted, however, it is important that Congress ensure VA and the Board have the appropriate resources to carry out these functions so as to not interfere with their main mission to decide and issue decisions on the claims and appeals of veterans, survivors, family members, and caregivers.

NOVA supports further discussion and study of the role that OGC opinions could potentially have in fostering consistency in decisions on issues raised in CAVC appeals.

NOVA supports the amendment to 38 U.S.C. § 7104 that would require the Board to provide specific reasons for a remand, to include any failure of VA to comply with duty to assist and the duty to notify. Specificity as to these failures will assist the veteran in determining how to proceed on remand and allow the Board and the CAVC to more readily determine whether VA corrected the errors identified in the remand should the issue(s) return to either body in any future proceedings.

Conclusion

NOVA appreciates the opportunity to present its views to the Subcommittee. We remain committed to working with this Committee, VA, and accredited stakeholders to improve the VA disability and claims adjudication process for veterans, survivors, family members, and caregivers.

For more information:

NOVA staff would be happy to assist you with any further inquiries you may have regarding our views on this important topic. For questions regarding this testimony or if you would like to request additional information, please feel free to contact Diane Boyd Rauber by calling NOVA's office at (202) 587-5708 or by emailing Diane directly at drauber@vetadvocates.org.