

March 22, 2020

The Honorable Robert Wilkie, Jr.
Secretary
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

RE: Proposals to the U.S. Department of Veterans Affairs in Response to COVID-19

Dear Secretary Wilkie,

It has become increasingly clear in recent days that the COVID-19 national emergency requires quick and decisive action from all levels of government to protect Americans' health and livelihood, including from the U.S. Department of Veterans Affairs. The nation's aging veteran population deals with severe disabilities at much higher rates than the general population, and will therefore require additional safeguards and protections. Veterans rely on the VA for support both medically and financially, both of which will be of increased importance during this chaotic time. We appreciate the rapid action the VA has taken in the face of this crisis and encourage the VA to continue to move quickly to address the emerging needs of the veteran community. In this time of uncertainty, our nation's veterans will turn to the VA with increasing frequency for care and support, and the VA must be ready to respond.

We, the undersigned legal services providers and advocates, urge the U.S. Department of Veterans Affairs to act on the following proposals aimed at providing assistance to our nation's veterans during this extremely difficult time:

(1) Suspend Deadlines on VA Benefit Claims Until At Least 60 Days After Termination of the National Emergency

The Veterans Benefits Administration (VBA), effective immediately, should suspend all deadlines on VA benefit claims for which they have the legal authority to do so until at least sixty days after the termination of the current national emergency order. The VBA should use its full discretion to delay expiration of deadlines, and should work with Congress to extend deadlines for those out of their control. During this time of crisis, veterans are likely unable to gather and provide adequate documentation to the VBA in support of their claims, and many VSOs and accredited attorneys are unable to meet with their clients to provide meaningful representation. Further, many veterans do not have access to electronic means for submission of documents they need to provide the VA; these veterans should not be risking their health and the safety of others by visiting their local Regional Office or post office. Veterans should not have to choose between risking their safety or risking their claims.

(2) Urgently Expedite Decisions on Claims and Benefits Involving Financial Hardship

The Department of Veterans Affairs must prioritize the handling of all claims and benefits involving financial hardship, particularly with regard to means-tested benefits like Non Service-Connected Pension and HUD-VASH. As the effects of COVID-19 wreak havoc on the economy, those who were previously facing financial distress will only see their situations worsened. Claims that were previously flagged for financial hardship should be expedited as urgently as possible, while still giving them the consideration they need. The VA should also be diligent in identifying new and pending claims that require expedited processing and should take a more liberal approach to evidence submitted as proof of financial hardship.

(3) Change All In-Person VA Compensation & Pension Disability Examinations to Telehealth or Audio Examinations

The Department of Veterans Affairs, effective immediately, should change all in-person VA Compensation & Pension Disability Examinations (C&P exams) to telehealth or audio examinations. VA C&P exams are a critical component of the VA disability benefits process, during which a veteran meets with an examiner who assists in determining whether a disability is service-connected, and the severity of the disability. These examinations are primarily performed in-person at VA medical centers or at contracted private medical facilities. At a time when we are encouraging individuals, especially those who are elderly or who suffer from disabilities, to stay in their homes, it is irresponsible and dangerous for the VA to schedule in-person examinations. The VA should take advantage of its robust telehealth system to continue to perform these crucial examinations, and in situations where the technology is not available, rely on audio examinations. For components of C&P exams that require in-person action, such as lab testing, the VA should first look to recent medical records for the needed information and in cases where it is not available, conduct testing at the veteran's next medically necessary appointment instead of requiring veterans to make additional trips to a medical facility. The VA should not halt C&P exams, as more than ever, veterans will be relying on these critical benefits. Rather, the VA should utilize the technology available to conduct these exams in a way that protects veterans and their communities.

(4) Extend Access to Housing Subsidies for Student Veterans Until At Least 60 Days After the Termination of the National Emergency

The Department of Veterans Affairs, effective immediately, should extend access to housing subsidies for student veterans who utilize VA Education Benefits until at least sixty days after the termination of the current national emergency order. Student veterans who utilize VA Educational Benefits to attend school also rely on monthly stipends from the VA to pay for housing, food, and other bills. The amount a veteran receives from this monthly stipend depends on whether they attend physical classes or are enrolled in online classes. As colleges and universities across the country transition to online classes or make the drastic decisions to end semesters early in response to the COVID-19 national emergency, tens of thousands of student veterans risk cuts to their monthly subsidies. The VA should immediately commit to maintaining current subsidy levels and extending access to these critical housing subsidies not just to the end of the semester, but until at least sixty days after the termination of the current national emergency order. The VA should not place student veterans in a position where they risk homelessness, food insecurity, or financial hardship because of a national emergency, especially because at the end of the school semester, many of these student veterans will struggle to find employment in an economy still reeling from the crisis. The VA needs to recognize this likely hardship to student veterans and act immediately.

(5) Stop Debt Collection Activity Until At Least 60 Days After Termination of the National Emergency

When veterans and their families are assessed a VA overpayment or other debt, they are typically stunned to learn not only that they have lost a monetary benefit that they had relied on to go to school, pay rent and bills, or buy necessities, but that they must now pay that money back. Even in ordinary times, VA recoupment activities often force veterans to scramble to replace the income they have lost and find the money to repay the debt; veterans have lost college degree credits, cars, and homes due to recoupment. In the COVID-19 national emergency when low-income people in particular are at risk of losing paychecks and jobs, the VA must do everything in its power to ensure that veterans and their families are not placed in unnecessary economic danger, including by exercising its discretion as to the timing of collections activities. For example, by statute and regulation the VA has the discretion to determine when to send an initial debt notice, which starts the clock on collections. The VA should halt all issuances of such notices during this time. The VA also has the discretion to enter into repayment agreements of any reasonable length and amount, and is not required to offset benefits or otherwise recoup repayments each month, as it does currently. If the VA finds it cannot waive interest and

penalties accruing during this time, it may send notice to veterans informing them that they may continue voluntarily paying down the debt, interest, or penalties in installment amounts of their choosing while the collections moratorium is otherwise in effect.

(6) Provide Free Access to VA Healthcare for All Veterans, Regardless of Discharge Status, Experiencing Symptoms Consistent with COVID-19

The Veterans Health Administration (VHA), effective immediately, should provide free access to VA Healthcare for all veterans, regardless of discharge status, who are experiencing symptoms consistent with COVID-19. In recognition of a growing mental health crisis, the VA created a program in 2017 to expand access to emergency mental health care for former service members who may have otherwise been ineligible for treatment at VA healthcare facilities. Now, as the country responds to the COVID-19 national emergency, the VA should make a similar commitment to provide free emergency care to all veterans who are experiencing symptoms consistent with COVID-19. This should include inpatient, residential, and outpatient care, and should also include any aftercare needed as the result of the virus as part of the VHA mission to provide health care to individuals responding to or affected by a natural disaster or national emergency.

Submitted by:

New York Legal Assistance Group (NYLAG)

New York Legal Assistance Group is a non-profit law office dedicated to providing free legal services in civil matters to low-income New Yorkers. NYLAG operates two veteran specific programs: NYLAG's LegalHealth Veterans Initiative operates medical-legal partnerships with the Bronx, Manhattan, and Northport VA Medical Centers, and NYLAG's Public Benefits Unit Veterans Practice focuses on community-based outreach, providing services to veterans and their families regardless of VA eligibility.

Connecticut Veterans Legal Center

Connecticut Veterans Legal Center provides free legal services to low-income veterans to help them overcome the legal barriers to housing, healthcare, and income.

The Deuterman Law Group (DLG)

The Deuterman Law Group VA Disability Department is made up of two VA-accredited attorneys, three paralegals, and two legal assistants and provides representation before the Regional Office and the Board of Veterans Appeals for service-connection claims, including DIC and birth defect claimants.

Inner City Law Project

The only provider of legal services on Skid Row in downtown Los Angeles, Inner City Law Center combats slum housing while developing strategies to end homelessness. Our Homeless Veterans Projects provides legal representation to veterans experiencing or at risk of homelessness to get them access to stable income, healthcare, and housing.

Modern Military Association of America

The Modern Military Association of America is the nation's largest non-profit organization for the LGBTQ military and veteran community. Our mission is to educate, advocate, and support the LGBTQ military and veteran community.

The National Law School Veterans Clinic Consortium (NVLVCC)

The National Law School Veterans Clinic Consortium is a collaborative effort led by the nation's law school legal clinics dedicated to addressing the unique legal needs of U.S. military veterans. The NVLVCC is a nationally recognized veterans service organization.

NYC Veterans Alliance

NYC Veterans Alliance is a grassroots, member-driven policy advocacy and community building organization advancing veterans and families as civic leaders.

Public Counsel

Public Counsel's Center for Veterans Advancement assists veterans and their families by providing legal representation to overcome the burdens veterans may face in procuring employment, benefits, housing, medical care and/or supportive services, as well as effecting systemic change within local, state, and governmental agencies in order to overcome or escape homelessness, poverty, or loss of quality of life among veterans.

Swords to Plowshares

Swords is a community-based not-for-profit organization that provides needs assessment and case management, employment and training, housing, and legal assistance to veterans in the San Francisco Bay Area.

University of Miami School of Law Health Rights Clinic

The Health Rights Clinic is a medical-legal partnership that provides assistance to low-income disabled individuals, including military veterans, on different legal matters related to health.

Veterans Law Clinic at Widener University Delaware Law School

The Veterans Law Clinic is a pro bono legal clinic representing primarily low-income veterans with VA benefit claims and appeals before the VA as well as the U.S. Court of Appeals for Veterans Claims.

Veterans Legal Services Project at Charlotte Center for Legal Advocacy

Charlotte Center for Legal Advocacy is a non-profit legal services provider that helps people in the Charlotte, North Carolina region access legal representation in civil matters to protect their safety, security, and stability. Specifically, our Veterans Legal Services Project serves low-income veterans with a variety of civil legal services, but primarily represents veterans with less than honorable discharges in seeking access to VA compensation, VA healthcare, other public benefits, and discharge upgrades.

VOLS - Elderly Project & Veterans Initiative

The Volunteers of Legal Service Elderly Project and Veterans Initiative provide free legal services to low-income New York City seniors and veterans. The Elderly Project and Veterans Initiative emphasizes outreach to underserved populations with the goal of helping vulnerable seniors stay in their homes and ensure that their caregivers are empowered to assist them.

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**Signing in their individual capacity*