



THE UNDER SECRETARY OF VETERANS AFFAIRS FOR BENEFITS
WASHINGTON, D.C. 20420

APR - 4 2013

The Honorable Dean Heller
United States Senate
Washington, DC 20510

Dear Senator Heller:

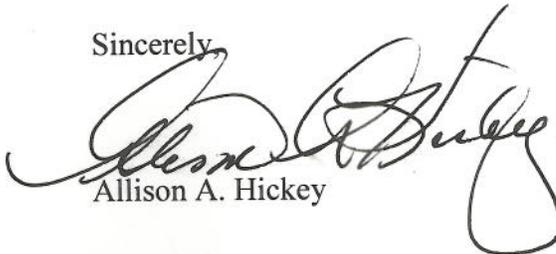
Thank you for your letter relaying your concerns about testimony provided before the Senate Committee on Veterans' Affairs on March 13, 2013, regarding the Department of Veterans Affairs (VA) requests for Federal records and associated wait times. In my testimony, I stated VA must wait 60 days after sending the initial Federal record request and 30 days after a subsequent request. In your letter, you requested a copy of the relevant supporting authority for this requirement.

During my testimony, I was referring to VA's duty under the Veterans Claims Assistance Act (VCAA), 38 USC 5103A(b)(3), which requires that VA continue efforts to obtain Federal records "unless it is reasonably certain that such records do not exist or that further efforts to obtain those records would be futile." The Veterans Benefits Administration (VBA) has implemented this statutory requirement by providing guidance in its procedures manual instructing how to request Federal records. A copy of the relevant manual provision is enclosed. Claims processors are directed to make an initial request for Federal records and wait 60 days for a response. If no response is received, they are to make a follow-up request for the records and continue making subsequent follow-ups every 30 days. This "futility standard" for obtaining Federal records often adds considerable time to the claims process. In comparison, the corresponding duty for non-federal records requires that VA make only "reasonable efforts," defined as no less than two attempts.

Neither statute nor regulation specifies a required wait time for response from a Federal agency. VA has discretion to determine what efforts and time limits are necessary to meet the statutory requirements for seeking records of another agency. However, VBA has been cautioned by the VA Office of General Counsel that shortening the time periods creates some litigation risk. Without legislation amending VA's duty regarding obtaining Federal records, there would be an increased risk that a reviewing court may find that VA did not fulfill its statutory duty to assist.

Thank you for your concern for our Nation's Veterans. I hope this information is helpful to you.

Sincerely,



Allison A. Hickey

Enclosure