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**REPORT BY THE MILITARY AND VETERANS AFFAIRS COMMITTEE,
THE DISABILITY LAW COMMITTEE,
AND THE SOCIAL WELFARE LAW COMMITTEE
CONCERNING INADEQUATE FINANCIAL SUPPORT FROM THE CITY AND
STATE OF NEW YORK FOR LEGAL SERVICES TO OBTAIN BENEFITS FROM
U.S. DEPARTMENT OF VETERANS AFFAIRS**

The New York City Bar Association issues this report to (i) voice its unequivocal support for the veterans’ lawyers and advocates currently assisting disabled and low-income veterans and their surviving family members in New York, and (ii) underscore that New York provides too little support to ensure veterans are receiving the federal benefits they need and deserve.

Legal representation is often crucial to low-income or disabled veterans seeking benefits to which they are legally entitled from the U.S. Department of Veterans Affairs (“VA”). New York’s statewide veteran population is the fifth largest in the country (at approximately 800,000), but New York lags far behind other states in benefits received from the VA. This often results in New York providing State and City-level benefits to veterans who should be receiving federal benefits instead. To help rectify this situation, New York needs qualified lawyers and advocates to assist its veterans in acquiring the federal benefits they deserve. At this time, however, despite the efforts of existing veterans’ counsel, the demand for legal help for New York veterans far exceeds the supply. As a community of lawyers, we urge the City and State to take immediate action to rectify this gap in legal services, help their veterans receive the services and benefits they need, and shift the source of these benefits back to the federal government where they belong.

I. FEDERAL BENEFITS AVAILABLE TO VETERANS

Two significant benefits low-income veterans receive are (i) VA Disability Compensation — a tax-free, monthly, monetary amount paid to veterans who have a disease or injury incurred during, or aggravated by, their military service;¹ and (ii) VA Pension — which “provides monthly benefit payments to certain wartime veterans with financial need, and their survivors.”² These two benefits (hereafter “VA Benefits”) are designed to offset the loss of income veterans experience due to military-connected health conditions that impair their ability to hold substantially gainful employment.

¹ See Veterans Benefits Administration “Compensation Home,” <https://www.benefits.va.gov/compensation/> (All websites cited in this letter were last visited on May 14, 2019.)

² See Veterans Benefits Administration “Pension Home Page,” <https://www.benefits.va.gov/pension/index.asp>.

II. THE DISPROPORTIONATELY LOW NUMBER OF NEW YORK VETERANS RECEIVING BENEFITS

Currently, less than 17 percent of New York veterans and veteran families receive either Disability Compensation benefits or Pension benefits.³ In New York City, the percentage is only 15.5 percent.⁴ Other states with large veteran populations such as California, Florida, and Texas,⁵ however, have significantly higher rates of veterans receiving VA Benefits:

- California has roughly 1.7 million veterans, with approximately 25 percent of those veterans receiving VA Benefits;
- Texas has nearly 1.6 million veterans, with roughly 29 percent receiving VA Benefits; and
- Florida has just over 1.5 million veterans, with approximately 24 percent receiving VA Benefits.⁶

If the same proportion of New York veterans received VA Benefits as California veterans, for example, an additional 62,000 New York veterans and their families would receive these federal benefits. This is a critical issue for the New York economy because VA Benefits inject federal dollars into the State and City economies and can replace State- and City-funded benefits these veterans currently receive — freeing those funds to assist other needy New Yorkers. In Florida, for example, disabled and low-income veterans receive \$6.3 billion in federal VA Benefits each year, compared to a paltry \$2.6 billion in New York.⁷ Likewise, California and Texas also receive billions more in VA Benefit dollars than New York.⁸

³ See New York FY2017 State Summary, https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_New_York.pdf. For updated New York statistics, please refer to the attached Appendix.

⁴ See Geographic Distribution of VA Expenditures 2017, https://www.va.gov/vetdata/docs/GDX/GDX_FY17_v1.xlsx; see also FY2017 VA Disability Compensation and Pension Recipients by County of Residence, https://www.va.gov/vetdata/docs/SpecialReports/Comp_n_Pen_by_Cnty_2017.xlsx.

⁵ See Texas FY2017 State Summary https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Texas.pdf; See also California FY2017 State Summary, https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_California.pdf, see also Florida FY2017 State Summary, https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Florida.pdf.

⁶ See Texas FY2017 State Summary, *supra* note 5.

⁷ See California FY2017 State Summary *supra* note 5, Texas FY2017 State Summary *supra* note 5, Florida FY2017 State Summary *supra* note 5.

⁸ See California FY2017 State Summary and Texas FY2017 State Summary *supra* note 5.

III. NEW YORK'S VETERANS ARE UNDERSERVED

While the exact percentage of veterans entitled to VA Benefits in New York is uncertain, the fact that less than 17 percent of New York's veterans receive these benefits should be deeply troubling in light of available statistics. For example, 45 percent of the 1.6 million veterans of the wars of Afghanistan and Iraq have filed claims for VA Benefits.⁹ And a Rand Corporation study conducted in 2008 estimated that nearly 20 percent of military service members who returned from Iraq and Afghanistan — 300,000 in all — reported symptoms of post-traumatic stress disorder or major depression.¹⁰ Further, on a national level, 23 to 24 percent of all veterans receive VA Benefits.¹¹ And while estimates vary considerably, it is generally believed that between 30 and 50 percent of veterans have some type of service-connected health issue that entitles them to VA Benefits. It defies credulity to think that so many of New York's veterans have somehow escaped the mental and physical traumas of military service.

The low rates of VA Benefits makes even less sense for New York's veterans because the research indicates they are actually in more need of VA benefits than veterans in states like California, Florida, and Texas. The VA tracks veterans' household income and educational attainment — and New York's veterans had *lower* income than the national average (for those veterans making less than \$100k annually) and *lower* educational attainment (fewer four-year and higher degrees) than their peers in other states.¹² If New York veterans actually had fewer service-connected disabilities and no need for a VA Pension, we would expect their income and educational attainments to be *higher* than the national average, not lower. In other words, all the data suggests that New York's veterans need these VA Benefits at least as much as veterans located elsewhere in the country. Thus, there are likely tens of thousands (if not hundreds of thousands) of needy veterans and their survivors across New York who are not receiving federal VA Benefits for which they are eligible and to which they are entitled.

IV. AN INCREASE IN LAWYERS SERVING VETERANS IS NEEDED

New York desperately needs more lawyers to help veterans get the VA Benefits they deserve:

⁹ See e.g. Marilynn Marchione, *Almost Half of New Veterans Seek Disability Benefits*, Boston Globe, May 28, 2012 <https://www.bostonglobe.com/news/nation/2012/05/27/almost-half-new-veterans-seek-disability-benefits/sYQAAY00ddXBRoqfsKMheJ/story.html>.

¹⁰ For a discussion of this report, see e.g. Press Release, *One In Five Iraq and Afghanistan Veterans Suffer from PTSD or Major Depression*, RAND Corporation, April 17, 2008, <https://www.rand.org/news/press/2008/04/17.html>.

¹¹ See e.g. New York FY2017 State Summary, *supra* note 3.

¹² *Id.*

a. New York Is Not Getting an Adequate Share of Federal VA Benefits, Despite Sending an Outsized Share of Tax Revenues to the Federal Government

New York's state comptroller recently observed that New York was one of just eleven states that sends more in tax revenue to the federal coffers than it receives in return.¹³ For every dollar New York sends to Washington, it receives 90 cents back.¹⁴ Successful representation of disabled and low-income veterans in VA Benefits cases not only helps the affected veterans and their families, but can also transfer veterans who previously were on state and local benefits to more generous federal VA Benefits.¹⁵ Adequate funding by the City and State for legal services will go a long way to shift that responsibility back to the VA where it belongs.

b. Veterans Need Lawyers, and Non-Lawyer Advocates Also Play an Important Role

For most of the last century, veterans and their survivors were represented by non-attorney representatives accredited by the VA to provide those services.¹⁶ However, as a result of the Veterans Judicial Review Act of 1988, and the introduction of binding, precedential decisions from the U.S. Court of Appeals for Veterans Claims, veterans are increasingly in need of lawyers to help secure their VA Benefits.

The Veterans Law bar today is still in its infancy, barely thirty years old, and the number of VA accredited-lawyer practitioners is far behind the demand in New York and across the country. Lawyers doing this work have demonstrated a proven track record of obtaining life-changing VA Benefits for survivors and their families. Most veterans and their survivors simply forego using a lawyer in the hope that they can navigate the VA process themselves, or with a non-attorney representative.

c. Funding VA Accredited Lawyers Should, Over Time, Be Revenue Positive

Adequate funding by the City and State for legal services will create a pipeline for new Veterans Law attorneys, as well as incentivize the legal academy in general to embrace this practice area and commit to the training of enough lawyers to address the staggering demand. Investing in Veterans Law practitioners should, over time, be revenue positive for the City and State. We anticipate that the City and State will spend far less by funding this Veterans Law initiative than it will save in not doing so, by transferring the costs of caring for disabled, low-income veterans back to the VA. To help ensure this outcome, the City and State can require attorneys receiving City and State funding or training to demonstrate that they are providing effective representation, including by successfully obtaining increases in monthly disability compensation from the VA, new grants after previous denials of VA Benefits, transfers of persons

¹³ Press Release from the Office of the New York State Comptroller, *DiNapoli: New York Sends More Money to Washington Than It Gets Back*, October 17, 2018, <https://www.osc.state.ny.us/press/releases/oct18/101718.htm>.

¹⁴ *Id.*

¹⁵ See Veterans Compensation Benefits Rate Tables – Effective 12/1/18 VA Benefits Table, https://www.benefits.va.gov/COMPENSATION/resources_comp01.asp.

¹⁶ 38 C.F.R. §§ 14.626-637.

from State/City dollars to federal dollars, and retroactive awards of benefits for low-income and disabled veterans.

d. Increasing Funding for General Legal Services to Veterans Is Necessary, but Not Sufficient to Address This Problem

While veterans in New York have a wide range of legal needs —many outside the scope of Veterans Law — simply increasing funding for general civil legal services will be insufficient to fix this unique problem. We applaud New York City’s Department of Veterans Services for increasing funds for general civil legal services each year it has existed. However, this problem requires additional funding that is specifically dedicated to training and supporting counsel addressing VA Benefits issues.

V. CONCLUSION

When low-income or disabled veterans do not receive VA Benefits, they are not getting their fair share from Washington vis-à-vis the VA — and neither are their families, and, in some cases, their survivors. Moreover, it is New York’s taxpayers who are shouldering that financial shortfall, to the tune of millions of dollars every year. That is not how the system is supposed to work, and it not fair to New York’s veterans or its taxpayers.

Lawyers have become integral to successfully obtaining VA Benefits for veterans, and we, the New York City Bar Association, call upon the City and State of New York to fund and incentivize Veterans Law practitioners to provide this important legal work. We believe this is a “win-win” proposition for our veterans, our City, and our State, because such funding should, over time, prove revenue positive as the burden of these benefits are shifted back to the VA, and away from our City and State.

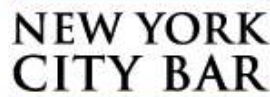
Military & Veterans Affairs Committee
Erik L. Wilson, Chair

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Social Welfare Law Committee
Susan E. Welber, Chair

May 2019*

* The report Appendix will be updated with the most recent statistics as they become available. The most recent update was made February 4, 2020.



APPENDIX

FY 2018 NEW YORK VETERAN POPULATION STATISTICS

- **158,871** – total number of veterans residing in New York City
 - **7,916** fewer veterans residing in New York City compared to FY 2017
 - **\$21,851,000** total losses in compensation and pensions across New York City between FY 2017 and FY 2018

Breakdown by borough:

- Bronx
 - 28,609 total number of veterans residing
 - 965 fewer veterans residing in county compared to FY 2017
 - \$5,022,000 total losses in compensation and pensions across county between FY 2017 and FY 2018
- Manhattan
 - 30,886 total number of veterans residing
 - 2,037 fewer veterans residing in county compared to FY 2017
 - \$4,086,000 total losses in compensation and pensions across county between FY 2017 and FY 2018
- Brooklyn
 - 40,388 total number of veterans residing
 - 1,942 fewer veterans residing in county compared to FY 2017
 - \$4,556,000 total losses in compensation and pensions across county between FY 2017 and FY 2018
- Queens
 - 42,979 total number of veterans residing
 - 2,276 fewer veterans residing in county compared to FY 2017
 - \$5,116,000 total losses in compensation and pensions across county between FY 2017 and FY 2018
- Staten Island
 - 16,009 total number of veterans residing
 - 696 fewer veterans residing in county compared to FY 2017
 - \$3,071,000 total losses in compensation and pensions across county between FY 2017 and FY 2018

Note: Population numbers are estimates. Compensation and pension losses are exact based on data provided by the Department of Veterans Affairs, available at:

<https://www.va.gov/vetdata/Expenditures.asp>.