

**STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Runyan, Ranking Member McNerney and Members of the Committee:

On behalf of the Disabled American Veterans and our 1.2 million members, all of whom are wartime disabled veterans, I am pleased to be here today to offer our views regarding the fiscal year (FY) 2012 budget in the area of veterans' benefits.

Mr. Chairman, let me first congratulate you for being selected to lead the Subcommittee, as well as Congressman McNerney being chosen the Ranking Member. DAV looks forward to working with you, as well as all of the members of the Subcommittee, to protect and strengthen the benefits programs that serve our nation's veterans, especially disabled veterans, their families and survivors.

In reviewing the budget request for the Veterans Benefits Administration (VBA), DAV recommends only modest increases in funding, and increases are primarily directed to Vocational Rehabilitation and Employment (VR&E) and the Board of Veterans' Appeals (BVA). Over the past couple of years, with strong support from Congress, VBA's Compensation and Pension (C&P) Service has received significant increases in personnel to address the rising workload of claims for benefits. It is important to note that this large increase in claims processors could actually result in a short-term net decrease in productivity, due to experienced personnel being taken out of production to conduct training, and the length of time it takes for new employees to become fully productive. While we do not recommend additional staffing increases at this time, we do recommend that VBA conduct a study on how to determine the optimum number of full-time employees necessary to manage the growing number of claims both accurately and in a timely manner.

We do, however, recommend Congress authorize at least 160 additional full-time employees for the VR&E Service for FY 2012, primarily to reduce current case manager workload. A 2009 study by the Government Accountability Office (GAO) found that 54 percent of Department of Veterans Affairs Regional Offices (VAROs) reported they had fewer counselors than they needed and 40 percent said they had too few employment coordinators. VR&E officials indicated that the current caseload target is 1 counselor for every 125 veterans, but that ratio is reported to be as high as 1 to 160 in the field. An increase of 100 new counselors would address that gap. Given its increased reliance on contract services, VR&E also needs an

additional 50 full-time employee equivalents (FTEE) dedicated to management and oversight of contract counselors and rehabilitation and employment service providers. In addition, VR&E has requested at least 10 FTEE in FY 2012 to expand its college program --“Veteran Success on Campus,” and we support that request.

With the number of claims for benefits increasing over the past several years, so too is the number of appeals to the BVA. On average, BVA receives appeals on 5 percent of all claims, a rate that has been consistent over the past decade. With the number of claims projected to rise significantly in the coming years, so too will the workload at BVA, and thus the need for additional personnel. Funding for the BVA must rise at a rate commensurate with its increasing workload so it is properly staffed to decide veterans’ appeals in an accurate and timely manner.

The VBA is at a critical juncture in its efforts to reform an outdated, inefficient, and overwhelmed claims-processing system. After struggling for decades to provide timely and accurate decisions on claims for veterans’ benefits, the VBA over the past year has started down a path that may finally lead to essential transformation and modernization, but only if it has the leadership necessary to undergo a cultural shift in how it approaches the work of adjudicating claims for veterans benefits.

The number of new claims for disability compensation has risen to more than 1 million per year and the complexity of claims have also increased as complicated new medical conditions, such as traumatic brain injury, have become more prevalent. To meet rising workload demands Congress has provided significant new resources to the VBA over the past several years in order to increase their personnel levels. Yet despite the hiring of thousands of new employees, the number of pending claims for benefits, often referred to as the backlog, continues to grow.

As of January 31, 2011, there were 775,552 pending claims for disability compensation and pensions awaiting rating decisions by the VBA, an increase of 289,081 from one year ago. About 41 percent of that increase is the result of the Secretary’s decision to add three new presumptive conditions for Agent Orange (AO) exposure: ischemic heart disease, B-cell leukemia, and Parkinson’s disease. Even discounting those new AO-related claims, the number of claims pending rose by 171,522, a 37 percent increase of pending claims over just the past year. Overall, there are 331,299 claims that have been pending greater than VA’s target of 125 days, which is an increase of 147,930, up more than 80 percent in the past year. Not counting the new AO-related conditions, over 50 percent of all pending claims for compensation or pension are now past the 125-day target set by the VBA.

Worse, by the VBA’s own measurement, the accuracy of disability compensation rating decisions continues to trend downward, with their quality assurance program, known as the Systematic Technical Accuracy Review (STAR) reporting only an 83 percent accuracy rate for the 12-month period ending May 31, 2010. Moreover, VA’s Office of Inspector General found additional undetected or unreported errors that increased the error rate to 22 percent. Complicating the Department’s problems is its reliance on an outdated, paper-centric processing system, which now includes more than 4.2 million claims folders.

Faced with all of these problems, VA Secretary Shinseki last year set an extremely ambitious long-term goal of zero claims pending more than 125 days and all claims completed to a 98 percent accuracy standard. Throughout the year he repeatedly made clear his intention to “break the back of the backlog” as his top priority. While we welcome his intention and applaud his ambition, eliminating the backlog is not necessarily the same goal as reforming the claims-processing system, nor does it guarantee that veterans are better served.

As we have consistently maintained, the backlog is not the problem, nor even the cause of the problem; rather, it is only one symptom, albeit a very severe one, of a much larger problem: too many veterans waiting too long to get decisions on claims for benefits that are too often wrong. If the VBA focuses simply on reducing the backlog of claims, it can certainly achieve numeric success in the near term, but it will not necessarily have addressed the underlying problems nor taken steps to prevent the backlog from eventually returning. To achieve real success, the VBA’s benefits claims-processing system must be designed to “get each claim done right the first time.” Such a system would be based upon a modern, paperless information technology and workflow system focused on quality, accuracy, efficiency, and accountability.

Recognizing all of the problems and challenges discussed above, we have seen some positive and hopeful signs of change. VBA leadership has been refreshingly open and candid in recent statements on the problems and need for reform. Over the past year, dozens of new pilots and initiatives have been launched, including a major new IT system that is now being field-tested. The VBA has shared information with the veterans service organizations (VSOs) about its ongoing initiatives and sought feedback on these initiatives. These are all positive developments and we are hopeful this practice will continue and become even more open and candid in the future.

VSOs not only bring vast experience and expertise about claims processing, but our service officers hold power of attorney for hundreds of thousands of veterans and their families. In this capacity, DAV and other VSOs are an integral component of the claims process who undeniably make the VBA’s job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources to develop and adjudicate them.

We are especially pleased with the new attitude towards VSOs demonstrated by many key VBA leaders, including Acting Under Secretary Mike Walcoff and C&P Director, Tom Murphy. Both have made good on their commitments to building a true partnership with VSOs, and we hope they are now able to infuse this positive attitude throughout the VBA from central office down to each of the 57 regional offices.

Mr. Chairman, to be successful, VBA must also change how it measures success and rewards performance in a manner designed to achieve the goal of “getting it right the first time.” Unfortunately, most of VBAs methodology used today, whether for the organization as a whole or for regional offices or employees, are based primarily on production measurement, which reinforces the goal of ending the backlog. VBA must modify how it measures and reports progress and success with reliable indicators of quality and accuracy. It is imperative for VBA

to review employee performance standards with incentives and accountability directed at achieving quality and accuracy, not just increased speed or production.

As VBA moves forward with the myriad of pilot programs and initiatives designed to modernize and streamline the claims-processing system, it is imperative that they have a systematic method for analyzing and integrating “best practices” that improve quality and accuracy, rather than just those that may increase production. One of the more important new initiatives is the use of templates, which VBA calls Disability Benefits Questionnaires (DBQs), designed to gather medical information specific to rating criteria contained in the VA Schedule for Rating Disabilities (VASRD). DBQs are designed to alleviate the time consuming burden of sorting through often voluminous unrelated medical evidence and instead focusing on pertinent information.

There are currently three DBQs that have been approved for use in claims for the three new presumptive conditions associated with Agent Orange exposure: ischemic heart disease, Parkinson’s disease, and B-cell leukemia. An additional 76 DBQs are in various stages of the development and approval process. We support the use of DBQs as a method to streamline and improve the quality and timeliness of decisions; however, it is crucial that DBQs are properly completed, either by VA or private medical examiners. VBA employees must be properly trained so they understand that DBQs are but one piece of evidence that must be considered in the development and decision-making process. VBA's rating specialists must properly consider the evidentiary weight and value of all evidence related to the claim, while adequately addressing it in the reason and bases of the subsequent decision.

One of the major initiatives toward reforming the claims process is the Fully Developed Claims (FDC) program, which began as a pilot program mandated by Public Law 110-389, and was rolled out to all VAROs last year. We were pleased that VBA modified the FDC application process allowing claimants to submit informal notification to the VBA of his or her intention to file a FDC claim, thereby protecting the earliest effective date for receipt of benefits. There have been reports from the field that local Regional Offices (ROs) were not allowing such informal claims to be made and that participation in the FDC program was extremely low. We have held numerous discussions with the C&P Director and his staff to address both issues. We have been pleased both with the collaborative process, as well as the plans being developed to address these problems. Although we still have concerns about particular aspects of the FDC program we appreciate VBAs openness with DAV and other VSOs, and for providing us with opportunities to exchange information and ideas to improve the FDC program. While DAV remains optimistic about the FDC program, we urge this Committee to closely monitor the coming improvements to the FDC program and work with us and VBA to address the obstacles to its success.

In order to synthesize the “best practices” from all of the ongoing pilot programs, VBA recently started a new Integration Laboratory at their Indianapolis RO. Although we have not yet visited, nor been briefed on this pilot, given the current focus on “breaking the back of the backlog”, we have concerns about whether the VBA will successfully extract and then integrate “best practices” focused on quality and accuracy, not just production and speed. Congress must continue to provide aggressive oversight of the VBA’s myriad ongoing pilots and initiatives to

ensure the practices adopted and integrated into a cohesive new claims process are judged first and foremost on their ability to help VA get claims “done right the first time.”

Two longstanding weaknesses of VBA's claims adjudication process are training and quality control. These two essential cornerstones of claims process reform must be linked to create a single continuous improvement program, both for employees and for the claims process itself. Quality control programs can identify performance areas and subject matter requiring new or additional training for VBA employees; better training programs for employees and managers should improve the overall quality of the VBA's work.

VBA's primary quality assurance program is the STAR program. The STAR program was last evaluated by the VA Office of Inspector General (OIG) in March 2009, with the OIG finding that STAR does not provide a complete assessment of rating accuracy. Although the STAR reviewers found the national accuracy rate was about 87 percent, the OIG found additional errors and projected an overall accuracy rate of only 78 percent. In addition to rectifying errors found by the OIG, we recommend the VBA establish a true quality control program that looks at claims "in-process" in order to determine propriety of a decision and how it was arrived at in order to identify ways to improve the system. The data analysis from all such reviews should be incorporated into the VBA's new information technology systems being developed to provide management and employees vital acumens regarding processes and decisions. This in turn would lead to quicker and more accurate decisions on benefits claims, and more importantly, the timely delivery of all earned benefits to veterans, particularly disabled veterans.

Essential to the professional development of an individual, comprehensive training is unquestionably tied directly to quality of work produced, as well as the quantity of work produced with accuracy and consistency. DAV National Service Officers (NSOs) have often been told by many VBA employees that meeting production goals is the primary focus of management, whereas fulfilling training requirements and increasing quality is still perceived as being secondary. An overemphasis on productivity must not interfere with the training of any employee, especially new employees who are still learning their job.

Mr. Chairman, Public Law 110-389, the “Veterans’ Benefits Improvement Act of 2008,” required the VBA to develop and implement a certification examination for claims processors and managers; however, today there are still gaps in the implementation of these provisions. While tests have been developed and piloted for Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs), additional tests need to be developed and deployed for Decision Review Officers (DROs) and supervisory personnel. None of these certification tests are mandatory for all employees, nor are they done on a continuing basis.

VBA cannot accurately assess its training or measure an individual's knowledge, understanding, or retention of the training material without regular testing. It is important, however, for all testing and certification to be applied equally to all employees, including managers and coaches. All VBA employees, coaches, and managers should undergo regular testing to measure job skills and knowledge, as well as the effectiveness of the training.

Equally important, testing must properly assess the skills and knowledge required to perform the work of processing claims. Many VBA employees report that the testing does not accurately measure how well they perform their jobs, and there have been reports that significant numbers of otherwise qualified employees who are not able to pass the tests. VBA must ensure certification tests are developed to accurately measure the skills and knowledge needed to perform the work of VSRs, RVSRs, DROs, coaches and other managers.

DAV has consistently maintained that successful completion of training by all employees and managers must be an absolute requirement for every VARO and a requisite, shared responsibility of both employees and management. Moreover, managers must be responsible for ensuring that training is offered and completed by all of their employees and held accountable when this requirement is not met. However it is also the responsibility, as well as part of the performance standard, for all employees to complete their training requirements. Managers are obligated to provide employees with the necessary time for training and employees must faithfully complete the training. Neither the employee nor manager should be able to, or feel pressured to, simply just “check the box” when it comes to training.

Unquestionably one of the more important new VBA initiatives underway is the highly anticipated Veterans Benefits Management System (VBMS), which is designed to provide the VBA with a comprehensive, paperless, and ultimately rules-based method of processing and awarding claims for VA benefits, particularly disability compensation. Following initial design work, the VBMS had its first phase of development in Baltimore last year where a prototype system was tested in a virtual regional office environment. The first actual pilot of the VBMS system began in November 2010 at the Providence, Rhode Island Regional Office. The six-month pilot program began with simulated claims and moved to “live” claims early this year. Although they are still in the early stages, we have seen great promise from this program. Building on the progress in Providence, a second six-month pilot is expected to begin in May 2011 at the Salt Lake City Regional Office. A third phase of the VBMS pilot program is scheduled to begin in November 2011 at an undesignated location, with the final national rollout of the VBMS scheduled to take place in May of 2012.

Modernizing the VBAs antiquated information technology (IT) system to process claims in a paperless environment is long overdue, however we do have concerns about whether the VBMS is being rushed to meet self-imposed deadlines in order to show progress toward “breaking the back of the backlog.” While we have long believed VBA’s IT infrastructure is inadequate, outdated, and constantly falling further behind modern software, as well as Web, and cloud-based technology standards, we would be equally concerned about a rushed solution that ultimately produces an IT system incapable of sustaining itself well into the future.

Given the highly technical nature of modern IT development, we urge Congress to fully explore these issues with the VBA. To aid in this process, it may be helpful to have an independent, outside, expert review of the VBMS system while it is still early enough in the development phase to make course corrections, should they be necessary.

To be successful, the VBMS must include the maximum level of rules-based decision support feasible at the earliest stages of development in order to build a system capable of

providing accurate and timely decisions, as well as include real-time, quality control as a core component of the system. VBA must also commit to incorporating all veterans' legacy paper files into the paperless environment of the VBMS within the minimum amount of time technically and practically feasible.

Beyond fixing the process of determining veterans' claims for benefits, Congress and VA must also address inequities in the level of benefits afforded to disabled veterans. In 2007, the Institute of Medicine (IOM) Committee on Medical Evaluation of Veterans for Disability Compensation published a report entitled, "A 21st Century System for Evaluating Veterans for Disability Benefits." The IOM recommended that the current VA disability compensation system be expanded to include compensation for non-work disability (also referred to as "noneconomic loss) and loss of quality of life. Non-work disability refers to limitations on the ability to engage in usual life activities other than work. This includes ability to engage in activities of daily living, such as bending, kneeling, or stooping, resulting from the impairment, and to participate in usual life activities, such as reading, learning, socializing, engaging in recreation, and maintaining family relationships. Loss of quality of life refers to the loss of physical, psychological, social, and economic well-being in one's life.

The IOM report stated, "[C]ongress and VA have implicitly recognized consequences in addition to work disability of impairments suffered by veterans in the Rating Schedule and other ways. Modern concepts of disability include work disability, non-work disability, and quality of life (QOL)...".

In addition, the Congressionally-mandated Veterans Disability Benefits Commission (VDBC), established by the National Defense Authorization Act of 2004 (Public Law 108-136), spent more than two years examining how the rating schedule might be modernized and updated. Reflecting the recommendations of the IOM study, the VDBC in its final report issued in 2007 recommended that the, "[v]eterans disability compensation program should compensate for three consequences of service-connected injuries and diseases: work disability, loss of ability to engage in usual life activities other than work, and loss of quality of life".

The IOM Report, the VDBC (and an associated Center for Naval Analysis study) and the Dole-Shalala Commission (President's Commission on Care for America's Returning Wounded Warriors) all agreed that the current benefits system should be reformed to include noneconomic loss and quality of life as a factor in compensation.

DAV calls on Congress to finally address this deficiency by amending title 38, United States Code, to clarify that disability compensation, in addition to providing compensation to service-connected disabled veterans for their average loss of earnings capacity, must include compensation for their noneconomic loss and for loss of their quality of life. Congress and VA should then determine the most practical and equitable manner in which to provide compensation for noneconomic loss and loss of quality of life and then move expeditiously to implement this updated disability compensation program.

Mr. Chairman, as you know, the amount of disability compensation paid to a service-connected disabled veteran is determined according to the VA Schedule for Rating Disabilities

(VASRD), which is divided into 15 body systems with more than 700 diagnostic codes. In 2007, both the VDBC, as well as the IOM Committee on Medical Evaluation of Veterans for Disability Compensation in its report “A 21st Century System for Evaluating Veterans for Disability Benefits,” recommended that VA regularly update the VASRD to reflect the most up-to-date understanding of disabilities and how disabilities affect veterans’ earnings capacity. In line with these recommendations, the VBA is currently engaged in the process of updating the 15 body systems, beginning with mental disorders and the musculoskeletal system and has committed to regularly updating the entire VASRD every five years.

In January 2010, the VBA held a Mental Health Forum jointly with the Veterans Health Administration (VHA), which included a VSO panel. In August 2010, the VBA and VHA held a Musculoskeletal Forum, which also included a VSO panel. Just a couple of months ago, a series of four public forums were held in Scottsdale, Arizona over the course of two weeks on four additional body systems. The Arizona sessions in particular, were far removed from the public and offered little opportunity for most VSOs to observe, much less offer any input.

While we are appreciative of any outreach efforts, we are concerned that but for these initial public forums, VBA is not making any substantial efforts to include VSO input during the actual development of draft regulations for the updated rating schedule. Since the initial public meetings, the VBA has not indicated it has any plans to involve VSOs at any other stage of the rating schedule update process other than what is required once a draft rule is published, at which time they are required by law to open the proposed rule to all public comment. We strongly believe VBA would benefit greatly from the collective and individual experience and expertise of VSOs and our service officers throughout the process of revising the VASRD. Moreover, since VBA is committed to continual review and revision of the VASRD, we believe it would be advantageous to conduct reviews of the revision process itself so future body system rating schedule updates can benefit from “lessons learned” during prior body system updates.

Two other matters we believe Congress must finally address to provide equitable benefits to all disabled veterans and their survivors. Under current law, many veterans retired from the armed forces based on longevity of service must forfeit a portion of their retired pay, earned through faithful performance of military service, before they receive VA compensation for service-connected disabilities. This is inequitable—military retired pay is earned by virtue of a veteran’s career of service on behalf of the nation, careers of usually more than 20 years. Conversely, monetary compensation for disability resulting from military service is awarded by VA, regardless of the length of service.

A disabled veteran who does not retire from military service, instead electing to pursue a civilian career after completing a service obligation, can receive full VA compensation and full civilian retired pay (including retirement from any federal civil service) without any offset. A veteran who retires from the military after serving honorably for 20 or more years and suffers from service-connected disabilities should have the same right.

Presently, military longevity retirees are able to receive their full retirement pay and VA compensation, provided their disability is rated 50 percent or higher. Congress should finally enact legislation to repeal the inequitable requirement that veterans’ military longevity retired

pay be offset by an amount equal to their rightfully earned VA disability compensation if rated less than 50 percent.

A similar inequity remains for certain survivors of disabled veterans. When a disabled veteran's death is the result of service-connected causes, or following a substantial period of total disability from service-connected causes, eligible survivors or dependents receive Dependency and Indemnity Compensation (DIC) from VA. This benefit indemnifies survivors, in part, for the losses associated with the veteran's death from service-connected causes or after a period of time when the veteran was unable, because of total disability, to accumulate an estate for inheritance by survivors.

Career members of the armed forces earn entitlement to retired pay after 20 or more years' service. Unlike many retirement plans in the private sector, survivors of military retirees have no entitlement to any portion of the member's retired pay following his or her death. However, military retirees can designate all or a part of their retired pay as a basis for survivor's annuity known as the Survivor Benefit Plan (SBP), wherein deductions are made from the member's retired pay to purchase a survivors' annuity. Upon the veteran's death, the annuity is paid monthly to eligible beneficiaries under the SBP. If the veteran's death is not due to military service or service-connected causes, or if he or she was not totally disabled by reason of service-connected disability for the required time preceding death, beneficiaries receive full SBP payments. Conversely, should a beneficiary become entitled to DIC, the SBP annuity is offset or reduced by an amount equal to DIC payment and where the monthly DIC payment is equal to or greater than the monthly SBP annuity, beneficiaries lose all entitlement to the SBP annuity.

DAV strongly believes this offset is inequitable because no duplication of benefits is involved. Payments under the SBP and DIC programs are made for different purposes. Under the SBP, a military retiree purchases this annuity through deductions of all or a portion of earned retired pay solely for the purpose of caring for loved ones upon his or her death. On the other hand, DIC is a special indemnity compensation paid to the survivor of a service member whose death is in service or the result of service-connected disabilities. In such cases, DIC should be added to the SBP, not substituted for it.

We note that surviving spouses of federal civilian retirees who are veterans are eligible to receive DIC without losing entitlement to any of their purchased federal civilian survivor benefits. The offset between SBP and DIC penalizes survivors of military retired veterans whose deaths are under circumstances warranting indemnification from the government separate from the annuity funded by premiums paid by the veteran from his or her retired pay. Congress should repeal the offset between DIC and the SBP.

Additionally, in order to conform to the requirements of other federal programs, Congress should lower the age requirement for restoration of DIC for survivors of veterans whose deaths are service-connected. Current law permits VA to reinstate DIC benefits to remarried survivors of veterans if remarriage occurs at age 57 or older or if survivors who have already remarried apply for reinstatement of DIC at age 57. Although we appreciate the action Congress took to allow restoration of this rightful benefit, the current age threshold of 57 years is arbitrary. Remarried survivors of retirees of the Civil Service Retirement System, for example, obtain a

similar benefit at age 55. We believe the survivors of veterans whose deaths are service-connected should not be further penalized for remarriage and that equity with beneficiaries of other federal programs should govern Congressional action for this deserving group.

Mr. Chairman and Members of the Committee, this concludes my statement and I would be happy to answer any questions you may have.