STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV) to address the various bills under consideration by this subcommittee today.

H. R. 3407, the Severely Injured Veterans Benefit Improvement Act of 2009, would amend title 38, United States Code, to make certain improvements to laws administered by the Secretary of Veterans Affairs relating to benefits for severely injured veterans.

Section 2 would increase the rate of monthly disability compensation for severely injured veterans subject to section 5503 (c) of title 38 in need of regular aid and attendance from $1,893 to $2,840 and from $2,820 to $4,230 for those eligible under paragraphs one and two respectively. DAV supports this increase in monthly compensation for this important group of veterans who must deal with significant levels of disability as a result of their service-connected conditions.

Section 3 would expand the eligibility for automobile and adaptive equipment grants to disabled veterans and members of the armed forces with severe burn injuries. Currently a veteran or service member must have the loss, or permanent loss of use, of one or both feet; loss, or permanent loss of use, of one or both hands, or permanent impairment of vision in both eyes to a certain degree. Those qualified for the automobile grant must currently have ankylosis, immobility of the joint, of one or both knees or hips resulting from an injury or disease incurred or aggravated by active military service may also qualify for the adaptive equipment grant. Adaptive equipment includes power steering, power brakes, power windows, power seats, and special equipment necessary to assist the eligible person into and out of the vehicle.

While DAV supports the expansion of this benefit, we must also raise the related issue of the adequacy of automobile and adaptive equipment grants themselves. Because sporadic adjustments have not kept pace with increasing costs, over the past 53 years the value of the automobile allowance has been substantially eroded. In 1946, the $1,600 allowance represented 85 percent of the average retail cost and was sufficient to pay the full cost of lower priced automobiles. The Federal Trade Commission cites National Automobile Dealers Association data that indicate that the average price of a new car in 2009 was $28,400. The current $11,000 automobile allowance represents 62 percent of the 1946 benefit when adjusted for inflation by

the Consumer Price Index (CPI); however, it is only 39 percent of the average cost of a new automobile. To restore equity between the cost of an automobile and the allowance, the allowance, based on 80 percent of the average new vehicle cost, would be $22,800. In accordance with the *Independent Budget* and DAV Resolution 171, our recommendation is that Congress enact legislation to increase the automobile allowance to 80 percent of the average cost of a new automobile in 2009 and then provide for automatic annual adjustments based on the rise in the cost of living. We also recommend that Congress consider increasing the automobile allowance to cover 100 percent of the average cost of a new vehicle and provide for automatic annual adjustments based on the actual cost of a new vehicle, not the CPI.

Additionally, in accordance with DAV Resolution No. 172, we note that section 3902 of title 38, United States Code, and section 17.119(a) of title 38, Code of Federal Regulations, restrict the eligibility for adaptive equipment to those veterans who qualify for the automobile grant as specified in section 3901 of title 38, United States Code. Not all veterans whose service-connected disabilities prohibit the safe operation of a motor vehicle meet the requirements of section 3901 of title 38, United States Code and we contend that veterans should be provided the adaptive equipment necessary to safely operate a motor vehicle. Therefore, DAV recommends that Congress adopt legislation to provide or assist in providing the adaptive equipment deemed necessary to any veteran whose service-connected disability interferes with the safe operation of a motor vehicle.

Section 4 would increase the nonservice–connected pension payments for certain veterans. DAV has no position on this issue.

Section 5 would expand the eligibility of veterans with traumatic brain injury for aid and attendance benefits. Veterans currently eligible in this category include bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 60 percent or more disabling and the veteran has also suffered service-connected total blindness with 20/200 visual acuity or less, or if the veteran has suffered service-connected total deafness in one ear or bilateral deafness (and the hearing impairment in either one or both ears is service connected) rated at 40 percent or more disabling and the veteran has also suffered service-connected blindness having only light perception or less, or if the veteran has suffered the anatomical loss of both arms so near the shoulder as to prevent the use of prosthetic appliances. DAV has no position on this issue.

Section 6 would authorize the Secretary of Veterans Affairs to increase the Medal of Honor special pension by up to $1,000 more per month, as funds are appropriated. DAV would not be opposed to this group of veterans who have rightfully earned this nation's highest honor to also received increased compensation as detailed in this legislation.

Section 7 amends title 38, United States Code, section 5503, which addresses hospitalized veterans and estates of incompetent institutionalized veterans. This bill extends the statute for hospitalization eligibility dates for treatment of veterans with nonservice-connected disabilities from September 30, 2011 to September 30, 2021. DAV has no position on this issue.

H.R. 3787 would amend title 38, United States Code, to deem certain service in the Reserve components as active service for purposes of laws administered by the Secretary of Veterans Affairs. Specifically, this bill seeks to extend "veterans status" to individuals who have completed 20 years of military service in Reserve status. While DAV has no resolution on this matter, we do have concerns that by granting veterans status now there may be unintended consequences in the future. A redefinition of the term veteran may then lead to efforts to extend benefits due those newly defined and their dependents and survivors. This potential for the expansion of benefits could then negatively impact the benefits available to current veterans, their dependents and survivors.

H.R. 4541, the Veterans Pensions Protection Act of 2010, would exempt reimbursements of expenses related to accident, theft, loss, or casualty loss from determinations of annual income with respect to pensions for veterans and surviving spouses and children of veterans. This legislation is outside the scope of the DAV's mission as it addresses pension benefits for nonservice-connected conditions. We nonetheless have no opposition to its favorable consideration.

H.R. 5064, the Fair Access to Veterans Benefits Act of 2010, would provide for the equitable tolling of the timing of review for appeals of final decisions of the Board of Veterans' Appeals. Essentially, 120-day period would be extended to claimants when they can provide a showing of good cause for not previously having been able to file a notice of appeal within the normally prescribed timeline. Examples of "good cause" include issues such as physical or mental incapacities. Current law does not provide for equitable tolling of the appeal period if a veteran is physically or mentally incapacitated and unable to file the appeal within the allotted time period. Yet, it is these very disabilities that may significantly impact a veteran's ability to file the appeal paperwork in the proper timeframe. DAV has testified on this proposal. This bill partially fulfills DAV Resolution No. 226, which calls for legislation to broaden the definition of equitable tolling, or the addition of a good cause provision to ensure that all veterans are not prevented from timely filing appeals for adverse decisions due to physical or mental incapacities, sending the request for appeal to the wrong office or other good cause reasons. DAV certainly supports this legislation as it moves the appeals process closer to providing a reasonable opportunity for veterans in certain circumstances to continue their appeals.

H.R. 5549, the Rating and Processing Individuals' Disability Claims Act or the RAPID Claims Act seeks to provide expedited procedures for the consideration of certain veterans' claims. Specifically, the bill would expedite those claims certified as fully developed for individuals represented by veterans service organizations (VSOs) or other representatives who waive the development period afforded them by the Veterans Claims Assistance Act. Further, if the claimant submits written notification of their intent to submit a fully developed claim and then does so within 365 days of that notice, the Secretary will accept this informal claim when it is submitted with the date of claim as that of the claimant's original informal claim notice. Lastly, this bill would reinstate VA's duty to assist when VA deems a claim is not ready to rate and requires them to notify the claimant accordingly.

The Fully Developed Claim (FDC), mandated by Congress under Public Law 110-389, was recently launched by the VA and is similar to this bill in seeking to expedite claims that are

ready to rate. However the VA's FDC program is missing key protections for veterans that this bill offers. First, under the FDC pilot there is no provision that would allow a veteran to file an informal claim to protect their effective date before submitting the FDC application.

Also, under the current claims system, a veteran may submit an informal claim before beginning development in order to secure an earlier effective date for a later disability rating. The FDC program, while quicker once adjudication begins, does not protect this earlier date, forcing a veteran to choose between an earlier effective date or quicker claims processing. Second, when a veteran elects to participate in the FDC program and waives some VCAA notice requirements, there are no provisions requiring that VA comply with notice requirements should that claim be returned to the normal claims process.

H.R. 5549 offers important adjustments to current processes that the VA has yet to incorporate into its many pilots. We recommend its passage.

We are pleased with the interest that Congress has shown in its oversight and investigation of the benefits delivery process. While we also applaud the Veterans Benefits Administration (VBA) for their openness and outreach to the VSO community, we still remain concerned about their failure to integrate us into their reform efforts or solicit our input at the beginning of the process. This is a mistake for a number of reasons: VSOs not only bring vast experience and expertise about claims processing, but our local and national service officers hold power of attorney (POA) for hundreds of thousands of veterans and their families. In this capacity, we are an integral component of the claims process. We make VBA's job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources for VBA to develop and adjudicate veterans' claims. We would encourage VBA to integrate us during the planning stages of new initiatives and pilots, as well as throughout the ongoing Information Technology (IT) development.

We also encourage Congress to await enactment of other legislation modifying any particular approach in the claims process until the results of the 30-plus pilots are known. Additionally, we would encourage Congress to continue to use its oversight and investigation authority in working with the Administration in examining the many initiatives currently underway. Questions for your consideration remain in the midst of this flurry of activity. For example, is there a deliberative, focused structure in place to monitor these pilots? What was the planning for each of them? How are the findings for each of them organized? What is the plan to assess the successes and lessons learned? What is the standard for success? What metrics are in place? Do the metrics include timeliness, accuracy and quality measures? How are best practices being captured and integrated into other pilots? Does the IT piece of this plan respond to the call by VSOs to ensure we are kept in the information loop when new evidence is requested from a veteran?

We are concerned that in an effort to meet the Secretary's goal of "breaking the back of the backlog" there could be a bias towards process improvements that result in greater production over those that lead to greater quality and accuracy. Is the Veterans Benefit Management System (VBMS) being rushed to meet self-imposed deadlines in order to show progress towards "breaking the back of the backlog?" We have been told that rules-based

decision support will not be a core component of the VBMS, but that it will be treated as a component to be added-on after its rollout, perhaps years later. We question whether the VBMS can provide maximum quality, accuracy and efficiency without taking full advantage of the artificial intelligence offered by modern IT through the use of rules-based, decision support. In addition, the VBMS must have comprehensive quality control built in, as well as sufficient business practices established, to ensure that there is real-time, in-process quality control, robust data collection and analysis and continuous process improvements.

We would urge the Committee to fully explore these issues with VBA. With regard to IT, we offer that an independent, outside, expert review of the VBMS system might be helpful while it is still early enough in the development phase to make course corrections, should they be necessary.

The last bill to address is an amendment to H.R. 3787, which seeks to modify the original bill's title and other provisions. As previously stated, while DAV is not opposed, we do have concerns that by granting veteran status to those who completed a full career in a Reserve status, there may well be unintended consequences in the future.

That concludes my testimony and I would be happy to answer any questions the Subcommittee may have.