

**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Miller and Ranking Member Michaud:

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for today's hearing examining the Department of Veterans Affairs (VA) new initiative to expedite compensation claims decisions for veterans who have been waiting one year or longer. As the nation's leading veterans service organization (VSO) assisting veterans seeking disability compensation and other benefits, DAV has tremendous experience and expertise relating to the processing of claims. With a corps of 270 full-time professional National Service Officers (NSOs) and 35 Transition Service Officers, DAV assists almost a quarter of all veterans who file claims for disability compensation each year.

Under this new program, VA is focusing its efforts on the oldest claims pending and will make decisions based upon the evidence that has already been received, even if there is identified evidence that has not yet been obtained. If a current medical evaluation is required for a rating decision, VA will seek to provide an expedited exam. These claims would then receive provisional ratings with benefits awarded retroactively to the original date of claim. Although this program was originally intended to focus on claims that were pending more than two years, it was launched on a larger scale by expanding its target to all claims pending more than one year.

Provisional rating decisions are required to specify what evidence was used to make the rating decision and also list any evidence or documentation that has not yet been provided to VA or that VA has been unable to obtain. The veteran would then have up to one year to submit additional evidence or to request that VA obtain new evidence that the veteran identifies. If at the end of the one-year period, the veteran has not provided any additional evidence nor requested that VA seek to obtain additional evidence, the provisional rating decision would become final. Once the rating decision becomes final the veteran has the standard one-year period in which to file an appeal. Provisional rating decisions, however, are not appealable, although the veteran can request that the provisional decision become final prior to the end of the one-year period and then file an appeal thereafter.

Mr. Chairman, VA's intention for initiating the provisional rating program is to expedite decisions for those veterans who have been waiting the longest and we certainly agree that these veterans deserve a decision. We are very aware that some claims sit on shelves for years awaiting evidence that may or may not make a difference in the final rating decision, and agree that in some cases, a provisional decision could at least provide partial benefits while further evidence is sought that may increase the rating assigned. As such, we do not oppose VA's provisional rating initiative at this time. However we do want to be certain that VA will not be

making provisional decisions when they could be making normal rating decisions with little or no additional development. Furthermore, we also need to be certain provisional ratings do not become an excuse for simply denying veterans' claims as a means to lower the number of pending claims.

For these reasons, it is imperative that VA be extremely open, transparent and forthcoming with information and results on a regular basis so that we can ensure that provisional ratings benefit veterans. We applaud this Committee for conducting today's oversight hearing and we would offer several areas of inquiry that we hope you will address.

It has now been more than four weeks since the provisional rating program was begun and VA has not yet publicly released any data about the number of provisional rating decisions completed. Such data should be broken down in as many useful categories as possible, starting with the number of provisional decisions that granted benefits and the number that denied benefits. How do the allowance rates for these provisional decisions compare to that for normal rating decisions? We would hope that such information is forthcoming by the time of this hearing and that it will then continue to be publicly released on a regular basis, weekly if at all possible, so that we and other veterans advocates, as well as Congress, can properly evaluate and oversee this program.

We would also like to review all of the directives and directions provided by VA to its Regional Offices, including any training materials related to this program, in order to increase our confidence in this program. In addition, we want to examine actual provisional decisions to ensure that they are properly listing the evidence that is missing or has not yet been obtained, crucial information for veterans deciding whether to accept a provisional rating or to appeal a final rating decision.

We want to analyze the changing performance metrics used by VA to measure progress on claims processing. In announcing this initiative, VA indicated that several standard measurements would begin to fluctuate as older claims were resolved. Specifically, the Average Days Pending for claims would be expected to decrease as the oldest claims on the books are removed. However, the Average Days to Complete a claim would be expected to increase as the longest pending claims would now become part of that metric. VA should provide weekly updates to determine if these metrics do shift as anticipated. In addition, VA should provide weekly updates on measurements of accuracy for provisional ratings, as well as analysis of how this initiative is affecting the overall number of claims completed and the number of claims pending. Until we have sufficient information and data about the provisional rating initiative, we will be unable to determine if it is operating as intended, whether it merits continuation or whether it needs to be adjusted or ended.

Finally, we would like to encourage Congress and VA to seek other ways to rapidly award partial or temporary benefits to disabled veterans when the evidence of record clearly supports such awards. VA currently has the authority under 38 Code of Federal Regulations, section 4.28, to issue prestabilization ratings for veterans who are discharged from active duty due to severe injuries or illnesses that are not yet fully stabilized or healed, and which cause significant limitations in their ability to be employed. VA also has rules to award intermediate

rating decisions with deferred issues as discussed in M21-1MR, Part II, Subpart iv, Chapter 6, Section A. Intermediate rating decisions for multi-issue claims can be made when the record contains sufficient evidence to decide some of the claimed issues, including service connection, even though remaining issues require further development, and will be deferred. Although VA has had these authorities for a number of years, VA rarely takes advantage of them to provide at least partial or minimum benefits to veterans on an expedited basis. DAV believes that both prestabilization and intermediate ratings should be encouraged and expanded to apply to additional circumstances.

We also believe that a new “temporary minimum rating” for claims in which the evidence of record is already sufficient to support at least a minimum 30 percent service-connected disability rating would provide a tremendous benefit to many veterans. Similar to intermediate ratings, these “temporary minimum” ratings should not slow or impede the regular development and processing of the rest of the claim. With the adoption of paperless e-folders and smart processing, temporary ratings could be easily accomplished without the risk of “double work” by VA. Although these temporary rating authorities would not directly reduce VBA’s workload or the backlog, providing a rapid award of at least some benefits, based on the available records, to disabled veterans would increase overall confidence in the claims process, and likely help to reduce the number of appeals filed by claimants. Most importantly, these changes would expedite much-needed assistance into the hands of veterans and their families during difficult transitions and recoveries.

Mr. Chairman, throughout VA’s transformation process, we have maintained that the most important result must be to create a system designed to decide each claim right the first time. Whether the use of provisional ratings should become a permanent part of VA’s future claims processing system remains an open question until we have sufficient results demonstrating its merit. While we understand the importance of reducing the backlog of pending claims, it does little good to lower that number by making bad decisions that are incomplete or inaccurate, leading to appeals and re-filed claims. VA must remain focused on completing the transformation process currently underway so that they can both reduce the pending workload, as well as be prepared to handle the future workload. In conclusion, we urge this Committee to continue supporting VA claims transformation process while also continuing to conduct regular and comprehensive oversight.