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***STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JUNE 28, 2013***

Chairman Runyan, Ranking Member Titus and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Subcommittee on Disability Assistance and Memorial Affairs. As you know, DAV is a non-profit veterans service organization comprised of 1.2 million wartime service-disabled veterans dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity. DAV is pleased to be here today to present our views on the bills under consideration by the Subcommittee.

H.R. 1288

H.R. 1288, the World War II Merchant Mariner Service Act, would direct the Secretary of Homeland Security to accept additional documentation when considering the application for veteran status of an individual who performed service as a merchant seaman during World War II.

Specifically, H.R. 1288 would expand methods for validating certain service considered to be active service by the Secretary of Veterans Affairs for the purpose of verifying that an individual performed service under honorable conditions, thereby satisfying the requirements of a merchant seaman who is recognized pursuant to section 401 of the GI Bill Improvement Act of 1977.

DAV has no resolution or position on this matter.

H.R. 1494

H.R. 1494, the Blue Water Navy Ship Accountability Act, would direct the Secretary of Defense to review the logs of each ship operating under the authority of the Secretary of the Navy that is known to have operated in the waters near Vietnam during the Vietnam era.

Specifically, H.R. 1494 would require the Secretary of Defense to review all of the ship operation logs to determine if such ship operated in the territorial waters of Vietnam during the period of January 9, 1962, to May 7, 1975, noting the specific dates, location and distance from shore for each ship. This information would then be provided to the Secretary of Veterans Affairs for verification purposes in support of claims received for entitlement to certain benefits, such as disability compensation for specific presumptive diseases or illnesses related to exposure to Agent Orange or other herbicides containing dioxin.

DAV resolution No. 016, states in part, "...[t]he exclusion of territorial seas or waters from the term "Republic of Vietnam" is contrary to the plain and unqualified language of the law and illogical insofar as its premise is that herbicides could be carried away from the area of application across any expanse of land but not equal or less expanses of water...veterans who served on ships no more distant from the spraying of dioxin containing herbicides than many who served on land are arbitrarily and unjustly denied benefits of the presumption of exposure and thereby the presumption of service connection for their herbicide-related disabilities."

Complicating this matter is the VA's demonstrated difficulty in obtaining information about each ship, and the respective service members aboard that performed service in the territorial waters, which may have been exposed to dioxin containing herbicides. This legislation would improve the process by providing important information and by accurately identifying all ships serving under the authority of the Secretary of the Navy.

As such, in accordance with DAV resolution No. 016, we support enactment of H.R. 1494 and any legislation directed at including the waters offshore in the phrase "served in the Republic of Vietnam."

H.R. 1623

H.R. 1623, the VA Claims Efficiency Through Information Act of 2013, would direct the Secretary of Veterans Affairs to make publicly available certain information about pending and completed claims for compensation under the laws administered by the Secretary.

Essentially, this legislation would require the Secretary of Veterans Affairs make specific statistical claims-related information available and publicly accessible on the VA's website. In particular, H.R. 1623 would require each VA Regional Office (VARO) to provide information such as the average number of days pending for a claim and the quality and accuracy of such claims for the three-month period immediately preceding enactment and at one year following.

This information would also include the number of claims pending, the number of claims pending more than 125 days and the number of claims completed during the current month to date, the preceding current month, the calendar year and the preceding calendar year. Similarly, this legislation would require the same type of report from VAROs which breaks down the aforementioned claims by medical condition. Additionally, the Secretary of Veterans Affairs would be required to update this information on the VA's website every seven days.

While a great deal of this type of statistical information is presently available on VA's website, this legislation requires a more in-depth breakdown of information about pending claims. One benefit to making this information available is transparency in the claims process, the inclusion of the veteran into the process, and potentially allowing an individual to become more educated about the claims process even before a claim is submitted; however, we recommend the language of the bill be expanded to include the specific link to the information being published on VA's website in every notice sent to a veteran.

DAV supports the intent of H.R. 1623 of making this type of information available on VA's website, however, we are concerned about the possibility that this legislation, if enacted, may cause more work for VA at a time when the primary focus is directed at reducing the backlog of claims.

H.R. 1809

H.R. 1809 would amend title 38, United States Code, to direct the Secretary of Veterans Affairs to provide notice of average times for processing claims and percentage of claims approved. The goal of legislation is to encourage veterans to seek the assistance of veterans service organizations (VSOs) and file claims for VA benefits using the Fully Developed Claim (FDC) process.

H.R. 1809 would make available to all current and potential veteran claimants useful information regarding the success or allowance rate of claims in each VARO by requiring the Secretary of Veterans Affairs to publish this information on VA's website. Additionally, this information will be required to be conspicuously posted in every VARO and, when a claim is received, VA will notify the claimant of such information, including information about the benefit of filing a FDC, such as faster processing time and eligibility to receive up to an extra year of benefit payments.

The type of information this legislation is seeking to publicize to every claimant is the average processing time of claims and the percentage of allowed or granted claims for those with representation versus those without representation. Additionally, H.R. 1809 will require the information to be broken down into the percentage of claims that were FDC submitted electronically versus paper as compared to those who do not file their claims through the FDC program in electronic, standard paper or non-standard paper form.

DAV supports the principle of this legislation, which is to bring better awareness and information to a claimant prior to filing a claim for benefits, similar to H.R. 1623. However, H.R. 1809 is directed at providing more in-depth information to a claimant about representation in keeping with the primary goal of encouraging claimants to submit their claims for benefits through the FDC program.

DAV agrees with providing and making available information about the percentage of claims allowed for those with representation versus those without representation. We also agree with encouraging claimants to submit their claims through the FDC process, as is a standard practice for DAV. Nonetheless, DAV believes, in order to fully reach the goal of this legislation

and, more importantly, to benefit the claimant in the best way possible, the posted information should provide a breakdown of the number of claims represented and the allowance rate for each VSO and for representatives other than VSOs. Otherwise, this information may not allow an individual to make an informed decision about representation. Moreover, when publishing this type of information, it should include the fact that DAV and other VSOs provide representation to virtually any claimant in the process, with the exception of frivolous or fraudulent claims. Conversely, others providing representation, including attorneys, tend to be much more selective in their representation; often choosing to represent only claims wherein the predicted outcome is favorable to the claimant. DAV believes this should also be made clear to a claimant in the published information.

Like H.R. 1623, DAV supports the intent of H.R. 1809, which will require VA to make this information available to claimants; however, we are concerned about the possibility that this legislation, if enacted, may cause more work for VA at a time when their primary focus is directed at reducing the backlog of claims.

H.R. 2086

H.R. 2086, the Pay as You Rate Act, would direct the Secretary of Veterans Affairs to make interim payments of disability compensation benefits for any disability for which a decision can be rendered prior to the complete adjudication of such claim. Currently, when VA receives a claim with multiple contentions and some issues can be adjudicated and finalized and others need further development, VA can make a decision to grant or deny specific issues and defer those needing further development.

Although VA can finalize and initiate payment for those issues ready-to-rate, they simply defer final action until all issues, specifically those needing development, have been completed. According to VA, this allows them to produce one rating only; however, with development being the major reason for delay in most claims this means compensation for the other ready-to-rate conditions must wait – the veteran must wait.

Moreover, VA already has the authority to do what this legislation seeks, to provide interim compensation payments, or rather, initiate compensation payments for those issues that can be finalized without delay. VA, for their own convenience, chooses not to take such action rather than taking action that is more beneficial to a veteran.

In accordance with DAV resolution No. 205, we support enactment of H.R. 2086, as it will codify and require the Secretary of Veterans Affairs to provide compensation payments for those conditions that can be finalized, thereby providing financial support to many veterans much sooner in the process.

H.R. 2138

H.R. 2138, the Ending VA Claims Disability Backlog and Accountability Act, contains several provisions intended to help reduce the backlog of pending veterans' disability compensation claims. The legislation seeks to address several of the key findings and

recommendations contained in the General Accountability Office (GAO) report (GAO-13-89) on claims processing issued in December 2012.

Section 3 of the bill would require the Secretary to eliminate the backlog by May 25, 2015 (Memorial Day), and to submit to Congress a report containing detailed timelines and metrics with which to judge VA's progress toward meeting that goal. Three years ago, Secretary Shinseki established the goal of having all claims adjudicated within 125 days with 98 percent accuracy by 2015; however, no specific end date or interim goals were stated. In January of this year, VA transmitted to Congress its "Strategic Plan to Eliminate the Compensation Claims Backlog," which contained an overview of the claims transformation strategy developed by VBA over the past several years, but it did not include interim milestones.

DAV and other major VSOs involved in assisting veterans file claims have been regularly consulted by VBA on most of the initiatives and programs included in this plan, including Fully Developed Claims (FDCs), Disability Benefit Questionnaires (DBQs) and the Veterans Benefits Management System (VBMS), and we support the implementation of this plan. However, we have consistently called for stronger oversight to ensure that VBA is on the right track to reform the claims process so that every claim is decided right the first time, not just to eliminate the current backlog.

By requiring detailed timelines and metrics with which to judge the progress of the transformation plan, this provision would provide Congress and VSOs with valuable tools to better judge VBA's progress, and to help make recommendations for course corrections, if they are necessary. Regarding the end date for eliminating the backlog, we would recommend that the Secretary be required to include with the interim goals required by this Section a specific end date in 2015 in order to properly set expectations inside and outside of VBA. With that small change, we would strongly support this section.

Section 6 of the bill would require GAO to issue progress reports on how well VBA is implementing its plan and meeting the specific timelines and targets required by Section 3 discussed above. We support this provision to provide an additional independent perspective on whether VBA is on track to meet its stated goals and offer expert recommendations to improve the claims process.

Section 4 of the bill would require VA to enter into agreements with the Social Security Administration (SSA) and Department of Defense (DOD) to require both agencies to transfer records requested by VA to adjudicate claims for disability compensation within 30 days of VA's request. This provision would also require VA and DOD to develop and submit to Congress a plan to ensure that National Guard medical records are also transferred to VA within 30 days of a request.

The longest delays in processing compensation claims result from incomplete medical, service and financial records needed to support the claim. While all delays in receiving records are problematic, it is simply unacceptable to have such delays for records in the custody of federal or state governmental agencies, and therefore DAV supports this section of the bill. Furthermore, in order to strengthen this Section, we recommend that language be included so

that federal or state agencies that are not able to comply with such record requests in the timeframes established be required to respond in writing stating a reason for their failure time they are unable to comply.

Section 5 of the bill seeks to strengthen VBA's training programs for new employees by requiring such training to continue for three years. DAV has long called for increasing the quality and quantity of training provided to VBA's claims processors, not just for new employees, but for all employees as part of a continuing education program, and thus we support the intention of this section. However, the bill's language does not provide specific details of how the proposed three-year training program for new employees would be different than current training, including on-the-job-training and mentoring programs, or how it would affect continuing education programs. We would be pleased to work with the Committee to develop more specific proposals that could improve all of VA's training programs.

H.R. 2189

H.R. 2189 would establish a commission or task force to study and report on the causes of the backlog of compensation claims and make recommendations on how to improve VA's claims adjudication and appeals process. The bill would require the first report to be delivered to Congress within 60 days of the first meeting of the commission or task force, require additional interim reports every 30 days thereafter, and require the final report to be issued 180 days after the first meeting. The Secretary of Veterans Affairs would be required to either implement the recommendations of the commission or task force, or submit to Congress a justification for failing to implement any recommendations. The commission or task force would be composed of 15 individuals appointed by Congressional and Administration leaders, approximately half of whom are required to be veterans. The commission or task force itself would then appoint five nonvoting, nonmember advisors from VSOs, and would have a mandate to seek advice from additional outside experts.

Over the past several years, there has been a renewed and intensified focus put on resolving the longstanding systemic problems plaguing VA's claims processing system. Facing a growing backlog of pending claims; projecting a sharp rise in the number to be filed in the future; and realizing that its paper-based system was no longer capable of managing its workload, VBA in 2009 reached out to VSOs involved in the claims process to seek our input on how to develop a new system. VBA leadership admitted that their old system was broken and committed to building a new system based on the paradigm of getting each claim done right the first time.

Since then, DAV and other VSOs have worked closely and collaboratively with VBA to develop, review and oversee the implementation of dozens of new initiatives designed to improve the people, processes and technology that adjudicate claims for disability compensation and other benefits. During this time, GAO has also closely studied the problems and issued numerous reports and testimonies, making detailed recommendations. In addition, the Advisory Commission on Disability Compensation (ACDC), statutorily established as follow-on to the Veterans Disability Benefits Commission (VDBC), has also provided oversight and input to

VBA over the past four years, bringing additional outside expertise and perspective to bear on claims processing reform, and continues in this role today.

And of course Congress has and continues to vigorously examine the causes of the backlog and review VBA's plans to design and build a new processing system. Both House and Senate authorization and appropriations committees have conducted dozens of hearings and made numerous recommendations on how to improve the claims process, address the current backlog of claims, and prevent future backlogs from recurring. There have been new studies and reports required, as well as new statutory changes approved to streamline VBA's processes, often in consultation with both VBA and VSOs.

Just last month, the House Committee on Veterans' Affairs held an insightful roundtable discussion bringing insurance industry experts together with VBA's compensation experts to see how private sector experience might benefit the current transformation efforts. DAV and our partners in *The Independent Budget* have recommended that a similar panel of outside, private sector experts from major IT companies review the progress of VBMS.

Over the past year, VBA has rolled out most of the major components of its transformation plan to all of its Regional Offices, including the Transformation Organizational Model and the VBMS. Individual initiatives, such as FDC, Disability Benefit Questionnaires (DBQs), and Quality Review Teams (QRTs), have also been implemented and VBA is starting to realize the benefits of these new programs. Legislative changes made over the past couple of years to streamline unnecessary or burdensome steps in the claims process are also just being implemented.

Given all of the research, discussion, consultation and planning that has taken place over the past several years, as well as the implementation and rollouts that have only recently taken place, we believe that the timing is not right for a new commission or task force focused on the causes of the backlog, or developing new solutions, until the current plan has had time to take full effect. In fact, there is beginning to be some concrete evidence that measurable progress is being made.

The number of claims currently pending on Monday, June 24th, was approximately 802,000, which is down from approximately 889,000 two months earlier. The number of claims pending over 125 days, VBA's official target for backlogged claims, has also fallen over the past two months from 611,000 to about 524,000 claims. There is still a long way to go before it is certain that these reductions will continue at this pace, or whether the transformation is working as planned, however at this juncture we believe that VBA's focus should remain on optimizing the transformation rather than considering new changes before the new system has had sufficient time to operate. For the above reasons, we do not support this legislation at this time.

H.R. 2341

H.R. 2341, the Veterans Pension Protection Act, would amend title 38, United States Code, to require the Secretary of Veterans Affairs to consider the resources of individuals

applying for pension that was recently disposed of by the individuals for less than fair market value when determining the eligibility of such individuals for such pension.

DAV has no resolution or position on this matter.

H.R. 2382

H.R. 2382, the Prioritizing Urgent Claims for Veterans Act, would amend title 38, United States Code, to establish a priority for the Secretary of Veterans Affairs in processing certain claims for compensation. This legislation seeks to codify an existing practice within VA, which is to process compensation claims with expedience and priority for those veterans who are age 70 or older, terminally ill, suffering life-threatening illness, financially destitute, homeless, or other grave situation. However, H.R. 2382 limits the claimants included to be veterans age 70 or older, terminally ill, or with life-threatening illness.

While we certainly appreciate the principle of this legislation to codify this existing practice, we believe it is unnecessary as the VA generally has no difficulty with their current practice expeditiously advancing the claims of individuals who are experiencing extreme or grave situations or circumstances. In fact, if this practice is codified it may be detrimental to some claimants by limiting the classification of circumstances. In doing so, H.R. 2382 would adversely impact VAs ability to determine priority or urgency for many claimants with severe circumstances, other than those included.

H.R. 2423

H.R. 2423, the Disabled Veterans' Access to Medical Exams Improvement Act, would extend and expand VA's authority to enter into contracts with private physicians to conduct medical disability examinations as an important tool in processing the volume of pending and future claims for disability compensation. Under this legislation, VA's authority to contract for disability examinations would be extended until December 31, 2016; it is currently set to expire at the end of this year. The bill would also expand from 10 to 15 the number of VA Regional Offices (VAROs) that could participate in this pilot program. Finally, the legislation would allow licensed physicians under a VA contract who are performing disability examinations for claims to conduct such examinations in any state without having to be licensed in that particular state.

Over the past decade, DAV National Service Officers (NSOs) have found that the quality and timeliness of compensation exams conducted by contractors was generally as good – sometimes better – than disability exams conducted by VA physicians, who are usually more focused on treating veterans rather than evaluating their disabilities under the VA Schedule for Rating Disabilities. Moreover, with demand for VA medical care rising, it is important that VA's treating physicians, especially specialists, remain focused on providing high quality care to their patients. In addition, the more technologically-advanced and user-friendly scheduling and IT systems used by some contractors has also contributed to higher customer satisfaction scores from veterans receiving contract exams. For these reasons, we support extending the authorization for at least an additional three years to ensure that VBA continues to have this tool

to help reach timely claims decisions. We would even recommend that VA consider whether it might be more cost efficient to extend the authorization further than three years if that would help to reduce the average annual cost and conserve precious budgetary resources.

For many of the reasons above, we also support expanding the pilot program to more than 10 VAROs; in fact we don't believe it's necessary to place an arbitrary cap on the number of VAROs allowed to use contract exams. The decision to use or not use contract examinations is and should be determined solely by VA and VAROs participating in the current pilot program based on their workload, local capacity and available resources. If contract disability compensation exams provide the same or better quality and timeliness, at the same or less cost per exam compared to the actual cost of using VA physicians, we find no compelling reason to limit their use to only 10 or even 15 VAROs. As such, we recommend that the Committee consider removing altogether the limitation on the number of participating VAROs, thereby allowing each individual VARO to determine when and if they use contract exams, basing their decisions solely on the best interest of veterans.

DAV does not have a resolution on allowing licensed physicians to conduct medical disability examinations across state lines and we have no position on that section of the bill.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions from you or members of the Subcommittee.