

**JOINT STATEMENT**  
**OF**  
**THE CO-AUTHORS OF THE INDEPENDENT BUDGET**  
**DISABLED AMERICAN VETERANS**  
**PARALYZED VETERANS OF AMERICA**  
**VETERANS OF FOREIGN WARS**  
**FOR THE**  
**SENATE COMMITTEE ON VETERANS' AFFAIRS**  
**CONCERNING**  
***THE INDEPENDENT BUDGET***  
**AND THE DEPARTMENT OF VETERANS AFFAIRS BUDGET**  
**FOR FISCAL YEAR 2017**

**FEBRUARY 23, 2015**

Chairman Isakson, Ranking Member Blumenthal, and members of the Committee, on behalf of the co-authors of *The Independent Budget* (IB)—DAV (Disabled American Veterans), Paralyzed Veterans of America (PVA), and Veterans of Foreign Wars (VFW), we are pleased to present the views of the IB organizations regarding the funding requirements for the Department of Veterans Affairs (VA) for FY 2017, including health care advance appropriations for FY 2018.

The IB veterans' service organizations (IBVSO) believe that the FY 2017 VA budget request is generally a good budget to begin the debate. The Administration's budget request is \$78.7 billion in total discretionary spending for FY 2017. When considering the additional \$5.7 billion that the Administration projects spending from the Choice Act funds appropriated in 2014, the total projected expenditure from VA in FY 2017 is approximately \$84.2 billion. The IBVSOs recommend \$84.4 billion in total funding for the VA.

The IBVSOs share growing concerns about the massive growth in expenditures in community care spending in FY 2017 totaling \$12.2 billion. We understand the need for leveraging community care to expand access to health care for many veterans, as discussed in *The Independent Budget* framework, but we are troubled by the virtually uncontrolled growth in this area of VA health care spending. Congress and the Administration must ensure that it devotes critical resources to expand capacity and increase staffing of the existing health care system, particularly for specialized services such as spinal cord injury or disease, and not simply punt this responsibility into the private sector. Simply outsourcing more care to the community will ultimately undermine the larger health care system on which so many veterans with the most catastrophic disabilities must rely.

Also, as we have previously announced, we believe the advance appropriation amount for FY 2017 provided for by Congress in the "FY 2016 Consolidated and Further Continuing Appropriations Act," approved in December 2015, is insufficient to meet the full demand for services veterans are placing on the system. For FY 2017, the *IB* recommends \$72.8 billion for total Medical Care. Congress recently approved only \$66.6 billion for total Medical Care (based on an assumption that VA will collect approximately \$3.3 billion in 1<sup>st</sup> and 3<sup>rd</sup> party payments to the Medical Care Collections Fund).

### **Medical Services**

The IBVSOs believe that significant attention must be placed on ensuring adequate resources are provided through the Medical Services account to ensure timely delivery of high quality health care. We are generally pleased with the Administration's revised overall medical care funding request for FY 2017, as well as the resources that would be directed specifically to Medical Services. Unfortunately, the budget shortfall from last year shined a bright light on the insufficient funding that has plagued, and may continue to plague, the VA health care system going forward. In FY 2017 (and subsequent fiscal years), the problem will be compounded as the VA will be shedding funds from its traditional Medical Services account to push more care into the community. With these thoughts in mind, for FY 2017, *The Independent Budget* recommends \$60.9 billion for Medical Services.

Additionally, we believe the Administration's advance appropriation request for Medical Services in FY 2018, \$54.3 billion, is woefully inadequate to meet continually growing demand for VA health care services. The Administration appears to have ignored its responsibility to properly address the funding question for VA medical care, and intends to pass it to a new Administration following this fall's election. This is an unacceptable proposition. For FY 2018, the IBVSOs recommend Congress appropriate \$64 billion as an advance appropriation for Medical Services.

Our recommendations for Medical Services reflect the estimated impact of uncontrollable inflation on the cost to provide services to veterans currently using the system. We also assume a 1.2 percent increase for pay and benefits across the board for all VA employees in FY 2017, as well as 1.3 percent in the advance appropriation recommendation for FY 2018. The significant increase in our recommendations for FY 2017 also reflects an adjustment in the baseline for funding within the Medical Services account of \$2.85 billion. *The Independent Budget* believes this adjustment is necessary in light of the nearly \$3 billion shortfall that the VA health care system experienced last summer. The fact that VA provided 7 million more appointments last year—both inside VA facilities and in the community—is further evidence of the dramatic increase in demand VA faces today. If the baseline from FY 2016 is not adjusted to better reflect the true demand for services, we believe the VA will once again face a severe shortfall this fiscal year and next.

The *Independent Budget* report on funding for FY 2017 and FY 2018, delivered to Congress on February 9, 2016, also includes a number of key recommendations targeted at specific medical program funding needs for VA. We believe additional funding is needed to address the array of long-term-care issues facing VA, including the shortfall in institutional capacity; critical resources to address the continually increasing demand for life-saving Hepatitis C treatments; to provide additional centralized prosthetics funding (based on actual expenditures and projections from the VA's Prosthetics and Sensory Aids Service); funding to expand and improve services for women veterans; and new funding necessary to improve the growing Comprehensive Family Caregiver program.

### ***Long Term Services and Supports***

*The Independent Budget* recommends \$285 million for FY 2017, as well as \$285 million for FY 2018. This recommendation reflects the fact that VA has experienced a significant increase in the number of veterans receiving long term services and supports (LTSS) in 2015. Unfortunately, due to loss of authorities—specifically fee-care no longer being authorized, provider agreement authority not yet enacted, and the inability to use Choice funds for all but skilled nursing care, to purchase appropriate LTSS, and particularly for home- and community-based care, we estimate an unfortunate increase in the number of veterans using more costly long-stay and short-stay nursing home care placements. This funding is particularly important to veterans with spinal cord injury/disease (SCI/D), because these veterans tend to rely on inpatient LTSS for services that are far more complex than the average veteran. Unfortunately, SCI/D veterans are significantly underserved by VA LTSS. We believe the Administration must demonstrate serious commitment to expanding capacity for long-term care for veterans with SCI/D, and that Congress should support this need with adequate appropriations.

### ***Hepatitis C***

We also recommend \$1.7 billion dedicated specifically to the goal of expanding treatment for veterans diagnosed with Hepatitis C. The VA previously projected a goal to treat 120,000 veterans with Hepatitis C between FY 2016 and FY 2018. In FY 2017, VA is expected to treat as many as 50,000 veterans with a projected cost of approximately \$1.7 billion. This estimate also includes the assumption of a 10 percent cost reduction per veteran, which we believe the VA

will can achieve through the introduction of newer and cheaper Hepatitis C medications, and if the VA renegotiates the price of currently available medications. In FY 2018, the VA is expected to treat as many as 30,000 veterans with a projected cost of approximately \$1.0 billion.

### ***Prosthetics and Sensory Aids***

In order to meet the increase in demand for prosthetics, the *IB* recommends an additional \$150 million in FY 2017 and \$160 million for FY 2018. These increases in prosthetics funding reflect a similar increase in expenditures from FY 2015 to FY 2016, and the expected continued growth in expenditures for FY 2017.

### ***Caregiver Support Program***

Our additional program cost recommendation also includes \$120 million (above the projected baseline of \$605 million) for the Comprehensive Family Caregiver Program in FY 2017. The additional \$120 million for VA's caregiver program will provide for the steady growth in the number of participating caregivers, currently averaging between 350 and 400 new caregivers per month. The amount recommended will also provide for a more robust number of VA Caregiver Support Coordinators to address issues regarding the program administration at local facilities. This will directly benefit an aging and severely disabled veteran population whose lives are significantly impacted by the availability of VA caregiver support services. For FY 2018, the IBVSOs recommend \$125 million to address the continually increasing demands on the caregiver program. Moreover, if Congress approves legislation to finally expand access to this program to veterans of all eras, beyond post-9/11 veterans, then consideration must be given to providing additional resources to meet the substantial new demand expected.

### ***Women Veterans***

Finally, the Medical Services appropriation should be supplemented with \$90 million designated for women's health care programs, in addition to amounts already included in the FY 2017 baseline. For FY 2018, this amount should be increased by an additional \$100 million. These funds would be used to help the Veterans Health Administration deal with the continuing growth in ensuring coverage for gynecological, prenatal, and obstetric care, other gender-specific services, and for maintenance and repair of facilities hosting women's care to improve privacy and safety of VA facilities where women seek their care. The new funds would also aid the VHA in making its cultural transformation to embrace women veterans and welcome them to VA health care, and provide the means for VA to improve specialized mental health and readjustment services for women.

### **Medical Support and Compliance**

For Medical Support and Compliance, *The Independent Budget* recommends \$6.2 billion in FY 2017. Our projected increase reflects growth in current services based on the impact of inflation on the FY 2016 appropriated level. Additionally, for FY 2018 *The Independent Budget* recommends \$6.3 billion for Medical Support and Compliance. This amount also reflects an increase in current services from the FY 2017 advance appropriation level.

## **Medical Facilities**

For Medical Facilities, the IBVSOs recommend \$5.7 billion for FY 2017, nearly \$700 million more than the enacted advance appropriation from December 2015. Our Medical Facilities recommendation includes \$1.35 billion for Non-Recurring Maintenance (NRM). The Administration's request over the past two cycles represents a wholly inadequate request for NRM funding, particularly in light of the actual expenditures that are outlined in the budget justification. While VA has actually spent approximately \$1.3 billion on average yearly for NRM, the Administration has requested only \$460 million. This is clearly insufficient. If Congress follows suit, VA would be forced to divert funds designated for other purposes to meet NRM needs.

Last year the Administration's recommendation for NRM reflected a projection that would place the long-term viability of the health care system in serious jeopardy. Unfortunately, it appears that the Administration will once again reduce critically needed funding in the Medical Facilities account for the advance year of FY 2018. *The Independent Budget* recommends \$6.7 billion for Medical Facilities for FY 2018. Our FY 2018 advance appropriation recommendation includes \$1.35 billion for NRM.

## **Medical and Prosthetic Research**

The IBVSOs are pleased that the Administration has committed significant new resources to the Medical and Prosthetic Research account. The IB recommends \$665 million in direct appropriations for the Medical and Prosthetic Research account; the Administration recommends \$663 million. The VA research program is a jewel within the VA that we support without hesitation or reservation. Research is a vital part of VA health care, and fulfills an essential mission for our national health care system. This sustained investment in research has been long needed, and we applaud the Administration for taking this step. We ask the Committee to also give consideration to making an additional investment specifically in the Million Veteran Program (MVP). The IBVSOs recommend \$75 million in directed funding for the MVP, independent of and supplemental to, the funds proposed for the Medical and Prosthetic Research account. Unfortunately, the Administration's budget request proposes to siphon funds from the research appropriation to support the expansion of MVP, rather than requesting dedicated funding to continue this important genetic research. Shifting research funds from the appropriated amount to MVP will weaken VA's ability to make awards for new and promising research proposals. We believe MVP should be funded outside these levels.

## **General Operating Expenses (GOE)**

For FY 2017 the *Independent Budget* recommends increasing funding for General Operating Expenses (GOE) – which includes the Veterans Benefits Administration (VBA), General Administration and the Board of Veterans Appeals (Board) – to approximately \$3.056 billion, more than \$380 million over the FY 2016 level, and \$156 million more than the Administration's budget request of approximately \$2.8 billion. Both the VBA and the BVA have significant financial needs to properly adjudicate claimed benefits by veterans, and the Administration's

budget proposal is a reasonably good start toward maintaining the functionality of these two crucial areas, particularly the substantial increase proposed for the Board.

### ***Disability Claims Processing and Appeals of Denied Claims***

The VBA account is comprised of several primary divisions. These include Compensation, Pension, Education, Vocational Rehabilitation and Employment (VR&E), Housing, and Insurance. The increases the IBVSOs are recommending for these accounts primarily reflect current service estimates with inflation. However, three of the VBA subaccounts— Compensation, VR&E, and the Board—also reflect substantial increases in requested staffing.

As you know, after several years of concentrated effort to reduce the backlog of disability compensation claims the VBA can point to a dramatic transformation of the claims processing system and significant measurable progress. Consider that at its peak in 2013 almost 611,000 disability claims were backlogged; today VBA reports roughly 75,000 claims are backlogged, defined as claims pending over 125 days. In FY 2015 VBA reported completing nearly 1.4 million claims, a laudable accomplishment, but more work remains to be done.

VBA owes much of this success to implementing new work processing models for the regional offices (RO) and efficiencies gained through the expansion of the Fully Developed Claims (FDC) process to speed up simpler claims for disability compensation. In fact, almost half of all disability claims filed with the VA are FDCs, proving the success and viability of this alternative claims-filing process. However, much of the productivity increase is the result of simply putting more resources into processing claims by shifting personnel from appeals processing, along with the use of mandatory overtime. What remains unknown is whether VBA will be able to manage its current claims inventory of just over 350,000 claims without relying on mandatory overtime.

Disability Benefits Questionnaires (DBQ) have streamlined the claims process, although some veterans still encounter obstacles within the Veterans Health Administration (VHA) when attempting to get DBQs completed by VA clinicians; however, efforts to simplify this process continue. VBA also continues to enhance information technology systems, including the Veterans Benefits Management System (VBMS), the Stakeholder Enterprise Portal (SEP) and e-Benefits, which are revolutionizing the filing of claims through electronic means.

Please consider that in 2010, no claims were processed electronically in the VA; today almost all of VBA's more than 350,000 pending disability claims are fully electronic; less than 30,000 paper claims remain in the system. More than one billion record images have been scanned into VBMS and are associated with claimants' new e-Folders, allowing them to be read simultaneously at all VBA offices, 148 VHA facilities and by veterans service organizations (VSO) that represent veterans in their claims.

As a consequence of this concentrated effort to reduce the disability claims backlog, the backlogs for other activities, including appeals, have grown. As of February 2016, 440,000 appeals were pending, 360,000 within the jurisdiction of the VBA, and the remainder within the jurisdiction of the Board. This growing appeals backlog is a result of VBA's shift in focus and resources to process disability claims, as evidenced by the fact that, until recently, Decision Review Officers

(DROs) and Quality Review Specialists (QRSs) were performing development and rating duties during both regular and overtime working hours at many VA regional offices (VARO). Considering the enormous growth in appeals, non-rating-activities and other services, the IBVSOs believe that more accurate staffing and production models are required to determine future resources for VBA.

***Compensation Service Personnel: 1,700 New FTEE—\$171 million***

For FY 2017, the IBVSOs have focused resource recommendations on VBA's non-rating related work, appeals processing and call center needs. We recommend an additional 1,000 FTEE for FY 2017 that would be dedicated to processing appeals at VBA in an effort to eliminate the backlog of an assumed 360,000 appeals within the next three years. We are concerned that the Administration request for an additional 300 FTEE will be far below resources needed to address the backlog of appeals pending at VBA.

To address the growing backlog of non-rating related work such as dependency claims, the IBVSOs recommend an additional 300 FTEE. In order to address the delays experienced by callers contacting VBA call centers, the IBVSOs recommend an additional 300 FTEE.

In addition, the IBVSOs recommend an increase of 100 FTEE for the Fiduciary program to meet the growing needs of veterans participating in VA's Family Caregiver Support programs. This recommendation is also based on a July 2015 VA Inspector General report on the Fiduciary program that found, "...Field Examiner staffing did not keep pace with the growth in the beneficiary population, [and] VBA did not staff the hubs according to their staffing plan...."

Since VA may achieve future technological and organizational productivity gains, we recommend that VBA hire a blend of permanent and two-year temporary FTEE for these new positions. At the end of the two years, the best of those hired on a temporary basis could be transitioned into permanent positions made available through attrition. The IBVSOs believe this approach to staffing would offer a temporary surge capacity, while also developing a group of experienced and trained employees to fill positions that occur through attrition.

***VR&E Service Personnel: 158 New FTEE—\$17.6 million***

For FY 2017, the Administration has again failed to request an increase in staffing for this program despite the fact that demand for services and workload continue to rise. VR&E is one of the most significant programs within the VA, enabling wounded, injured and ill veterans able to lead more fulfilling lives by providing them with significant employment, education, and training opportunities.

The Vocational Rehabilitation and Employment Service (VR&E), also known as the VetSuccess program, provides critical counseling and other adjunct services necessary to enable service disabled veterans to overcome barriers as they prepare for, find, and maintain gainful employment. VetSuccess offers services on five tracks: re-employment, rapid access to employment, self-employment, employment through long-term services, and independent living.

An extension for the delivery of VR&E assistance at a key transition point for veterans is the VetSuccess on Campus (VSOC) program deployed at 94 college campuses. Additional VR&E services are provided at 71 military installations for active duty service members undergoing medical separations through the Department of Defense and VA's joint Integrated Disability Evaluation System (IDES). These additional functions of VR&E personnel are undoubtedly beneficial to injured and ill veterans; however, staffing levels throughout VR&E services must be commensurate with current and future demands and its global responsibilities.

At the end of FY 2014, VR&E reported a total of 1,416 FTEE dedicated to direct VR&E services. VR&E projected an increase of 7.3 percent in program participation for FY 2015, and for FY 2016 an additional 3.8 percent increase in participation was expected. Over the previous two fiscal years, program participation was expected to increase by 11.1 percent; however, the Administration failed to request adequate staffing levels to keep pace with anticipated demand.

For FY 2015 and FY 2016, only 1,442 direct personnel were requested, with no increase for FY 2016, the same pattern holds true for the FY 2017 budget request, with no request to increase staffing. Over the past five years, program participation has increased by an average of 7.1 percent each year, and the IBVSOs project that total program participation for FY 2017 will grow by at least 7.1 percent for a total caseload of approximately 147,000.

In July 2015, VR&E reported that its average Vocational Rehabilitation Counselor (VRC)-to-client ratio was 1:139, which represented an increase from its previous 1:135 ratio. A more reasonable VRC-to-client ratio would consist of 1:125; however, this benchmark may even be too high when taking into consideration the overall responsibilities of VRCs, such as VSOC and IDES.

In order to achieve and sustain a 1:125 counselor-to-client ratio in FY 2017, we estimate that VR&E would need 158 new FTEE, for a total workforce of 1,600 FTEE, to manage an active caseload of 147,000 VR&E participants. At a minimum, three-quarters of the new hires should be VRCs dedicated to providing direct services to veterans.

***Board of Veterans' Appeals Personnel: 166 New FTEE—\$23.1 million***

The IBVSOs fully support our FY 2017 budget recommendation to hire an additional 242 FTEE for the Board, which is a larger number than the IBVSOs had estimated could be absorbed over the next year.

Faced with a growing number of claims and resultant appeals, the Board's staff grew from 510 FTEE in FY 2012 to 676 FTEE in FY 2015. However, for 2016, the Administration did not request funding for increased staffing, despite an ever-increasing workload; instead the FY 2016 budget request actually proposed a reduction from of 669 FTEE to 662 FTEE.

Over the past few years, the Board has averaged approximately 90 appeal dispositions per FTEE, producing a record 55,532 decisions in FY 2014. For FY 2015, the Board reached another milestone by issuing just over 57,000 dispositions. Although most of the 440,000 pending appeals are in various stages of processing at VBA, the Board currently has nearly 80,000



appeals in its jurisdiction. In order to process these 80,000 appeals in one year, based on 90 appeals per Board FTEE per year, the Board would need approximately 890 FTEE; however, it did not receive any increase in FY 2016, and will likely only be able to dispose of approximately 60,000 appeals.

Furthermore, as the number of claims processed annually continues to rise as a result of the increased capacity of VBA, and the number of appeals is expected to continue rising. Even with increased accuracy in rating board decisions, on average 10 to 12 percent of claims decisions are appealed. Thus, assuming VBA processes 1.5 million claims next year—a reasonable estimate considering VBA processed over 1.4 million claims in both FY 2014 and FY 2015—roughly 150,000 appeals would enter the system, with roughly half of them continuing on to the Board for review.

In order for the Board to keep pace with only new incoming workload and not appeals already in the system, a total FTEE level of 833 would be required. Furthermore, a significant number of Board remands return to the Board for a second round of appellate review, as many as 20,000 per year, requiring an additional 217 FTEE to manage this workload.

About 360,000 appeals are backlogged at VBA, of which approximately 180,000 are expected eventually to reach the Board. If the goal were to eliminate the backlog in three years, while simultaneously disposing of both new incoming appeals and returning remanded appeals, then an additional 666 FTEE would be required. In total, without any increases in productivity, the Board would require 1,716 FTEE, almost tripling its current workforce. Even if the Board could increase its productivity by one-third to 120 appeals per FTEE per annum, approximately 1,291 FTEE, almost double the current workforce, would be needed.

To meet current and future workload requirements, the Board would need to continue adding new attorneys and veteran law judges, as well as sufficient support staff; however, the Board could not absorb that level of staffing growth while simultaneously managing its overall workload. Approximately 18 months of training and orientation are required for a new Board attorney to reach full productivity. Given the time taken away from existing staff to train and mentor new staff, the Board must strike a balance in its hiring strategy.

For FY 2017, the IBVSOs recommended an increase of 166 FTEE, based upon the assumption that the Board could not absorb more than a 25 percent increase in personnel in one year. However, the Board seems convinced it can bring onboard 242 FTEE next year without disrupting ongoing appeals work; thus, the IBVSOs fully support that requested increase. Further, the Board must continue to increase its personnel over the next couple of years to grow its capacity to handle the rising number of appeals that will come from VBA's increased productivity.

The Board may also want to consider in future years authorizing a mix of full-time and temporary hires to meet rising workload, utilizing the temporary workforce in a surge capacity role to help reduce the appeals backlog.

However, even with this sizeable increase for FY 2017, the effect on the appeals inventory may not be realized until sometime in 2018. Moreover, Congress has delayed VA's appropriation beyond October 1 every year for the past decade; a delayed budget will mean delayed hiring, delayed training, and delayed production.

### ***Proposed "Simplified Appeals Process"***

One concern within the Administration's budget identified by the IBVSOs is a provision calling for developing a "simplified appeals process" to expedite adjudication of veterans' appeals, which if not done properly eliminates due process rights for appellants. The recommendations outlined within the budget proposal regarding the "simplified VA appeals process" – particularly eliminating hearings and closing the evidentiary record – raise many due process concerns and call for deeper discussions. The IBVSOs strongly disagree with the recommendations as currently proposed. It is essential that we protect the rights of every veteran who seeks and receives the benefits he or she deserves while contemplating changes to simplify and streamline the appeals process. We have proposed several concepts to reform appeals, and look forward to participating in the discussion on the best ways to improve the process while protecting the rights of veterans to seek redress. As currently proposed, the IBVSOs oppose the Administration's "simplified appeals process" because it could severely harm many veterans. Rather than focusing only on reducing the elapsed time of a BVA decision from the filing of a Notice of Disagreement to an arbitrary one year, we must work together to develop a plan that ensures veterans receive proper decisions within reasonable time frames while fully protecting their due process rights.

### ***Standardized Forms for Claims and Appeals***

On September 25, 2014, VA issued a Final Rule in the Federal Register requiring that all claims and appeals for benefits must be filed on standard forms issued by VBA, and that VA would only accept NODs on standardized forms provided by the agency. The rule was fully implemented March 24, 2015. VBA also eliminated the informal claims process and replaced it with a new intent-to-file process. Under the new rule, if a claimant files a written claim or appeal using anything other than a VA standard form for the purpose, VBA does not recognize this filing as a claim or an appeal; instead, VBA sends the claimant notice as to which form is required to properly complete the claim or appeal filing. Please note that VA does not send the claimant the form, but simply tells him or her where and how to obtain one.

We understand the need to use standard forms whenever possible in order to create a more efficient claims processing system to benefit all claimants, and we support the principle involved in that decision, but VA's hardened rule changes have failed the test of reasonableness. These changes provide for no exceptions or extensions for the small number of claimants who might require accommodation. Considering the fact that claimants often have physical or psychological limitations from service-connected disabilities, may lack the degree of sophistication required to understand, are poor, have no access to the internet, have educational deficits, and are subject to other circumstances that may hinder their ability to fulfill these new requirements, these rules need to be amended to allow limited but commonsense exceptions and extensions to the standard form restriction.

The IBVSOs and other stakeholders were deeply troubled by VA's decision to change the rules for filing claims and appeals without providing for such exceptions. In response, concerned stakeholders filed suit against the VA. Five separate challenges on behalf of 10 veterans' service organizations are currently pending before the United States Court of Appeals for the Federal Circuit. All parties have challenged the March 2015 rule change because we consider VA's dramatic changes to the claims and appeals process to be extremely harmful to ill and injured veterans and their dependents and survivors in their efforts to secure earned benefits related to service performed in our nation's armed forces.

Congress should closely monitor the progress of the Federal Circuit action, and if the Court does not protect the interests of all veterans and their dependents, we will work with Congress to enact legislation that provides necessary protections.

### ***Appeals Reform***

While the claims backlog has fallen significantly, as indicated above, the backlog of pending appeals has risen. Over the past several years, the IBVSOs have voiced our concerns that appeals were being neglected as VA concentrated on the inward-facing 2015 claims processing goals, but a backlog is a backlog, whether it is a claim or an appeal, and each claim in a backlog is a veteran waiting for an important VA decision that may affect his or her life.

Despite the fact that the Board decided more than 55,000 appeals in FY 2014, an increase of 10 percent over the highest previous total and just over 57,000 decisions for FY 2015, the number of appeals at various stages working their way through VBA toward the Board now exceeds 320,000, not counting over 80,000 appeals already within the Board's jurisdiction. As VA continues to complete more claims each year (at the end of FY 2015, roughly 1.4 million), the rate of appeals also coming into VA increases; these two trends are inversely related.

In order to seek new solutions that could improve the appeals process for veterans, the IBVSOs along with other key VSO stakeholders, VBA and the Board developed a new appeals approach that entitled "Fully Developed Appeals" (FDA). Each of our organizations testified at hearings before the House Veterans Affairs Committee during this Congress in support of H.R. 800, the "Express Appeals Act," a bill that would create a new pilot program modeled after the FDC program. The premise of the FDA program is that some appellants could opt into the streamlined FDA process and contribute to development by gathering new private evidence necessary to support their appeals. These appellants would agree to waive some current appeal processing options and technical work currently performed by VBA and the Board, such as issuance of a Statement of the Case, Supplemental Statement of the Case, and conduct of hearings. In return the appellant would receive a significantly faster decision from the Board.

The elimination of these steps could save some veterans two to three years of processing time at the RO compared to the traditional appeals approach. While the FDA proposal is not a magic bullet that would eliminate the backlog of pending appeals, it would create another option that could save some veterans up to a thousand days waiting for their appeals to go to the Board, while also reducing the workload on both VBA and the Board.

With bipartisan support in the House from Representative O'Rourke and Chairman Miller, FDA language similar to H.R. 800 was recently included as an amendment to H.R. 677, the "American Heroes COLA Act of 2015." This bill was reported by the House VA Committee and approved favorably by the House. We hope that the Senate VA Committee will give favorable consideration to these provisions.

Of note, H.R. 677 also contains language that would round-down cost-of-living adjustments (COLA) for VA beneficiaries over a nine year period, a legislative proposal that we oppose because it would dilute benefits for ill and injured veterans, their dependents and survivors. The IBVSOs call on Congress to strike the round-down provision contained within H.R. 677.

Regarding a companion Senate bill, we are pleased to report that members and staff of the Senate Veterans' Affairs Committee considered the merits of the FDA concept. In response, Senator Sullivan, along with Senators Casey, Heller and Tester, introduced a similar FDA bill, S. 2473, the "Express Appeals Act of 2016." We hope the passage of this concept in the House and its introduction in the Senate eventually illustrate that Congress is willing to reach across party lines to provide wounded, injured and ill veterans, their dependents, and their survivors with a reasonable and viable solution to address the backlog of pending appeals. The IBVSOs intend to continue to work diligently to achieve compromise legislation on appeals reform.

We have identified some additional reforms to the appeals process that we urge VBA, with encouragement from the Committee, to adopt, or for the Congress to mandate:

- Strengthening VBA's DRO post-determination review program;
- Simplifying the "new and material evidence" standard, or eliminating it altogether;
- Commissioning a feasibility study on pre-screening appeals to identify cases that should require development prior to review by the Board;
- Engaging an outside entity to conduct a Six Sigma management study of the best performing ROs in terms of quality and timeliness, to identify best practices for processing claims and appeals work that would be transportable to other ROs;
- Engaging an outside entity to conduct a time-and-motion study of claims and appeals processing in order to determine accurate and effective human resources requirements for ROs and the Board; and
- Requiring the Secretary to report to Congress within 90 days on progress in modernizing the Board's IT systems along with a plan, including required funding, to complete all necessary IT improvements within one year from the date of a required report.

Adoption of these ideas would go a long way toward significantly and substantially reducing VA's appeals backlog, and we urge the Committee to support them.

The IBVSOs also call on Congress to support the following legislative proposals to enhance the benefits and services provided by our nation to veterans who have sacrificed as a consequence of their military service:

- Complete the ongoing reform of VA's benefits claims processing system, with the focus on quality, accuracy, accountability and timeliness;

- Eliminate inequitable policies that prohibit the concurrent receipt of VA disability compensation and military retired pay, and that require Dependency and Indemnity Compensation and military Survivor Benefit Plan payments to be offset;
- Exclude veterans' disability compensation from countable income for purposes of eligibility for benefits and services under other government programs;
- Enact legislation that would allow veterans to transfer their military skills and credentials to the civilian sector to enhance their employment opportunities;
- Strengthen veterans' vocational rehabilitation and employment programs by ensuring adequate funding for increased staffing and IT enhancements to meet increases in VR&E demand;
- Remove the 12-year delimiting date imposed on vocational rehabilitation entitlement under Chapter 31, title 38, United States Code;
- Improve delivery of transition services to all separating service members;
- Reduce premiums for Service Disabled Veterans' Life Insurance, consistent with current life expectancies.

VA's budget request for FY 2017 includes some necessary increases; however, we believe more must be done to adequately provide both VBA and the Board with the resources needed to accomplish their critical missions. We look forward to working with this Committee and others to ensure that every veteran is able to receive the benefits earned through military service.

### **Construction Programs**

For more than 100 years, the government's solution to provide health care for our military veterans has been to build, manage and maintain a network of federal hospitals across the nation. This model allows VA to deliver care at 1,753 facilities, but has left it with more than 5,600 buildings, many of which are well past their building lifecycles. Many of these facilities need to be replaced, others need to be expanded, and all of them need to be maintained. The process to manage this network of facilities is the Strategic Capital Infrastructure Plan (SCIP). The SCIP effort identifies VA's current and projected gaps in building access, utilization, and condition. Then it lists them in order based on a gaps priority. In VA's FY 2017 budget submission, the 10-year full implementation plan to close these gaps is estimated to cost from \$52-\$63 billion, including \$11-\$13 billion in activation costs for new facilities.

Four cornerstones guide VA capital infrastructure: major construction, minor construction, leasing, and non-recurring maintenance. Major construction projects construct, alter, extend and improve a facility, and cost over \$10 million each. Minor projects perform the same tasks as major construction projects but cost less than \$10 million each. Leases generally reserved for small stand-alone projects such as community-based outpatient clinics (CBOC) or mental health facilities. Non-Recurring Maintenance funds the cost to equip new facilities and ensures existing facilities are functional through their lifecycle.

### ***Major Construction***

While Congress and VA needs to realign the SCIP process to allow VA to enter into public-private partnerships and sharing agreements – both federal and private – to right-size VA's

footprint, it must continue to fund the projects it had partially funded, and begin the advance planning and design of those projects it knows VA will need to fund through the traditional appropriations process.

Currently, VA is managing 30 major construction projects that are partially funded, some of which were originally authorized by Congress in FY 2004. These projects need to be put on a clear path to completion. Outside of the partially funded major projects list are major construction projects at the top of the FY 2017 priority list that are seismic in nature. These projects cannot take a strategic pause while Congress and VA decide how to manage capital infrastructure in long term.

VA will need to invest more than \$3 billion to complete the 30 partially funded projects. Of the top five projects on the priority list, two of them are seismic deficiencies, two are the in VA's core mission: a mental health clinic, and a spinal cord injury center – and one is an addition to an existing facility. The total cost of these five projects is \$1.2 billion.

The IB recommends that Congress appropriate \$1.5 billion for FY 2017. This amount will fund either the next phase, or fund through completion all existing projects, and begin advance planning and design development on six major construction projects that are the highest ranked on VA's priority list.

### ***Minor Construction***

In FY 2016, Congress appropriated \$406 million for minor construction. Currently, approximately 600 minor construction projects need funding to close all current and future year gaps within ten years. To complete all of these current and projected projects, VA will need to invest between \$6.7 and \$8.2 billion over the next decade.

In August 2014, the President signed the Veterans Access, Choice, and Accountability Act of 2014 (VACAA), Public Law 133-146. In this law Congress provided \$5 billion to increase health care access by expanding medical staffing levels and investing in VA infrastructure. In response, VA developed a spending plan that will obligate \$511 million for 64 minor construction projects over a two-year period.

VA planned to invest \$383 million of these funds in FY 2015, leaving \$128 million for minor projects in FY 2016. It is important to remember that these funds are a supplement to, not a replacement for, annual appropriations for minor construction. To ensure that VA funding keeps pace to complete identified current and future minor construction projects, the IBVSOs recommend that Congress appropriate an additional \$749 million in FY 2017.

Additionally, the IBVSOs recommend \$175 million in non-recurring maintenance and minor construction funding to address needs identified in the Congressionally-mandated report on the status of VA research laboratories and related facilities.

## *Leasing*

Historically VA has submitted capital leasing requests that meet the growing and changing needs of veterans. VA has again requested an adequate amount, \$52 million for its FY 2017 leasing needs. While VA has requested adequate resources, Congress must find a way to authorize and appropriate leasing projects in a way that precludes the full cost of these leases being accounted for in the first year. This will be especially important as VA includes public-private partnerships for major medical facilities in the future.

## *Non-Recurring Maintenance*

Even though non-recurring maintenance (NRM) is funded through VA's Medical Facilities account, and not through a construction account, NRM is critical to VA's capital infrastructure. NRM embodies the many small projects that together provide for the long-term sustainability and usability of VA facilities. NRM projects are one-time repairs, such as modernizing mechanical or electrical systems, replacing windows and equipment, and preserving roofs and flooring. Nonrecurring maintenance is a necessary component of the care and stewardship of a facility. When managed responsibly, these relatively small, periodic investments ensure that the more substantial investments of major and minor construction provide real value to taxpayers and to veterans as well.

To maintain in the status quo, VA's NRM account must be funded at \$1.35 billion per year, based on estimated plant replacement value (PRV). The Administration is requesting \$1.057 billion for NRM in FY 2017. While this amount falls short of the PRV guideline, it is much closer to the actual need than VA has requested over the past several years. While more than the baseline \$1.35 billion per year will be required to reduce the more than \$20 billion of identified gaps within NRM, VA is investing more than \$800 million from funds that were made available through the Veterans Access, Choice, and Accountability Act in NRM in FY 2016 and FY 2017.

The IB partners believe VA should develop a PRV metric and publish its results. Adding the PRV to the SCIP will allow VA to more accurately determine the appropriate amount to request for NRM and objectively decide when a facility becomes more costly to maintain than to replace. Using the PRV as a tool, VA can more accurately determine the annual funding levels needed for NRM by facility, allowing for a reduction in the NRM backlog and fully funding future needs in a way that would be the more cost effective. The industry goal for NRM is approximately two percent of the PRV. At that rate, a facility could operate for 50 years or more without outpending its replacement cost. Knowing what percentage of the PRV is being spent and taking a long-term view of capital planning could allow Congress and VA to rationally assess when a facility would need to be replaced.

## **National Cemeteries**

In a strategic effort to meet the burial and access needs of our veterans and eligible family members, the NCA continues to expand and improve the national cemetery system, by adding new and/or expanded national cemeteries. Not surprising, due to the opening of additional national cemeteries, the NCA is expecting an increase in the number of annual veteran

interments through 2017 to roughly 130,000, up from 125,180 in 2014; this number is expected to slowly decrease to 126,000 by 2020. This much needed expansion of the national cemetery system will help to facilitate the projected increase in annual veteran interments and will simultaneously increase the overall number of graves being maintained by NCA to 3.7 million in 2018 and 3.9 million by 2020.

Even as the NCA continues to add veteran burial space to its expanding system, many existing cemeteries are exhausting their capacity and will no longer be able to inter casketed or cremated remains. In fact, as of 2016, the NCA expects four national cemeteries—Baltimore, Maryland; Nashville, Tennessee; Danville, Virginia; and Alexandria, Virginia—to reach their maximum capacities and will be closed to first interments, although they will continue to accept second interments.

With the above considerations in mind, the IB recommends \$275 million for FY 2017 for the Operations & Maintenance of the NCA. The IBVSOs believe that this should include a minimum of \$20 million for the National Shrine Initiative. Since FY 2013, national shrine funding has declined each year. We believe the NCA must continue to invest sufficient resources in the National Shrine initiative to ensure that this important work is completed, and that our veterans of the past will be memorialized in properly maintained fields of honor.

### **State Veterans Home Construction Grants**

Grants for state extend-care facilities, commonly known as state home construction grants, are a critical element of federal support for the state veterans' homes. The state home program is a very successful federal-state partnership in which VA and states share the cost of constructing and operating nursing homes and domiciliaries for America's veterans. State homes provide over 30,000 nursing home and domiciliary beds for veterans, their spouses, and gold-star parents of deceased veterans. Overall, state homes provide more than half of VA's long-term-care workload, but receive less than 15 percent of VA's long-term-care budget. States construction grants help build, renovate, repair, and expand both nursing homes and domiciliaries, with states required to provide 35 percent of the cost for these projects in matching funding.

VA maintains a prioritized list of construction projects proposed by state homes based on specific criteria, with life and safety threats in the highest priority group. Only those projects that already have state matching funds are included in VA's Priority List Group 1 projects, which are eligible for funding. In FY 2016, the estimated federal share for the 109 state home construction grants requests that had been submitted by states was over \$1 billion. Of that amount, the states had already secured their state matching funds required to put them in the Priority Group List 1 for 69 projects that will require \$550 million in federal matching funds. Last year, VA requested only \$80 million whereas the IBVSOs had recommended \$200 million; Congress ultimately appropriated \$120 million funding for FY 2016, which will fund only the first 13 projects on the FY 2016 Priority Group 1 List. Unfortunately, this year VA recommended only \$80 million for FY 2017, a 33 percent reduction from the FY 2016 appropriated level. With almost \$1 billion in state home projects still in the pipeline, the IBVSOs again recommend \$200 million for the state home construction grant program, which we estimate would provide funding for approximately



40 percent of the projects expected to be on the FY 2017 VA Priority Group 1 List when it is released at the end of this year.

We encourage the Committee to scrutinize the VA's budget with vigor. The IBVSOs thank you once again for the opportunity to submit this joint statement for the record. We would be pleased to provide the Committee additional information concerning any of the issues raised in our testimony.