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***STATEMENT OF
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COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
FEBRUARY 26, 2015***

Chairman Isakson, Ranking Member Blumenthal and Members of the Committee:

On behalf of the DAV and our 1.2 million members, all of whom were wounded, injured or made ill from their wartime service, I am pleased to present recommendations of *The Independent Budget (IB)* for the fiscal year (FY) 2016 budget related to veterans' benefits and the Veterans Benefits Administration (VBA). The IB is jointly produced each year by DAV, AMVETS, Paralyzed Veterans of America and Veterans of Foreign Wars of the United States. This year's IB Budget Report as well as the IB's Policy Agenda for the 114th Congress contain numerous recommendations to improve veterans' benefit programs and the claims processing and appeals system; however, in today's testimony I will highlight just some of the most critical ones for this Committee to consider, particularly those requiring new resources.

Mr. Chairman, five years ago the Veterans Benefits Administration (VBA) set out to transform and modernize its systems and procedures for processing veterans' claims for benefits, particularly for disability compensation. Then-VA Secretary Shinseki announced ambitious "aspirational goals" for transforming the claims system, promising that by the end of 2015 VBA would decide all claims for disability compensation within 125 days and that they would be completed to a 98% accuracy standard. This aspirational goal soon became enshrined as VBA's bedrock strategic target, against which all of its plans and progress would be measured. Today, with less than a year remaining, there are questions about whether either of those goals can be achieved.

VBA HAS MADE PROGRESS IN TRANSFORMING CLAIMS PROCESSING

Mr. Chairman, unquestionably, over the past five years VBA has achieved remarkable progress, much of it visible and measurable. A new organizational model has been implemented, new technologies deployed and new business processes adopted. The fully developed claims (FDC) program started as a pilot test, and now about 40 percent of all claims filed today are done through the FDC program. Standardized medical evidence forms known as Disability Benefits Questionnaires (DBQ) are now used universally, and are an essential component of creating an automated claims processing system. And the development and deployment of the Veterans Benefits Management System (VBMS) and its "e-Folder" have dramatically enhanced VBA's ability to manage the volume of documents and information required to process over a million claims yearly. Today, VA receives more claims, processes more claims, has fewer claims

pending in its inventory, has fewer claims in backlog status, takes less time to process claims, and issues decisions that are more accurate.

Five years ago, no claims were processed electronically; today with VBMS fully deployed to all 58 regional offices, more than 93% of VBA's roughly 500,000 pending claims are fully electronic. There have been more than one billion images scanned into VBMS or other VA systems, and both new and legacy claims documents and files continue to be converted into digital documents and uploaded into VBMS. Veterans' e-Folders in VBMS can be read at all VBA offices, including the Appeals Management Center (AMC) and Board of Veterans' Appeals (Board), as well as at 148 VHA facilities and by VSOs that represent veterans. About 75 percent of the rating schedule, which covers more than 93 percent of all rating decisions, has been coded into "calculators" and embedded in VBMS to assist Rating Veterans Service Representatives (RVSRs) make rating decisions.

Both e-Benefits and the Stakeholder Enterprise Portal (SEP) allow veterans and their authorized representatives to initiate, submit and track their claims online. These technological advancements have enabled VBA to make major improvements in the size of the backlog, the timeliness of claims and the accuracy of decisions; however, analysis of currently available data raises questions about whether the level and trends of progress are sufficient to meet VBA's 2015 goals.

According to VBA's Monday Morning Workload Analysis reports, at its peak early in 2013, the total number of pending claims for disability compensation and pension rose to over 860,000, with the backlog (those pending over 125 days) topping 600,000. As of last week, the total pending workload of claims was reduced by more than 40 percent to just under 500,000 and the number in backlog status was cut by over 60 percent down to about 230,000.

Based on data from the Aspire Dashboard, the timeliness of claims has also improved; however, this performance remains far short of the 2015 goal of all claims being completed in less than 125 days. In January 2013, the average processing time and the average days pending metrics were both approximately 280 days. By January 2015, the average days processing was down to about 200 days and the average days pending was about 150 days. However, it is important to point out that both of those timeliness measures are for "average" times, whereas VBA's 2015 target is based on *all* claims being completed with 125 days. To have all completed in 125 days might require an "average" processing time of 80 or 90 days. The current trends raise questions about whether this target can be achieved by the end of 2015.

Finally, the most important metric of a properly functioning claims processing system is the accuracy of decisions. After all, claims completed rapidly do a veteran little good if the decision results in a wrongful denial. In January 2013, VBA's claims accuracy based on its Systematic Technical Accuracy Review (STAR) was 86.4 percent for the 12-month average, and 86.8 percent for the three month average. Over the past two years, the accuracy rate had increased steadily reaching 91 percent for the 12-month measure ending in January 2015, and 91.5 percent for the 3-month measure. Among the reasons for these increases were sharpened focus on training, testing and quality control, including the creation of Quality Review Teams (QRTs), the dramatic reduction of Veterans Claims Assistance Act of 2000 (VCAA) "duty to

assist” notification errors due to the inclusion of this notice directly on application forms, and the elimination of errors due to automation. However, whether it is possible to reach 98 percent accuracy for claims remains an open question, particularly as the average number of issues per claim continues to rise.

REALISTIC GOALS ARE KEY TO LONG-TERM SUCCESS

Overall, VBA has made significant progress toward reaching the 2015 goals; however, with less than a year remaining to reach those goals, VBA must openly and honestly assess whether those goals are still appropriate and achievable. Vital lessons must be learned from the VA’s scandals last year of holding onto unrealistic and unachievable goals. The Veterans Health Administration’s (VHA) access standard that outpatient appointments must be scheduled within 14 days of the patient’s desired date, was widely viewed as unrealistic considering VHA’s limited capacity to provide timely care to new patients. Faced with the dilemma of an unreachable and unchangeable standard, some employees made the decision to manipulate data and cover up true waiting lists rather than be held accountable for failure to meet this standard.

The critical question that VA and Congress must confront now is whether the goals established five years are working to drive VBA’s performance in a positive direction or whether it would be better for veterans and VA to review, reassess and if necessary, revise VBA’s target goals before they start to distort behavior in the chase to meet these unreachable standards. If VBA concludes they are not, VBA must work in a transparent and collaborative manner with Congress and its VSO partners to set new goals, revise its strategies and plans, and request new resources if needed to reach those goals.

PERMANENTLY ENDING THE BACKLOG REQUIRES SUFFICIENT STAFFING

Recognizing that rising workload, particularly claims for disability compensation, could not be addressed without additional personnel, Congress provided the VBA with more than 3,000 full time employee equivalents (FTEE) between 2008 and 2013, primarily in Compensation Service. However, relative to VBA’s total workload, including appeals, these increases have not been sufficient to keep pace with rising workload, including non-rating work and appeals work, as evidenced by VBA’s own resource allocation and personnel decisions.

VBA’s largest increases in productivity – periods where the backlog declined most markedly – occurred while VBA enforced a policy of mandatory overtime for its workforce. During holiday periods, when mandatory overtime was curtailed, production fell off measurably. Furthermore, over the past couple of years many VA Regional Offices (VARO) have diverted some of their senior employees from both quality review and appeals work to focus on claims processing to drive down the backlog. Specifically, both Decision Review Officers (DRO) and Quality Review Specialists (QRS) have been performing claims development and rating duties during both regular and overtime working hours at many VAROs. The reliance on this supplemental claims processing workforce is a clear indicator that VBA is insufficiently staffed to handle its current workload.

A blend of technology and people will be necessary to provide veterans and their dependents with timely accurate decisions. Although this new claims processing system has the potential to transform the delivery and accuracy of benefits, some additional time will be required before the full effect of these changes will be realized. Therefore, in order to increase productivity now, while allowing for future productivity increases, the IBVSOs propose that VBA be provided with 1,700 additional FTEE, half of them permanent and the other half under a two-year temporary authority. The temporary FTEE request is based on an approach included in the stimulus legislation that was passed several years ago that allowed the VBA to hire several thousand employees for temporary, two-year terms. At the end of those two years, many of these temporary employees transitioned into permanent positions through staff attrition.

Allowing VBA to again hire employees for two-year temporary terms could supplement the staff and alleviate reliance on mandatory overtime, and further reduce the backlog of disability claims. Such an initiative would also provide an outstanding opportunity for VBA to develop a generous pool of trained, qualified candidates for succession of full-time positions vacated by employees leaving VBA.

While this infusion of resources is necessary to supplement the current workforce, the IBVSOs continue to believe that a more accurate staffing and production model is required to determine VBA's long-term resource needs as new technology and business processes evolve.

In FY 2016, the IBVSOs recommend providing VBA's compensation service with 850 new permanent FTEE and 850 two-year temporary FTEE. These additions will require an increase in appropriations of \$158.9 million.

IT MODERNIZATION MUST BE ACCELERATED

The most critical elements of VBA's claims processing transformation are its new IT systems created over the past five years: VBMS, e-Benefits and SEP. These three systems have led the way in moving claims processing from an outdated paper-based system to the modern digital system. Despite early challenges, the VBMS program has proven to be an effective platform for processing claims in a digital environment. The objective now is to fully integrate all elements of the claims system, VSOs and other VBA business lines to create a unified digital work environment.

Current planning at VBA calls for some critical elements of the claims process, including major modules to allow electronic transmission to VBMS of examinations and service treatment records from the Department of Defense, other government agencies, private businesses and other organizations, to be completed over the next several years. Although VBA could use these modules immediately, budget constraints have extended planning into future years. Similarly, plans to expand VBMS, or another compatible IT solution, to all remaining VBA business lines and the Board, are also being stretched out to future years due to lack of budget availability. We believe that Congress must provide sufficient resources to VBA now to allow these critical elements of VBMS and associated IT systems to be accelerated.

VBA must also place greater emphasis on integrating VSOs into VBMS and resolving lingering issues in SEP, both of which are essential to maximizing the benefits that VSO service officers offer in resolving claims more quickly and accurately.

The IBVSOs recommend increasing the amount of IT funding allocated to the VBMS program in FY 2016 by \$60 million to support the specific IT enhancements

CLAIMS REFORM MUST INCLUDE APPEALS REFORM

While the claims backlog has dropped significantly as indicated above, the backlog of pending appeals has risen over the past couple of years. Despite the fact that the Board completed more than 55,000 appellate decisions in FY 2014, an increase of 10 percent over the highest previous total, this improvement was primarily driven by an increase of more than 100 new FTEE. However, the number of appeals at various stages working their way through VBA toward the Board now tops 300,000. In order to address the pending workload in a reasonable timeframe, the Board will need to utilize a multi-pronged approach that includes increasing the size of staff, modernizing IT systems and innovative programs to streamline work.

One essential element needed to permanently address the backlog of pending appeals is to complete VBA's transformation and reform of the claims process. As the claims error rate goes down, and as confidence in the claims process grows, the percentage of claimants who later file appeals would be expected to fall. However, as VBA increases its productive capacity and the number of completed claims, an increase in the number of appeals could occur even if the accuracy rate continues to climb. Even accurate decisions may be appealed if they are unfavorable to claimants.

BOARD MUST INCREASE STAFFING TO MEETING RISING WORKLOAD

After several years of reduction in workforce, the Board has significantly increased its FTEE levels over the past three years, rising from an average of 510 FTEE in FY 2012 to an authorized level of 640 FTEE in FY 2015. Significant training and orientation are required for new Board attorneys to reach full productivity. The time taken away to train and mentor these attorneys reduces appeals output; therefore, some temporary losses in completed appeals may occur even with these new staff resources.

As indicated above, over the past five years the Board has averaged approximately 90 appeals dispositions per FTEE, producing a record 55,532 decisions in FY 2014. However, with the inventory of pending appeals now topping 360,000 in various stages at both VBA and the Board, there are simply not enough hands to do all the work that will be required, even with further efficiencies gained through technology and other reforms.

For FY 2016, the IBVSOs recommend an increase of 120 new FTEE, a 20 percent increase over the FY 2015 authorized level, which will require an additional \$17 million.

THE BOARD'S IT NEEDS MUST BE ADDRESSED NOW

While VBMS for compensation claims processing has received virtually all of the IT attention and resources up to this point, the extension and adaptation of VBMS for the Board's use has been pushed back to future years due to limited budgets. While the Board has access to e-Folders to review claims records, the Board is unable to process appeals within a fully electronic environment. With the inventory of pending appeals at both VBA and the Board growing, IT modernization at the Board must move forward as a high priority.

The IBVSOs recommend that at least \$15 million be allocated in FY 2016 for IT modernization to aid the Board.

VBA MUST STRENGTHEN THE DECISION REVIEW OFFICER PROGRAM

Another key approach to lowering the appeals workload for the Board is to strengthen the DRO post-determination review process, which can often be more effective or timely than the traditional appeals process because it resolves appellate-related disputes at the VARO level. A DRO has *de novo* authority, meaning he or she reviews the entire appeal file with no deference given to the rating board decision. DROs can overturn or uphold a previous decision, hold hearings and perform any activity necessary to assemble evidence, including ordering medical examinations. Even if a DRO is unable to grant the benefit sought on appeal, any additional development work he or she performs could potentially shorten the time required by the Board to produce a decision.

For years, the IBVSOs have voiced concerns to VBA and Congress regarding the erosion of the DRO program. The number of DROs in the system is insufficient for the amount of DRO work generated in VAROs. Also the assignment of initial claims processing work to DROs at numerous VAROs further detracts from their intended work. Having DROs perform claims processing work when there is more than enough appeals work pending is merely shifting the weight of the backlog from one area to another. Over the past year VBA leadership has made some efforts to limit or eliminate the use of DROs in performing claims work; however, we continue to observe DROs at many VAROs working on claims processing activities. While we understand that VBA has limited resources but seemingly unending claims work, it is imperative that VBA ensure that DROs focus solely on appeals-related work. If additional personnel are required to process pending and future claims in a timely manner, VAROs must request additional resources, not repurpose DROs.

FULLY DEVELOPED APPEALS PILOT PROGRAM

In order to seek new solutions that could improve the appeals process for veterans, the IBVSOs, other VSO stakeholders, VBA and the Board worked to reach consensus on a new proposal to create a "fully developed appeals" (FDA) program modeled after the fully developed claims (FDC) program. The premise of the FDA program is that the appellant would assume responsibility for gathering all private evidence necessary for the appeal and agree to eliminate some steps and work required by VBA and the Board. In return the veteran would receive a

significantly quicker appeal decision by the Board with no diminution in the quality or accuracy of that decision.

The FDA would become an additional option that the claimant could choose any time during the one-year period allowed to file an NOD. When veterans make the FDA election, they would be required to submit any and all additional evidence they want considered as part of their appeals and any arguments to support their appeals. They would also be required to certify that they have been fully informed about the FDA program, that they understand what they are required to do and not do, what VBA and the Board are required to do and not do, and that they consent to voluntarily filing their appeals in this manner. With this certification, the veterans' rating decisions and complete files—supplemented by any new evidence or argument submitted by veterans or their representatives at time of filing their FDA—would be transmitted directly to the Board and placed on a new FDA docket for date-ordered review and decision. Unlike the traditional appellate process, no Statement of the Case (SOC) would be created and issued, no VA Form 9 would be completed, no local VARO hearings or reviews would be conducted, no Board hearings would be held, no Supplemental Statement of the Case would be created, and no Form 8 certification process would occur. The elimination of these steps alone could save two to three years of processing at the VARO compared to a traditional appeals process.

Similar to the FDC program, the FDA program would require the veteran to certify that there is no additional private evidence relevant to the appeal under consideration, and if the veteran later submitted additional evidence after the date of filing, the appeal would revert from the FDA program and return to the traditional appeals process, without any loss of rights or options. The veteran could also withdraw his or her appeal from the FDA process at any time for any reason. The Board, however, would still be required to develop any federal evidence, examinations or independent medical evaluations determined necessary for the Board to make its decision. The IBVSOs believe it is important that the FDA program be a time-limited, statutorily-authorized pilot program in order for VA to provide Congress and stakeholders the ability to oversee the program's design, implementation and operation, as well as to ensure that veterans' rights are fully protected.

It is important to understand that the FDA proposal is not a “magic bullet” that will eliminate the backlog of pending appeals; it is designed to be another option – one of many for veterans seeking to overturn an incorrect or unfavorable claims decision. As discussed above, the IBVSOs continue to strongly support the DRO process, and the FDA program is neither a substitute nor replacement for it. Instead, it will provide another option that each individual veteran and his or her representative, if any, can consider in making decisions about the most effective and timely process to resolve appeals.

RESOURCES FOR VOCATIONAL REHABILITATION AND EMPLOYMENT SERVICE

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 through five tracks: reemployment, rapid access to

employment, self-employment, employment through long-term services, and independent living. Another key program helping to deliver VR&E assistance at a key transition point for veterans is the VetSuccess on Campus (VSOC) program which is operating 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's (DOD) and VA's joint Integrated Disability Evaluation System (IDES).

In order to meet the critical needs of veterans seeking employment, careers or more independent living, staffing levels throughout VR&E services must be commensurate with current and future demands. At the end of FY 2013, VR&E employed a total of 1,343 FTEE. VBA projected an increase in FY 2014 to an authorized level of 1,442 FTEE. In the FY 2015 budget request, VBA did not recommend increasing this staff and was again authorized 1,442 for FY 2015, despite an increasing workload.

In order for VR&E to keep pace with demand, the IBVSOs project the total number of VR&E participants at roughly 165,000 for FY 2016, nearly 10 percent in participant growth. At present there are roughly 974 VR&E counselors managing an active client caseload of roughly 140,000 participants which averages a counselor-to-client ratio of roughly 1 to 135. Ideally, a reasonable client-to-counselor ratio would consist of one VR&E counselor for every 125 veterans as has been advocated by the IBVSOs for the past several years. However, the average can be misleading as there are higher and lower actuals throughout VAROs. As an example, the Cleveland VARO's counselor to client ratio is 206 cases for every VR&E counselor, and in the Fargo VARO, 64 cases for each VR&E counselor. Therefore, it is essential that staffing increases be properly distributed throughout all of VR&E to ensure that counselors' caseloads are equitably balanced.

For FY 2016, the IBVSOs recommend an additional 382 FTEE, of which 277 would be dedicated as VR&E counselors and the remaining 105 employees dedicated to support services bringing VR&E's total FTEE strength to 1,824. The additional funding required for VR&E for FY 2016 would be \$41.8 million.

OTHER PRIORITY BENEFIT PROPOSALS

Eliminate rounding down of veterans' and survivors' benefit payments

In 1990, Congress, in an omnibus reconciliation act, mandated veterans' and survivors' benefit payments be rounded down to the next lower whole dollar. While this policy was initially limited to a few years, Congress has continued to extend it every few years. Each year's COLA is calculated on the rounded-down amount of the previous year's payments. While not significant in the short run, the cumulative effect over time results in a significant loss to beneficiaries.

The effect of rounding down monthly COLA increases has eroded approximately \$10 per month for every veteran or survivor. For example, a veteran totally disabled from service-connected disabilities would have received \$1,823 per month in 1994 and today will be paid at \$2,848 per month. Had that veteran received the full COLA each year for the past two decades,

he or she would receive about \$120 extra this year, and cumulatively over two decades would have received almost \$2,000 more. The Independent Budget veterans service organizations note and greatly appreciate that the most recent COLAs were not rounded down and urge Congress not to return to a policy of rounding down veterans' and survivors' benefits payments.

STRENGTHEN SUPPORT FOR SURVIVOR BENEFITS PROGRAMS

Increase DIC rates

The current rate of compensation paid to the survivors of deceased members is inadequate and inequitable when measured against other federal programs. Under current law, DIC is paid to an eligible surviving spouse if the military service member died while on active duty or the veteran's death resulted from a service-related injury or disease.

DIC payments were intended to provide surviving spouses with the means to maintain some semblance of economic stability after the loss of their loved ones. All surviving spouses who rely solely on DIC, regardless of the status of their sponsors at the time of death, face the same financial hardships.

The IBVSOs recommend that the rate of DIC should be increased from 43 percent to 55 percent of a 100 percent disabled veteran's compensation for all eligible surviving spouses.

Eliminate DIC and SBP offsets

The current requirement that an annuity under the DOD SBP be reduced by an amount equal to DIC is inequitable because no duplication of benefits is involved. A veteran of military service is compensated for the effects of service-connected disability. When a veteran dies of service-connected causes or following a substantial period of total disability from service-connected causes, eligible survivors or dependents receive DIC from the VA.

Career members of the armed forces earn entitlement to retired pay after 20 or more years of service. Survivors of military retirees have no entitlement to any portion of the veteran's military retirement pay after his or her death, unlike many retirement plans in the private sector. Under the SBP, deductions are made from military pay to purchase a survivor's annuity. This benefit is not gratuitous but is purchased.

Upon a retiree's death, the SBP annuity is paid monthly to eligible beneficiaries. If the veteran died from other than service-connected causes or was not totally disabled by service-connected disability for the required time preceding death, beneficiaries receive full SBP payments. However, if the veteran's death was a result of military service or after the requisite period of total service-connected disability, the SBP annuity is reduced by an amount equal to the DIC payment. When the monthly DIC rate is equal to or greater than the monthly SBP annuity, beneficiaries lose the SBP annuity in its entirety.

The IBVSOs recommend that Congress repeal the inequitable offset between DIC and Survivor Benefit Plan (SBP) because no duplication occurs between these two separate and distinct benefits.

Allow remarriage after age 55

Current law allows retention of DIC upon remarriage at age 57 or older for eligible survivors of veterans who die on active duty or of a service-connected injury or illness. However, remarried survivors of retirees of the Civil Service Retirement System, for example, obtain a similar benefit at age 55. Equity with beneficiaries of other federal programs should govern Congressional action for this deserving group, therefore Congress should lower the age required for remarriage for survivors of veterans who have died on active duty or from service-connected disabilities. This change in eligibility would also bring DIC in line with Survivor Benefit Plan rules that allow retention with remarriage at the age of 55.

Although the IBVSOs appreciate the action Congress took to allow restoration of this rightful benefit, the current age threshold of 57 years should be lowered to 55 for all eligible surviving spouses, consistent with other similar programs.

Mr. Chairman, that concludes our testimony and I will be happy to answer any questions from you or other members concerning these issues.