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***STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIALS AFFAIRS
AND
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
UNITED STATES HOUSE OF REPRESENTATIVES
MARCH 15, 2018***

Chairman Bost, Chairman Arrington, Ranking Member Esty, Ranking Member O'Rourke and Members of the Subcommittees:

Thank you for inviting DAV (Disabled American Veterans) to testify at this joint hearing of the Subcommittee on Disability Assistance and Memorial Affairs and Subcommittee of Economic Growth regarding the fiscal year (FY) 2019 budget submission of the Department of Veterans Affairs (VA). As you know, DAV is a non-profit veterans' service organization comprised of 1 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

As you know, DAV is a member of *The Independent Budget* (IB), and with our partners, Paralyzed Veterans of America and Veterans of Foreign Wars of the United States, we jointly develop and issue budget recommendations each year for VA programs, services and benefits. In today's testimony, I will highlight DAV's and the IB's budget recommendations for the Veterans Benefits Administration (VBA) for fiscal year 2019 and compare them to the Administration's proposed budget released in February 2018.

GENERAL OPERATING EXPENSES--VETERANS BENEFITS ADMINISTRATION

The Veterans Benefits Administration (VBA) account is comprised of six primary divisions. These include Compensation, Pension, Education, Vocational Rehabilitation and Employment (VR&E), Housing and Insurance. The increases recommended for these accounts primarily reflect current services estimates with the impact of inflation representing the grounds for the increase. However, two of the subaccounts—Compensation and VR&E—also reflect modest increases in requested staffing to meet the rising demand for those benefits and backlogs of pending workload.

We recommend approximately \$3.104 billion for the VBA for FY 2019, an increase of approximately \$194 million over the estimated FY 2018 appropriations level. Our recommendation includes approximately \$92 million in additional funds in the Compensation account above current services, and approximately \$18 million more in the VR&E account above current services to provide for new full-time equivalent employees (FTEE).

The Administration's FY 2019 budget request for VBA is approximately \$2.9 billion, more than \$200 million less than our recommendations. Below are further details regarding some of the specific recommendations that result in this disparity.

COMPENSATION SERVICE PERSONNEL

In recent years, VBA has made significant progress in reducing the claims backlog, which was over 610,000 claims in March 2013. As of March 3, 2019, the claims backlog is roughly 78,000 claims, a decrease of 87 percent from its peak, and a decrease of about 18,000 claims compared to the year prior. VA defines a backlogged disability claim as one pending over 125 days. Overall, the total pending claims workload decreased from about 390,000 in January 2017, to just over 328,000 claims today, a decrease of 18 percent in the past year. During that time, the average days to complete a claim dropped from 119 days last year to 103 days this January.

However, the trends on accuracy have gone the other direction. In January 2015, the 12-month issue-level accuracy was approximately 96 percent; today it is down to about 94.5 percent, though it has leveled off over the past 10 months. The 12-month claim-based accuracy measurement has dropped from approximately 91 percent in January 2015, to less than 85 percent today. While it is critical to continue reducing the backlog and the time it takes to complete a claim, VBA must refocus on completing claims accurately the first time.

In addition, VBA has a backlog of non-rating related claims, such as for dependency status changes, that must also be addressed in a timely manner. While continued advancements in the functionality of e-Benefits and other IT systems have allowed veterans and their representatives to directly make dependency changes more quickly, this non-rating related workload is too often given low priority status in Regional Offices. VBA must provide the resources and attention necessary to consistently complete this work in a timely manner.

It is also critical that VBA have sufficient funding for IT development and maintenance. In particular, VBA must devote additional resources to stakeholder IT enhancements in order to allow VSOs to more efficiently submit and review claims they represent. This will not only provide better service to veterans, it will also reduce some of the burden and workload that would otherwise fall on VBA personnel.

Another major driver of VBA workload is appeals processing. As of February 28, 2018, there are approximately 462,000 pending appeals of claims decisions at various stages between VBA and the Board of Veterans Appeals (Board), with approximately 306,000 requiring further processing at VBA Regional Offices.

Last year, Congress approved the Veteran Appeals Improvement and Modernization Act (P.L. 115–55) in order to help streamline the appeals process and provide better, timelier decisions for veterans. In November, VBA began early implementation of the law through the Rapid Appeals Modernization Program (RAMP) pilot that invites veterans with pending appeals to opt into the new system through either the Higher Level Review or Supplemental Claim option. RAMP may have the effect of redirecting some workload from the Board back to VBA, however, once implemented, the new law will also eliminate many of the current appeal processes that take place at the Agency of Original Jurisdiction (AOJ), such as Statements of Case, and Form 9 Certification.

Over the past several years, VA has requested, and Congress has provided, additional funding to increase staffing at VBA to address the claims backlog. However, there have not been commensurate increases in funding to address the backlog of appeals pending inside VBA.

For FY 2019, we recommend an additional 900 FTEE for VBA, requiring an estimated \$92.4 million increase in funding. Of those new FTEE, 500 should be allocated to the Compensation Service to address the pending and future appeals workload; another 350 should be allocated to address the growing backlog of non-rating related work such as dependency claims; and 50 should be allocated to the Fiduciary program to address increased workload in recent years, particularly related to veterans participating in VA’s Caregiver Support programs.

The Administration’s FY 2019 budget requests an additional 605 FTEE to implement the new appeals process and reduce the inventory of pending appeals. We support the Administration’s commitment to reducing the large amount of legacy appeals while also implementing the new appeals system. We concur with VA’s proposed increase in additional FTEE.

We are concerned, however, that the Administration is not requesting any additional FTEE for non-rating related work, such as dependency claims. A concerted effort will need to be undertaken to reduce these non-rating issues as veterans should not have to wait 12 months or longer to have dependents added to or removed from their benefits.

A July 2015 VA Inspector General report on the Fiduciary program 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....”

Last year we recommended 100 additional FTEE to address this problem, however since VBA reallocated an additional 51 FTEE to the Fiduciary program this fiscal year, then we had to reduced our recommendation to 50 new FTEE for FY 2019.

In recognition that the program has experienced a 73 percent growth since 2011, and staffing has not kept up with the needs of the program, the Administration requested an additional 225 FTEE for FY 2019 for the Fiduciary program. We concur with this increase as these veterans can be among the most vulnerable beneficiaries in VBA.

Finally, we would note that as the Veterans Appeals Improvement and Modernization Act of 2017 continues to be fully implemented, including RAMP, VBA must develop more accurate workload, production and staffing models in order to accurately forecast future VBA resource requirements.

VR&E SERVICE PERSONNEL

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 program deployed at 94 college campuses. Additional VR&E services are provided at 71 select military installations for active duty service members undergoing medical separations through the Department of Defense and VA's joint Integrated Disability Evaluation System (IDES).

Over the past four years, program participation has increased by an estimated 16.8 percent, while VR&E staffing has risen just 1.8 percent. VA projects program participation will increase another 3.1 percent in FY 2019, and it is critical that sufficient resources are provided not only to meet this rising workload, but also to expand capacity to meet the full, unconstrained demand for VR&E services.

In 2016, Congress enacted legislation (P.L. 114–223) that included a provision recognizing the need to provide a sufficient client-to-counselor ratio to appropriately align veteran demand for VR&E services. Section 254 of that law authorizes the Secretary to use appropriated funds to ensure the ratio of veterans to Vocational Rehabilitation Counselors (VRC) does not exceed 125 veterans to one fulltime employment equivalent. Unfortunately, for the past three years, VA has requested no new personnel for VR&E to reach this ratio.

In order to achieve the 1:125 counselor-to-client ratio established by Congress, we estimate that VR&E will need another 143 FTEE in FY 2019 for a total direct workforce of 1,585, to manage an active caseload and provide support services to almost 150,000 VR&E participants. At a minimum, three-quarters, of the new hires should be VRCs dedicated to providing direct services to veterans. This would require an increase of \$18 million for FY 2019.

We are disappointed by the Administration's proposal for a decrease of \$257 million for VR&E for FY 2019. While we understand this is partly due to lower pricing for the Transition Assistance Program (TAP) for those separating from service, this disregards the increased need of VR&E services veterans may require many years after separation. The Administration acknowledges that since 2013, participation in this program increased by 17 percent and noted a rolling average counselor to caseload ratio of 136.4, however, their budget request fails to request additional FTEE to move closer to a 1:125 counselor-to-client ratio.

GENERAL ADMINISTRATION

The General Administration account is comprised of ten primary divisions. These include the Office of the Secretary, the Office of the General Counsel, the Office of Management, the Office of Human Resources and Administration, the Office of Enterprise Integration, the Office of Operations, Security and Preparedness, the Office of Public Affairs, the Office of Congressional and Legislative Affairs, and the Office of Acquisition, Logistics, and Construction, and the Veterans Experience Office (VEO). This marks the first year that the VEO has been included in the divisions of General Administration.

Additionally, a number of the divisions reflect changes to the structure and responsibilities of those divisions. For FY 2019, we recommend approximately \$355 million, an increase of more than \$25 million over the FY 2018 estimated level. This increase primarily reflects an increase in current services based on the impact of uncontrollable inflation across all of the General Administration accounts.

BOARD OF VETERANS' APPEALS

With the enactment of the Veterans Appeals Improvement and Modernization Act (P.L. 115-55), the Board in 2018 will be developing and implementing the new appeals system scheduled to begin in February 2019. Once fully implemented, the Board will operate five separate dockets concurrently, which will require new training and new IT functionality to manage this workload. The Board has presented its implementation plans to Congress and must adhere to the timelines laid out in order to finalize new regulations and prepare its workforce. In addition, sufficient IT resources must be provided to the Board to complete development of new workload management tools.

Once the new appeals system is stood up in 2019, overall workload coming into the Board is expected to begin leveling off, or perhaps begin to decrease, as veterans take advantage of the expanded options to resolve appeals at the AOJ level. Thus, it is too early to project whether the Board will require more or less resources in its future state.

For FY 2018, the Board is projecting that it will produce 81,000 decisions, the highest total in the Board's history, though there will still remain a significant backlog of appeals in the pipeline to the Board. VA's budget submission for FY 2018, requested funding to increase FTEE levels to 1,050, continuing staffing increases in recent years to expand capacity and allow the Board to address both the backlog of legacy appeals and the transition to the new appeals system.

For FY 2019, we do not recommend any additional staffing increases at the Board; however, it is critical that the Board complete the hiring and training of new personnel as rapidly as possible. Further, it will be critical for VA and Congress to carefully and regularly monitor

workload, timeliness, quality and other metrics to ensure that the Board is and remains appropriately staffed in the future.

For FY 2019, the Administration is requesting a budget of \$175 million, an increase of \$8.7 million over FY 2018 funding. The increase is to allow for use of carryover funds for personnel costs and to continue to fund the additional staff to be hired in 2018. We are pleased with these proposed increases as it reflects the Administration's commitment to reducing legacy appeals and to be properly prepared for the implementation of the Appeals Modernization Act.

ADMINISTRATION'S PROPOSED LEGISLATION

Within the Administration's VA budget request were legislative proposals on several topics that we find troubling because it could have significant negative consequences for veterans and their families. We oppose the following proposals:

- **Clarify Evidentiary Threshold for Ordering VA Examinations:**

VA seeks to amend 38 U.S.C. § 5103A(d)(2) to clarify the evidentiary threshold at which VA, under its duty to assist obligation in § 5103A, is required to request a medical examination for compensation claims. We oppose this proposal would raise the threshold for obtaining medical evidence and make it more difficult to receive favorable claims decisions. While this proposal estimates it would save the federal government over \$900 million in ten years, it does not reflect the amount of rightful compensation that would be lost to veterans nor does it contemplate the additional resources necessary to resolve an increase of appeals on claim denials.

- **Elimination of Payment of Benefits to the Estates of Deceased Nehmer Class Members and to the Survivors of Certain Class Members:**

VA seeks to amend 38 U.S.C. § 1116 to eliminate payment of benefits to the estates of deceased Nehmer class members and to survivors of certain class members when such benefits are the result of presumptions of service connection established pursuant to §1116 for diseases associated with exposure to Agent Orange and certain other herbicide agents. This proposed legislation would deny veterans' families benefits that would have otherwise been due to their deceased veteran family member as a result of exposure to these toxic chemicals while in service. We oppose any such legislation.

- **Clarify Chemicals at Issue for Purposes of Presumptive Service Connection for Veterans Serving in the Republic of Vietnam:**

VA seeks to amend 38 U.S.C. § 1116 to define the harmful chemicals, specifically Tetrachlorodibenzo-p-dioxin (TCDD), used in herbicides by claiming those were only

used in Vietnam. Herbicides with TCDD were used outside of Vietnam and suggesting otherwise appears to be an attempt to save money at the expense of disabled veterans. We strongly oppose this proposal to limit disability benefits based on the location of herbicide exposure.

Mr. Chairmen, that concludes my testimony on behalf of DAV. I would be happy to answer any questions you or other members of the Subcommittees may have.