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**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JANUARY 30, 2018**

Mr. Chairman and Members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this hearing of the House Veterans' Affairs Committee concerning the implementation of the Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55).

As National Service Director, I want to thank this Committee for its dedication and efforts to modernize and improve the VA appeals process for all veterans and claimants. As one of the key stakeholders who helped develop the Veterans Appeals Improvement and Modernization Act of 2017, DAV strongly supports and is fully committed to its timely and faithful implementation.

Mr. Chairman, as you may know, DAV is a congressionally chartered national veterans' service organization of more than one million wartime veterans, all of whom were injured or made ill while serving on behalf of this nation. To fulfill our service mission to America's injured and ill veterans and the families who care for them, DAV directly employs a corps of more than 260 National Service Officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every Department of Veterans Affairs (VA) regional office (VARO) as well as other VA facilities throughout the nation. Together with our Chapter, Department, Transition and County Veteran Service Officers, DAV has over 4,000 accredited representatives on the front lines providing free claims and appeals services to our nation's veterans, their families and survivors.

In 2017, DAV NSOs interviewed over 300,000 veterans and their families and filed over 192,000 new claims for benefits for the injured and ill veterans we represented before the VA. We currently represent over one million veterans or survivors, making DAV the largest veterans service organization (VSO) providing claims assistance. In addition, DAV has a National Appeals Office that represents veterans, dependents and survivors in their appeals before the Board of Veterans' Appeals (Board). In fiscal year 2017, DAV provided representation for 31 percent of all appeals decided by the Board, a caseload of 16,400 appeals, more than any other VSO. This testimony reflects the collective experience and expertise of our thousands of dedicated and highly trained

service officers who provide free claims and appeals assistance to hundreds of thousands of veterans and survivors each year.

In 2014, DAV organized a workgroup consisting of subject matter experts from VA, the Board and other VSO stakeholders, to seek consensus on commonsense ways to help reform and improve the appeals process. This collaboration led to development of the Fully Developed Appeals pilot proposal, which was introduced and made progress as legislation in both the House and Senate. In 2016, VA convened a new workgroup with a much more ambitious goal: overhaul the entire appeals process. The resultant appeals modernization legislation was produced through a remarkable collaboration between the VA, Board and VSO stakeholders representing veterans, including DAV.

Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55)

On August 23, 2017, the Veterans Appeals Improvement and Modernization Act of 2017 was signed into law. The legislation comprehensively reforms the VA appeals system, fully protecting the due process rights of veterans while creating multiple options for them to receive their decisions in a more timely and judicious manner. The critical core of the new system provides veterans multiple options to address unfavorable claims decisions, introduce new evidence at both the Board and VBA, and protect their earliest effective dates without having to be locked into the current long and arduous formal appeals process.

In general, veterans unsatisfied with their claims decision will have three main options. First, there will be an option for a local Higher Level of Review of the original claim decision based on the evidence of record at the time of the claim decision. Second, there will be an option for a Supplemental Claim when new and relevant evidence is presented or a predetermination hearing requested. Third, there will be an option to pursue an appeal, via Notice of Disagreement (NOD), to the Board, with or without new evidence or a hearing. Veterans must elect one of these three options within one year of the claims decision to protect their effective date.

The central dynamic of the new system is that a veteran who receives an unfavorable decision from one of these three main options may then pursue another option. As long as the veteran continuously pursues a new option within one year of the last decision, they would be able to preserve their earliest effective date, if the facts so warrant. Each of these options, or “lanes,” as some call them, have different advantages that allow veterans to elect what they and their representatives believe will provide the quickest and most accurate decision.

For the higher-level review option, the veteran can choose to have the review done at the same local VARO that made the claim decision, or at another VARO, which would be facilitated by VBA’s electronic claims files and the National Work Queue’s ability to instantly distribute work to any VARO. The veteran does not have the option to introduce any new evidence, nor have a hearing with the higher-level reviewer, although

a veteran or the appointed representative can choose to have informal conferences with the reviewer in order for them to point out errors of fact or law. The review and decision will be *de novo* and a simple “difference of opinion” by the higher-level reviewer will be enough to overturn the decision in question. If the veteran is not satisfied with the new decision, they can then elect one of the other two options.

For this higher-level review, the “Duty to Assist” (DTA) will not apply because it is limited to the evidence of record used to make the original claims decision. If a DTA error is discovered that occurred prior to the original decision, unless the claim can be granted in full, the claim will be sent back to the VARO to correct any errors and readjudicate the claim. If the veteran is not satisfied with that new decision, they can still elect the other appeal options.

For the supplemental claim option, veterans will be able to request a pre-determination hearing and present new evidence that would be considered in the first instance at the VARO. VA’s full DTA will apply, to include development of both public and private evidence. This will be a *de novo* review of all the evidence presented both before and after to the claim decision, until the new decision is issued. As with a higher level review, if the veteran is not satisfied with the new decision, they can then elect another option to continue pursuing the contested claims.

For the third option, appeal to the Board, there will be three separate dockets: one that does not allow hearings and new evidence to be introduced; one that allows both new evidence and hearings, and one that allows new evidence with no hearing. For each of these dockets, the appeal would be routed directly to the Board with no processing steps at VBA. In conjunction with the continuing legacy appeals docket, the Board will now have to manage four different dockets.

For the Board docket that allows hearings, veterans can choose either a video conference hearing or an in-person hearing at the Board’s Washington, DC offices; there will no longer be travel hearing options offered to veterans. New evidence will be allowed, but limited to specific timeframes: if a hearing is elected, new evidence could be presented at the hearing or for 90 days following the hearing; if no hearing is elected, new evidence could be presented with the filing of the NOD or for 90 days thereafter.

If the veteran is not satisfied with the Board’s decision, they can elect to continue with a Supplemental Claim, and if filed within one year of the Board’s decision, it would continue to preserve their earliest effective date. The veteran also has 120 days to file a notice of appeal to the Court of Appeals for Veterans Claims (Court). If the Court’s decision does not satisfy the veteran, they can file another Supplemental Claim within one year with new evidence. They also retain the right to appeal the Court’s decision to the Federal Circuit Court of Appeals.

If the Board discovers that a DTA error was made prior to the original claims decision, unless the claim can be granted in full, the Board would remand the case back to VBA for it to correct the errors and readjudicate the claim. Again, if the veteran was

not satisfied with the new claim decision, they could choose from one of the three appeals options available to them, and as long as they do so within one year of the decision, they would continue to preserve their earliest effective date. The new statute does not impose a limit on the number of times a veteran could choose one of these three options, and as long as they properly elect a new one within a year of the prior decision, they continue to protect their earliest effective date.

Improving Claims Decision Notification

P.L. 115-55 mandates that the contents of notification letters must be clear, easy to understand and easy to navigate. The notice must convey not only VA's rationale for reaching its determination, but also the options available to claimants after receipt of the decision. It requires that in addition to an explanation for how the veteran can have the decision reviewed or appealed, all decision notification letters must contain the following information to help them in determining whether, when, where and how to appeal an adverse decision:

1. A list of the issues adjudicated;
2. A summary of the evidence considered;
3. A summary of applicable laws and regulations;
4. Identification of findings favorable to the claimant;
5. Identification of elements that were not satisfied leading to the denial;
6. An explanation of how to obtain or access evidence used in making the decision; and
7. If applicable, identification of the criteria that must be satisfied to grant service connection or the next higher level of compensation for the benefit sought.

The new decision notification will provide a more thorough and complete explanation of the VA decisions and will require a denial to describe the type of evidence that is required. The decision notification letter should be used in all decisions being conducted during implementation of the new appeals system.

Rapid Appeals Modernization Program (RAMP)

Starting in September 2017, the Appeals Management Office (AMO) and the Board began discussions with VSOs and other stakeholders about the Rapid Appeals Modernization Program (RAMP), which was authorized by the pilot program authority in P.L. 115-55. RAMP is intended to address the backlog of legacy appeals while also serving as a mechanism for testing elements of the new appeals system.

At the beginning of October 2017, there were approximately 340,000 pending appeals at the VARO in various stages. There were roughly 88,000 appeals at the Board. RAMP will give the oldest pending legacy appeals the first opportunity to opt-in to the program, which allows claimants to choose two of the new options: Higher Level of Review and Supplemental Claims. Claimants are required to withdraw their legacy

appeal to opt into RAMP, but will be able to retain their earliest effective dates. The Board option is not offered through RAMP, as this option will not become effective until full implementation of the law in February 2019.

Prior to initiating RAMP, and in consultation with DAV and other VSOs, the AMO addressed concerns and suggestions for the implementation and options under the program. The draft RAMP opt-in letters were provided to VSOs and other stakeholders for review and comments. However, although the new decision notification letter requirements in P.L. 115-55 will be applied to all RAMP decisions, VA's IT system is currently unable to seamlessly support the new notification requirements so VA is using a "work-around" for new decision and notification letters.

In November 2017, VA launched the first phase of RAMP, offering the 500 oldest appeals the opportunity to opt into the program, providing claimants 60 days to respond. On December 1, 2017, an additional 5,000 legacy appellants were invited to opt-in to RAMP, and in January 2018, 10,000 more were invited.

Although RAMP is still in its infancy, the earliest returns as of January 25, 2018, resulted in 309 appellants electing to opt-in, a 3 percent opt-in rate, with 225 choosing Higher Level of Review. Of those cases, the decisions were completed in an average of 27 days.

Of those initial claimants opting in to RAMP, 58 are represented by DAV, the largest of any accredited representative; nine of those cases have already been decided in an average of 31 days. Those nine decisions resulted in two cases being completely denied and the other seven with favorable decisions. A total of 29 issues were granted and 25 issues denied. Those seven cases resulted in an amazing total of retroactive compensation payments of \$520,693.09. Some of the exceptional results were:

1. **Gulf War Era veteran receives 100 percent evaluation in less than two months.** This veteran submitted new and material evidence in June 2008 but his claim for mental health disorder was denied. After many years of appealing to the VARO and remands from the Board, the veteran opted into RAMP on November 16, 2017. Based on the *de novo* review by the AMO, a grant of service connection with a 100 percent evaluation was completed in 48 days. The decision was established effective June 2008 and resulted in \$276,489.68 in retroactive benefits. After 10 years of appealing, RAMP was able to grant benefits in less than two months.
2. **Veteran receives Total Evaluation retroactive for seven years in 41 days.** In 2014, this Vietnam Era veteran was denied an increased evaluation in his wartime connected mental health disorder and entitlement to a total evaluation based on individual unemployability (TDIU). The veteran was offered to opt-in to RAMP on December 1, 2017, and returned the election on December 18, 2017. The AMO decision of January 11, 2018, granted TDIU effective September 2011. RAMP yielded a favorable grant of benefits totaling \$124,777.44 in retroactive

payments. After waiting five years for action from his claim, he received a grant of benefits in 41 days after being offered RAMP.

- 3. MST veteran receives full grant in less than 30 days after waiting seven years.** A Vietnam Era veteran filed a claim for a mental health disorder due to military sexual trauma (MST) in June 2010. The claim was denied and the veteran continued to pursue evidence after being repeatedly denied. The veteran submitted a NOD in March 2014 and was offered to opt-in to RAMP on December 1, 2017, and returned the election on December 11, 2017. The AMO decision of December 28, 2017, granted service connection for the mental health disorder and established a 100 percent evaluation effective June 2010, yielding a total of \$104,484.70 in retroactive benefits. After seven years, under RAMP, a grant was made in less than 30 days.

These early cases establish the tremendous impact of RAMP and its potential in reducing the legacy appeals backlog. RAMP is showcasing two of the three options of the Veterans Appeals Improvement and Modernization Act and its impact on timeliness.

Currently, only the AMO is adjudicating those opt-in cases under RAMP. The next phase of RAMP will include expanding the program to two additional VA Regional Offices, Denver and Phoenix, to process RAMP cases. The AMO will provide all RAMP on-site training to both VAROs. The next release of opt-in letters will be February 1, 2018, to 25,000 legacy appeals claimants and 12,000 NODs received in December and January.

DAV has provided this information and training to our NSO Corps for their knowledge in providing assistance on RAMP to our clients. RAMP provides claimants with extremely old legacy appeals to have an option for relative immediate adjudicative action that protects their effective dates. If the Higher Level of Review or the Supplemental Claims options do not result in their desired outcome, beginning in February 2018, they can also elect the Board option under RAMP, although these appeals will not begin to be addressed until February 2019, when the law is fully implemented.

As mentioned, DAV's represented veterans have benefited from RAMP and we believe it is a great testing environment for the new appeals system. We understand it is early in the program and improvements and adjustments will be made throughout the process. Below are specific comments and recommendations in reference to RAMP.

RAMP Comments and Recommendations

- 1. Early Opt-in Rates of RAMP.** As RAMP was offered to the oldest appeals, many claimants may be under the impression that they are too close for a decision and choose not to opt-in. In addition, at this point there has been very little communication or education by VA or VSOs about the potential benefits of

RAMP for veterans with pending appeals. We believe it is too early and there is not adequate data to draw conclusions about the program.

2. **Resolution of IT Issue to support new decision notification letters.** The AMO committed to provide all RAMP participants with decision/notification letters as will be required upon full implementation of P.L. 115-55. However, VA IT systems have not been updated to allow for automatic generation of the new letter format, thereby forcing the AMO to use a manual work-around. We believe this can have a negative impact on the timeliness of these decisions and urge VA to fix this issue prior to the expansion of RAMP to VAROs in Denver and Phoenix.
3. **Allow all claimants with pending appeals to opt-in to RAMP in the future.** The early results of RAMP indicate this program can significantly benefit many veterans who have waited years for favorable claims decisions. As VA and VSOs begin sharing these early success stories, many appellants who learn about RAMP, but who have not yet been invited by VA, may seek to opt-in to the program to bypass considerable delays in the current legacy appeals processing system. As the representatives of over 1 million veterans and families, we see tremendous potential benefit by allowing all veterans to have the choice to opt-in to RAMP as soon as possible.
4. **Opt-in Election Letter submission.** Opt-in Elections completed by the claimant are required to be submitted only via fax to the Appeals Resource Center (ARC) with the ARC Coversheet. DAV has over 260 National Service Officers nationwide providing representation and utilizing the VA Direct Mail Upload for evidence and record submissions, which provides a more efficient way to transmit the information. DAV believes we should be able to submit RAMP Opt-in Elections through the same means, rather than solely by fax.

Implementing the Modernized Appeals System.

The Veterans Appeals Improvement and Modernization Act of 2017 (P.L. 115-55) requires VA to complete a Comprehensive Plan for Processing Legacy Appeals and Implementing the Modernized Appeals System. The Plan was released in November 2017 and was discussed at the House Veterans' Affairs Subcommittee on Disability and Memorial Affairs Roundtable on November 30, 2017. Overall, DAV believes that the proposal provides a reasonable path forward for VBA and the Board to implement the new system. Key comments and recommendations for specific issues are noted below:

1. **Section 3(a)(3)-Timely Processing Under New Appeals System.** Supplemental claims and Higher Level of Review case completion is projected as an average of 125 days. To ensure that the new appeals system is successful, these average days to completion projections must be given the appropriate resources to ensure that quality and timely decisions are produced.

2. **Section 3(a)(3)-Timely Processing Under New Appeals System.** For appeals in which there is no additional evidence and no request for hearing, the projected average processing time is 365 days. The plan notes that the average processing time for the two other dockets will be contingent upon what resources remain and how they are allocated among the dockets. DAV is concerned that resources may be shifted to ensure that the no-evidence/no-hearing docket meets its 365-day average goal, leaving the other two dockets and the legacy appeals docket to suffer unacceptable delays. To assure timeliness and provide fairness and equity to veterans on all dockets, we urge VA to provide adequate resources and consider establishing projected average time processing standards for all four dockets.
3. **Section 3(b)(10)-Modifications to Information Technology Systems.** As noted above, the Board will now be maintaining four separate appeals dockets; three for the new appeals and one for legacy appeals. At the November 30th Roundtable, VA's office of Digital Services indicated that 30 employees were assigned to rebuild the Board's existing appeals tracking system (VACOLS) to include RAMP. The design and completion of this new appeals tracking system is an integral part of the implementation plan. The targeted goal is for the complete integration of this system in the Veterans Benefits Management System (VBMS) by August 30, 2018. We urge VA to provide sufficient resources for the completion and launch of this new system prior to the targeted date.
4. **Section 3 (b)(15)-Timeline for Promulgating Regulations.** We received and provided preliminary comments and requests for clarification of the Proposed Regulations. However, our main concern is the time frame for the Proposed Regulations. We understand that these are currently being reviewed by VA Counsel before being sent to the Office of Management and Budget. We urge the VA to have these numerous Proposed Regulations submitted to the Federal Register as soon as possible to avoid any delays in publishing these regulations prior to February 2019.
5. **Legacy Appeals and Pending Hearings.** While the RAMP Program can address a portion of the legacy appeals, we are concerned with the overall processing time for legacy appeals, specifically the timeliness and volume of hearings that are pending. As of January 24, 2018, there are 84,658 total hearings pending with the Board; 65,550 video conference hearings, 17,241 travel board hearings, and 1,867 in-person hearings in Washington DC. Currently, the Board is only conducting in-person hearings in Washington DC one day a week. We do not feel this will adequately address the pending in-person legacy appeal hearing backlog. We urge the VA put forward a plan to address the overwhelming number of pending hearings for legacy appeals and to provide the necessary resources to reduce the over 84,000 pending hearing requests.

6. **Evidence Submission for Hearings.** Under P.L. 115-55, when a veteran submits a NOD to the Board, they can opt to have a hearing and/or opt to submit new evidence. If a veteran elects to have a hearing and chooses to submit new evidence, it is required to be submitted at the hearing or within 90 days after the hearing. An issue that has not been adequately addressed is, “what will happen to evidence submitted prior to the requested hearing?” We contend that any evidence received after the NOD but prior to the Board hearing, should be accepted and made part of the appeal record.

Mr. Chairman, to reiterate, DAV strongly supports the Veterans Appeals Improvement and Modernization Act the Rapid Appeals Modernization Program (RAMP). We are grateful for the opportunity to continue our partnership with the VA and our fellow VSOs and our stakeholder partners. We look forward to continued collaboration on these programs to ensure that P.L. 115-55 results in the modern appeals processing system this grateful nation owes to our deserving veterans and their families.

This concludes my testimony. Thank you for the opportunity to appear at today’s hearing. I would be pleased to answer any questions you or members of the Committee may have.