

**STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
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Chairman Runyan, Ranking Member Titus and Members of the Subcommittee:

On behalf of the DAV (Disabled American Veterans) and our 1.2 million members, all of whom are wartime wounded and injured veterans, thank you for asking DAV to share with the Subcommittee our views regarding the Fully Developed Claims (FDC) program within the Veterans Benefits Administration (VBA). As the nation's leading veterans service organization (VSO) assisting veterans seeking disability compensation and other benefits, DAV has tremendous experience and expertise relating to the processing of claims and the various reasons claimants may appeal adverse actions and decisions.

To fulfill our mandate of service to America's wounded, injured, and ill veterans and the families who care for them, DAV employs a corps of 270 National Service Officers (NSOs) all of whom are wartime service-connected disabled veterans who successfully complete their rigorous DAV training in concert with VA's Vocational Rehabilitation and Employment Service. DAV NSOs are located in all VA regional offices (VAROs) as well as in other VA facilities throughout the nation. As disabled veterans ourselves, and through our personal experiences from military life, the compensation claims process, and the VA and military health care systems, we have both expertise and a passion for helping other veterans through the labyrinth of the VA system.

Mr. Chairman, I am a veteran of the United States Marine Corps, serving on active duty from 1993 to 1997, until I was discharged after sustaining permanent service-related injuries. My career as a DAV NSO began in Milwaukee, Wisconsin, in 2002, and after serving as Assistant Supervisor of our San Diego National Service Office, I was promoted to Supervisor of our Chicago National Service Office in 2007, where I served until being promoted to my current position of Assistant National Service Director here in Washington, DC, on August 13, 2013. During my tenure at the Chicago VARO, I was fortunate to have been involved from the beginning with one of the first and most successful FDC programs. Working together with Regional Office Director Duane Honeycutt, VBA, DAV and other VSOs have made Chicago a model for other stations in how to execute the FDC program. I want to thank Director Honeycutt for his commitment to taking care of our nation's veterans and their families as demonstrated by the major improvements he has made in the Chicago VARO.

Over the past several years, much attention has been rightly focused on efforts to reform VBA's claims processing system and reduce the unacceptable backlog of pending disability compensation claims, and today there are statistically significant signs of progress. DAV

continues to advocate that the only way to truly address the current problems is by creating a new paperless system and culture focused on getting each claim done right the first time. VBA's transformation strategy focused on three areas: people, process and technology, and has for the most part been implemented nationally. The transformation has been comprised of dozens of initiatives, including new Challenge Training, Quality Review Teams (QRTs), the Veterans Benefits Management System (VBMS), eBenefits, the Stakeholder Enterprise Portal (SEP), the Transformational Organizational Model, Disability Benefits Questionnaires (DBQs), Simplified Notification Letters (SNLs) and the FDC program.

Since the beginning of this year, the number of pending claims has fallen by about 120,000; the number of claims in the "backlog" (those pending more than 125 days) has fallen almost 25 percent from over 600,000 to about 450,000; and the accuracy rate for rating claims has steadily risen from about 85 percent to more than 90 percent in the last three-month period measured. We commend VBA for the progress being demonstrated in reducing the backlog of claims; however, it is hard to determine how much of this progress is the result of the transformation strategy, and how much results from the increased productivity of new claims processors and mandatory overtime they are required to work. It is still too early to assess whether this transformation strategy will ultimately eliminate the backlog and reform the claims processing system; however, there is almost universal agreement that the FDC program has been a success and it must continue to be encouraged and expanded.

The FDC began as a pilot program in 2009 at the VA Regional Office (VARO) in Chicago and several other locations with the intent to reduce the overwhelming volume of backlogged claims and provide veterans with a quicker route to getting a decision. Unlike many other initiatives with the same goal in mind, the FDC program is unique because the claimant is actively involved in the process, specifically with gathering the evidence needed to adequately reach a determination. However, this concept is not new. In fact, DAV and other VSOs have for decades been able to submit a complete "fully developed" or "ready-to-rate" claim to VBA and DAV NSOs have long urged claimants to obtain as much of the evidence as possible prior to submitting the claim. However, prior to the inception of the current FDC program, claims that were considered "fully developed" or "ready to rate" were handled on a case-by-case basis and there was no formal program with standard procedures or consistency throughout VBA. As a result, even though these "fully developed" claims required less work by VBA and therefore should have resulted in quicker decisions, they were too often treated as just another claim, often sitting for months or years awaiting decisions. As such, this vital opportunity for VBA to process claims with much, if not all, of the development already completed when the claim was received, never really gained any acceptance, support, or cooperation between VBA and VSOs. VBA set out to change that with their new FDC pilot programs.

The first obstacle to overcome was the time-consuming requirement of providing the claimant with a notice of their rights and VA's duty to assist them, based on the Veterans Claims Assistance Act (VCAA), commonly called "VCAA notice." Upon receipt of a new claim, and upon receipt of any additional evidence submitted by the veteran, VBA would send out a VCAA letter, consuming months without any significant progress in adjudicating the claim. For the FDC program to have any chance of becoming a fully integrated practice, VBA first had to overcome the hurdles of providing the claimant a timely VCAA notice, and full understanding,

cooperation and communication within the VARO and partnership with VSOs and stakeholders. Creating special “EZ Forms” and providing the VCAA notice along with the application to a claimant allowed the first hurdle to be overcome.

Originally, the FDC program was limited to claims filed using a VA Form 21-526EZ, Fully Developed Claim (Compensation), and 21-527EZ, Fully Developed Claim (Pension). VBA later added the VA Form 21-534EZ, Fully Developed Claim (Death Benefits). These three VA forms, known as the “EZ Forms” are the only forms that can be used to file an FDC claim, as each form describes the evidence necessary to prove certain compensation and pension claims and fulfills the Duty to Notify requirements pursuant to title 38, United States Code, section 5103. Claimants must use one of the prescribed “EZ Forms” or the electronic version through VONAPP Direct Connect (VDC) in order to participate in the FDC process; otherwise their claims will be processed under the traditional claims process.

Additionally, the FDC application will require the claimant to:

1. Certify that the information or claim submitted is truthful;
2. Acknowledge receipt of the VCAA, which is part of the application;
3. Attest to the completeness of the claim and that there is no additional evidence; and
4. Provide authorization to VA for release of information required to process the claim.

Should a claim not contain these basic elements to qualify for FDC participation, the claim would be excluded from the FDC program and be processed under the traditional claims process.

A second important obstacle to overcome was ensuring that veterans who took it upon themselves to assemble their complete claims files, including hard-to-gather private medical evidence, would not lose out on their effective dates if they waited to file a FDC. To do so, VBA had to develop an “informal” FDC procedure, similar to what can be done for a regular information claim, which allows a veteran to “perfect” their claim up to one year from the date of their information claim, and still have benefits based on the effective date of that informal claim.

In the FDC program, upon initial contact, during which the VA Form 21-22 (POA) is received, an incomplete application (informal FDC) is filed to maintain the effective date for any possible future claims. DAV’s NSOs are directed to always initiate an informal FDC if any potential development may be needed. A formal FDC is only filed once all information is obtained and reviewed by an NSO within 12 months of the VARO receiving an informal FDC, which ensures preservation of the effective date. Claimants have one year from the date the informal FDC is submitted to VARO to submit a formal FDC, and by VBA’s direction, it is imperative that the claimant not specify any particular issues or conditions within the informal FDC memorandum. The purpose of the informal FDC is to allow a claimant to establish the intention of participating in the FDC process and establishing the earliest effective date possible while the claimant proceeds with obtaining necessary evidence to be submitted as a formal FDC claim. If the claimant specifies any issues or conditions within the informal FDC memorandum, VBA must consider it as a formal claim and will result in being adjudicated under the traditional process.

Before a VA Form 21-526EZ, 21-527EZ, or 21-534EZ is submitted, all additional evidence and information that would have originally been acquired or requested through a traditional claims process is reviewed in depth by an NSO and then submitted as a complete application. This is important, as it may allow for additional claims such as secondary issues to be filed while maintaining the effective date as the date of receipt the informal FDC was received. Additional evidence and information includes, but is not limited to, the following: private treatment reports from non-VA facilities, personal statements, lay statements, additional VA Forms, medical opinions, and Disability Benefits Questionnaires (DBQs).

Moreover, before filing a claim through the formal FDC process, NSOs ensure the claimant has no claims pending, which will exclude a claimant from the FDC process. Likewise, if the claimant has an appeal pending, NSOs ensure the actual claims folder, or C-File, is not located at the Board of Veterans' Appeals (Board), as this will also exclude a claimant from the FDC process. Based on my experience in Chicago, as well as having visited other DAV offices actively engaged in promoting the FDC program, there are some best practices for both VBA and VSOs that we believe can really make this program even more effective across the nation.

First, to make this partnership work, every VARO must have a dedicated FDC Program Coordinator (PC) who's primary, and perhaps only, responsibility is to make the FDC program a success. In the Chicago VARO, the FDC PC on staff is invaluable to the program and a vital conduit between VBA, the claimant and VSOs. The FDC PC is responsible for the integrity of the FDC program, for identifying and monitoring pending FDCs through the VETSNET Operations Reports (VOR); and for case managing any individual FDCs pending near 90 days or longer. The FDC PC is also responsible for locating and retrieving FDC claims folders, reviewing FDC development actions, and also delivering FDC claims folders for expedited processing. The FDC PC must be willing and able to carry out whatever is necessary to get these claims completed as quickly as possible, which is the key to motivating veterans to file FDC claims in the first place. While I know firsthand how important the FDC Program Coordinator is to the process at the Chicago VARO; I am not certain that other VAROs have taken this same approach. DAV believes it is essential to have at least one knowledgeable FDC PC at each VARO to assist with all inquiries and ensure the FDC program is operating as intended. Furthermore, the Service Center Manager must ensure that the FDC PC is provided all the time they require to manage the FDC program, without being pulled away from that primary work in order to help address deficiencies in other areas of the VARO, or to help reach short-term productivity goals.

Another major obstacle in the FDC process has been the exclusion process, or the act of removing or disqualifying a claim from the FDC program, due to such reasons as not submitting sufficient private medical evidence, submitting additional claims, failing to report for a VA medical examination, or using the older (2010) version of the 21-526EZ form. Any one of these issues, or similar, would be reason for a claim being disqualified, because each of these acts or omissions results in additional development work by VBA, which defeats the intent of the FDC. However, too often VAROs were removing claims from the FDC program for reasons that could have been easily avoided by contacting the claimant directly or VSO service officer and requesting any identified but missing evidence, or for other simple matters such as a missing signature.

Working with DAV and other VSOs, VBA has been able to reduce the amount of FDC exclusions, which was unacceptably high in the beginning. VBA has increased their efforts and communication with the claimant or VSO when a claim is identified as not qualified for the FDC program. In Chicago, the VARO contacts our DAV NSOs prior to a claim being removed from the program to allow us the opportunity to resolve the issue and avoid its removal. Take for example a claimant who has submitted a FDC for an increased evaluation for a back condition, but who later submits additional radiological evidence of the back condition. Previously, this action would have prompted removal from the FDC program; however, in Chicago, the VARO employee contacted our NSO, indicating that because the evidence required no additional development, there would be no reason to remove it from the program. This type of effort, communication, and partnership is vitally important not only to the FDC program, but to reforming the entire VBA disability claims process.

The most important change necessary for maximizing the use and success of the FDC program is the full commitment and participation of VBA, VSOs and veterans. Earlier this year, DAV, along with The American Legion, joined with VA to establish the FDC Community of Practice, dedicating ourselves to maximizing the use and success of the FDC program. As Under Secretary Alison Hickey is fond of saying, VBA is “all-in” when it comes to the FDC program.

I saw firsthand at Chicago how much difference it makes when you have this type of complete “buy-in” amongst the VARO staff and VSOs. A great deal of the credit for this must go to Director Honeycutt, whose positive approach and belief in the FDC program, and his enthusiastic desire to assist our nation’s wounded, ill and injured veterans profoundly reshaped the claims process in Chicago. In addition to drastically reducing the claims processing time overall, the number of appeals initiated at the Chicago VARO has also been significantly reduced over the past four years, and DAV has been proud to be a major partner in this effort.

According to DAV analysis, in 2009, the Chicago VARO FDC pilot program yielded an average processing time of 78 days for 25 percent of the FDC claims submitted, while 50 percent were rated within 130 days. This was improved in 2010, when 25 percent of FDC claims were rated within 69 days and half were decided within 115 days. Moving forward with the FDC program nationally, the participation continues to increase, while the number of claims excluded from the FDC is decreasing.

Data received from the VBA reflects that, during the first quarter of fiscal year (FY) 2013, of the total number of claims submitted by our Chicago DAV National Service Office, 21 percent were qualified FDC claims. At the end of the second quarter, the percentage of FDC claims increased to 25 percent and by the end of the third quarter of FY 2013, the percentage of qualified FDC claims submitted by DAV dramatically increased to 38 percent of all claims being filed through our NSOs.

In our opinion, a major reason for the dramatic increase between the second and third quarters of FY 2013 is due to the decrease in the number of claims being excluded from the FDC program, which is attributed to the improved communication between VARO staff and DAV NSOs, allowing us the opportunity to contact the claimant and resolve the issue and keep the

claim in the FDC program. To date, approximately 22 percent (10 percent nationally) of the total claims processed at the Chicago VARO are claims submitted through the FDC program with an average processing time of 105 days. DAV is very optimistic about the continued increase in FDC participation largely due to the program and its positive results becoming more known in the veterans' community.

DAV believes that the most important factor in making the FDC program work is educating and communicating directly with the claimant. Communication and cooperation are imperative to the FDC process, which is why DAV NSOs have direct interaction with claimants at all stages throughout the process. NSOs provide claimants with specific guidelines on the proper development of an FDC, and as a general rule, all claimants are requested to contact the assisting NSO office no later than 60 days following the submission of an FDC. Additionally, once a decision has been reached by VBA, DAV NSOs proactively contact our claimants to explain the decision. The education and communication with our clientele have been largely responsible for the success in the FDC claims process and has also resulted in fewer appeals being initiated, or Notices of Disagreement (NODs), being filed. An additional study DAV completed in Chicago between 2009-2011 harvested results indicating 325 NODs had been submitted in 2009 and dramatic reduction to 61 NODs being filed in 2011, which is an astonishing decline of approximately 82 percent.

DAV has assisted VBA greatly in promoting the FDC process to the veterans' community in hope of encouraging more participation, thereby avoiding claims entering the traditional process and lengthy backlog delays. In addition to promoting the FDC program through the DAV website, magazine, literature, meetings, conferences and other means, NSOs introduce DAV clients to the FDC process through formal orientation classes and/or by explaining the difference between an FDC and a traditional claim. Currently, DAV provides these orientation classes in approximately five locations, but we are hopeful to expand this to all of our offices.

In Chicago, these DAV-led orientation classes are held weekly and are offered to potential claimants or anyone interested in learning more about the FDC process, including VARO employees and other VSOs. Orientation classes may vary in size, up to 20 to 25 participants and representation by DAV is not required. In fact, claimants represented by other VSOs participate in the orientation classes to gain valuable information and ask questions about the FDC process. As part of a local agreement between VSOs, DAV does not solicit participants for representation if they are currently represented by another VSO.

During DAV-led orientation sessions, NSOs advise clients of their options in regards to an informal FDC and how future claims received under the FDC process will not affect the established effective date. Additionally, participants are provided detailed requirements of what is needed for a complete FDC, such as service treatment records, private medical records, personal statements, lay testimony, etc., which will allow for greater success. The importance of good communication and cooperation is stressed. Once a claimant understands the process and the type of information or evidence needed to be successful in a claim, such as obtaining a completed DBQ or records from their private physician(s), the more excited a claimant is to be engaged with their claim throughout the process. It cannot be overemphasized: the majority of

claimants want to be involved with their claim and are more than willing to obtain the necessary information, rather than simply submitting a claim with no supporting information and waiting to receive a decision.

Also, as part of the discussion during orientation, or even one-on-one interviews, DAV NSOs ensure that all clients understand the importance of attending any scheduled VA examinations and the importance of not submitting any additional claims or information requiring development after the FDC has been submitted, as any of these will exclude a claimant from the FDC process. DAV NSOs also ensure claimants are fully aware and informed of any VA literature and websites regarding the FDC.

Finally, in order for the FDC program to continue being successful, full cooperation and communication between VA, the claimant and VSOs is imperative. During the early days of the FDC program, when claims would be excluded from the FDC, neither DAV NSOs nor the claims would be notified that their claim was no longer in the FDC program. In many cases, we would later discover that this exclusion had taken place, although it could have easily been avoided had VBA simply communicated with our NSOs. In Chicago, in an unprecedented approach, Director Honeycutt reached out to DAV and offered to contact our NSOs by email when a case was being prepared for exclusion from the FDC. This simple communication bridge allows the NSO the opportunity to contact the claimant and can often resolve simple problems, such as missing signatures, thereby allowing the claim to remain in the FDC.

Mr. Chairman, DAV believes the FDC program has been very successful and has had a major impact on reducing the backlog of disability claims. We know the FDC program will continue to improve as VBA and VSOs continue seeking to improve our roles, and in that regard, DAV would offer the following recommendations.

First, VAROs need to clearly designate one individual to serve as the FDC coordinator, and VARO Directors must ensure that this person is provided adequate time and resources to successfully work with VSOs to address problems with submitted FDCs as they arise. This person must not be diverted away from their FDC responsibilities to address gaps in regular claims processing, particularly if such a change were being done to make short-term boosts in productivity just to show momentary progress in reducing the backlog.

Second, VBA should revise its national policies on excluding claims from the FDC process so that when a veteran files a FDC and later submits additional evidence that does not require any development, the claim should remain in the FDC program. This process has worked very successfully in Chicago and some other VAROs, and we believe it should be formalized as a national policy.

Third, VBA should not remove claims from the FDC program if VBA determines that secondary claim can be inferred based on the evidence received. When a claimant fulfills all their obligations to file a FDC, actions taken by VBA in satisfying the law should not become a reason to remove that claim from the FDC program. It will not help the veteran and it will not help the FDC program.

Fourth, VBA must continue to encourage and support the use of private medical evidence in order to eliminate the time and resources required to administer compensation medical exams. VBA has taken significant actions to encourage private evidence, such as the development and use of DBQs and the Acceptable Clinical Evidence (ACE) initiative, however there still remains resistance in some VAROs from some employees to give private medical evidence the same weight as VA medical evidence.

Fifth, one concrete way to advance private medical evidence would be for VBA to release all DBQs for veterans' private treating physicians to complete, particularly those designated for medical or nexus opinions and for assessing PTSD.

Sixth, VBA and VHA must reach an agreement and quickly implement new procedures to ensure that all VHA-treating physicians are required to complete DBQs for veterans upon request. Today, many VHA treating physicians are being told that they either should not, or may not have to fill out DBQs for their patients.

Finally, DAV urges Congress to pass legislation amending current law by requiring VA to give equal weight to private medical evidence that is competent, credible, probative, and otherwise adequate for rating purposes; the same weight as VHA-provided medical evidence.

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