



National Service & Legislative Headquarters
807 Maine Avenue, S.W.
Washington, D.C. 20024-2410
Phone (202) 554-3501
Fax (202) 554-3581
www.dav.org

**STATEMENT OF
PAUL R. VARELA
DAV ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
SUBMITTED FOR THE RECORD TO THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
MARCH 12, 2014**

Chairman Sanders, Ranking Member Burr and Members of the Committee:

On behalf of the DAV and our 1.2 million members, all of whom are wartime disabled veterans, I am pleased to present recommendations of *The Independent Budget* (IB) for the fiscal year (FY) 2015 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 contains numerous recommendations to improve veterans' benefit programs and the claims processing system; however, in today's testimony I will highlight just some of the most critical ones for this Committee to consider.

Mr. Chairman, the timely delivery of earned benefits to the millions of men and women who have served in our Armed Forces is one of the most sacred obligations of the federal government. The award of a service-connected disability rating does more than provide compensation payments; it is the gateway to an array of benefits that support the recovery and transition of veterans, their families and survivors. However, when these benefits are delayed or unjustly denied, the consequences to veterans and their families can be devastating. For those wounded heroes who file claims for disability compensation, the wait to receive an accurate rating decision and award can take anywhere from a few months to several years; longer if they have to appeal incorrect decisions.

In early 2010, Secretary Shinseki laid out an extremely ambitious goal for VBA to achieve by 2015: process 100 percent of claims in less than 125 days, and do so with 98 percent accuracy. Since that time, VBA has worked to completely transform their IT systems, business processes and corporate culture, while simultaneously continuing to process more than a million claims each year. VBA is actively rolling out new organizational models and practices, and continuing to develop and deploy new technologies almost daily.

Today there are about 685,000 claims for compensation and pension awaiting decisions at VBA. At the beginning of 2013, there were more than 860,000 pending claims for disability compensation and pension. By the end of the year, that number had dropped by more than 20 percent, down to about 685,000 pending. The number of claims in the backlog—greater than 125 days pending—dropped by about a third, from more than 600,000 in January 2013 to just over 405,000 in January 2014. The VBA increased the number of claims completed each month from an average of about 89,000 during the first four months of the year to more than 114,000 during the succeeding six months prior to the government shutdown. Claims production dropped significantly following the shutdown and during the subsequent holiday period.

In the midst of this massive transformation, it can be hard to get the proper perspective to measure whether their final systems will be successful, but we believe there has been sufficient progress to merit continued support of the current transformation efforts. Now is not the time to stop or change direction.

We urge this Committee and Congress to provide the support and resources necessary to complete this transformation as currently planned, while continuing to exercise strong oversight to ensure that VBA remains focused on the long-term goal of creating a new claims processing system that decides each claim right the first time. In particular, the proposed FY 2015 budget for VBA includes additional funding for scanning and conversion of existing paper claims files, absolutely critical for VBA to complete its transformation from an outdated, paper-based claims system to a modern, paperless, automated claims system.

Mr. Chairman, one of the most important aspects needed to assure ongoing positive changes within the VBA is their willingness to remain open and partner with veterans service organizations. Our organizations possess significant knowledge and experience of the claims process and collectively we hold power of attorney (POA) for millions of veterans who are filing or have filed claims. VBA recognized that close collaboration with VSOs could not only reduce its workload, but also increase the quality of its work. We make VBA's job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources for VBA to develop and adjudicate them.

The IB veterans service organizations (IBVSOs) have been consulted about initiatives proposed or underway at VBA, including Fully Developed Claims (FDC), Disability Benefit Questionnaires (DBQs), the Veterans Benefit Management System (VBMS), the Stakeholder Enterprise Portal (SEP), and the update of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). Both Secretary Shinseki and Under Secretary Hickey have reached out to consult and collaborate with VSOs and we are confident that VBA's success going forward will require a continued and enhanced partnership that will result in better service and outcomes for veterans.

Since 2009, VBA has made some significant changes in how claims are processed. The most important amongst these is the development of the VBMS, its new IT system. VBMS has been rolled out to all 56 Regional Offices and VBA was able to complete implementation of the VBMS ahead of schedule in June; by the end of 2013, nearly all of VBA's pending claims were processed using electronic files. It is important to remember that VBMS is not yet a finished product; rather, it continues to be developed and perfected as it is deployed so it is still premature to judge whether it will ultimately deliver all of the functionality and efficiency required to meet VBA's future claims processing needs.

Another very important milestone was VBA's decision and commitment to scan all paper claims files for every new or reopened claim requiring a rating-related action, and creating digital e-folders to serve as the cornerstone of the new VBMS system. E-folders facilitate instantaneous transmission and simultaneous reviewing of claims files. At present, there are an estimated 500,000 e-folders and that number will continue to grow as the remaining ROs convert to VBMS this year.

In addition, the Appeals Management Center (AMC) is now working in VBMS and able to review e-folders. The Board of Veterans Appeals (BVA) will also begin receiving appeals in VBMS on a pilot basis.

VBA also continues to strengthen its e-Benefits and SEP systems, which allow veterans and their representatives to file claims, upload supporting evidence and check on the status of pending claims. VBA has rolled out a new transformation organizational model (TOM) to every Regional Office that has reorganized workflow by segmenting claims into different processing lanes depending upon the complexity of the issues to be decided for each claim. Other key process improvements that we strongly support include the FDC program, which expedites ready-to-rate claims, and DBQs, which standardize and encourage the collection of private medical evidence to aid in rating decisions. To improve the accuracy of their work, VBA also fulfilled one of our long-standing recommendations by creating local Quality Review Teams (QRTs), whose primary function is to monitor claims processing in real time to catch and correct errors before rating decisions are finalized.

CLAIMS PROCESSING RECOMMENDATIONS

Over the next year, Congress must continue to perform aggressive oversight of VBA's ongoing claims transformation efforts, particularly new IT programs, while actively supporting the completion and full implementation of these vital initiatives. In order for VBA's current transformation plans to have any reasonable chance of success, VBA must be allowed to complete and fully implement them. Congress must continue to fully fund the completion of VBMS, including providing sufficient funding for digital scanning and conversion of legacy paper files, as well as the development of new automation components for VBMS. At the same time, the IBVSOs recommend that Congress encourage an independent, expert review of VBMS while there is still time to make course corrections.

Congress must also encourage and support VBA's efforts to develop a new corporate culture based on quality, accuracy and accountability, as well as strengthen the transmission and adoption of these values and appropriate supportive policies throughout all VBA Regional Offices. The long-term success of all of VBA's transformation efforts will depend on the degree to which these changes are institutionalized and disseminated from the national level to the local level. In addition to strengthening training, testing and quality control, VBA must be encouraged to properly align measuring and reporting functions with desired goals and outcomes for both its leadership and employees.

For example, as long as the most widely reported metric of VBA's success is the Monday Morning Workload Reports, particularly the weekly update on the size of the backlog, there will remain tremendous pressure throughout VBA to place production gains ahead of quality and accuracy. Similarly, if individual employee performance standards set unrealistic production goals, or fail to properly credit ancillary activity that contributes to quality but not production, those employees will be incentivized to focus on activities that maximize only production. VBA must develop more and better measures of work performance that focus on quality and accuracy, both for the agency as a whole and for individual employees.

Furthermore, VBA must ensure that employee performance standards are based on accurate measures of the time it takes to properly perform their jobs.

Congress must also ensure that VBA does not change its reporting or metrics for the sole purpose of achieving statistical gains, commonly referred to as "gaming the system," in the absence of actual improvements to the system. For example, VBA recently announced that they will change how errors are scored for multi-issue claims.

Previously, a claim would be considered to have an error if one mistake on at least one issue in the claim was detected during a STAR review. Under the new error policy, if there are 10 issues in the claim and a single error is found on one of the issues, that would now be scored as only 0.1 errors for that claim. While this may be a more valid way of measuring technical accuracy, it also has the effect of lowering the error rate without actually lowering the number of errors committed. For instance, if VBA measures errors by issue, then the backlog of claims would not be the reported 405,000, but a multiple of that based upon the total number of issues, which would be in the millions. Likewise, VBA's allowance rate must be adjusted with this type of change in reporting to accurately reflect the number of issues allowed out of the total number of issues claimed, which would be significantly lower than the current allowance rate per claim. In essence, VBA cannot simply change the metrics to suit their need to reflect gains or improvements; they must change all corresponding metrics such as claims v. issues, allowances v. denials and remands or similar.

Additionally, to make the system more efficient, Congress should enact and promote legislation and policies that maximize the use of private medical evidence to conserve VBA resources and enable quicker, more accurate rating decisions for veterans. The IBVSOs have long encouraged VBA to make greater use of private medical evidence when making claims decisions, which would save veterans time and VBA the cost of unnecessary examinations.

DBQs, many of which were developed in consultation with IBVSO experts, are designed to allow private physicians to submit medical evidence on behalf of veterans they treat in a format that aids rating specialists. However, we continue to receive credible reports from across the country that many Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs) do not accept the adequacy of DBQs submitted by private physicians, resulting in redundant VA medical examinations being ordered and valid evidence supporting veterans' claims being rejected.

Although there are currently 81 approved DBQs, VBA has only released 71 of them to the public for use by private physicians. In particular, VBA should allow private treating physicians to complete DBQs for medical opinions about whether injuries and disabilities are service connected, as well as DBQs for PTSD, which current VBA rules do not allow; only VA physicians can make PTSD diagnoses for compensation claims. Congress should work with VBA to make both of these DBQs available to private physicians.

To further encourage the use of private medical evidence, Congress should amend title 38, United States Code, section 5103A(d)(1) to provide that, when a claimant submits private medical evidence, including a private medical opinion, that is competent, credible, probative, and otherwise adequate for rating purposes, the Secretary shall not request a VA medical examination. This legislative change would require VSRs and RVSRs to first document that private medical evidence was inadequate for rating purposes before ordering examinations, which are often unnecessary.

VBA STAFFING AND RESOURCE RECOMMENDATIONS

Compensation Service Staffing

In recent years, VBA has seen a significant staffing increase because Congress recognized that rising workload, particularly claims for disability compensation, could not be addressed without additional personnel and thus provided additional resources each year to do so. More than 5,000 full-time employee equivalents (FTEE) were added to VBA over the past five years, a 33 percent increase, with most of that increase going to the Compensation Service. In FY 2013, VBA's budget

supported an additional 450 FTEE above the FY 2012 authorized level, and the FY 2014 level added less than 100 new FTEE, and for FY 2015 the level of staffing remains unchanged.

Since the early part of 2013, the VBA has clearly made positive strides toward increasing productivity, reducing the backlog of disability claims and, by the end of 2015, reaching the Secretary's goal of completing all claims in less than 125 days with 98 percent accuracy. Over the past year, the total number of claims pending dropped by about 20 percent, and the number in the backlog (over 125 days) decreased by more than a third. The VBA has employed a variety of aggressive initiatives, such as processing all claims pending longer than two years and then, when completed, moving to process all claims pending longer than one year.

We believe allowing the VBA to again hire employees for a two-year temporary term could supplement and/or alleviate the reliance on mandatory overtime and further reduce the backlog of disability claims to help reach the Secretary's goal by the end of 2015. Such an initiative would also provide an outstanding opportunity for VBA to have a generous pool of fully trained, qualified candidates to choose from as replacements for full-time VBA employees who will undoubtedly be lost over the next few years because of attrition.

However, rather than hiring "new" employees who need training and time to become fully productive, VBA would have instantly productive replacements ready and would have the ability to hire only the best of these candidates. Therefore, we urge Congress to provide the funding and resources necessary for VBA to hire a minimum of 1,000 new employees for a temporary two-year term.

Board of Veterans' Appeals Staffing

Based on historical trends, the number of new appeals to the Board averages approximately five percent of all claims received, so as the number of claims processed by the VBA is expected to rise significantly, so too will the Board's workload rise accordingly. Yet the budget provided to the Board has been declining, forcing it to reduce the number of employees. Although the Board had been authorized to have up to 544 FTEE in FY 2011, its appropriated budget could support only 532 FTEE that year. In FY 2012, that number was further reduced to 510. At present, due to cost-saving initiatives, the Board may be able to support as many as 518 FTEE with the FY 2013 budget; however, this does not correct the downward trend over the past several years, particularly as workload continues to rise.

The FY 2014 budget actually proposed cuts to funding for the Board and further reduced staffing down to 492 FTEE, despite expected workload increases each year. Projecting for FY 2014, the IBVSOs recommended a modest increase in staffing to 544 FTEE.

We are pleased Congress supported this recommendation and actually went beyond the suggested number by providing enough funding for BVA to increase staffing to approximately 640 FTEE to be in place by the end of FY 2014 and an FY 2015 budget request to increase the number of FTEE to 650.

VOCATIONAL REHABILITATION

Employment Service Staffing

In FY 2012, VA's Vocational Rehabilitation and Employment (VR&E) program, also known as the VetSuccess program, had 121,000 participants in one or more of the five assistance tracks of VR&E's VetSuccess program, an increase of 12.3 percent above the FY 2011 participation level of 107,925 veterans. In FY 2012, VR&E had a total of 1,446 FTEE, and anticipates an increase of approximately 150 FTEE for FY 2013. Given the estimated 10 percent workload increases for both FY 2013 and FY 2014, the IB estimated VR&E would need an additional 230 counselors in FY 2014 in order to reduce their counselor-to-client ratio down to their stated goal of 1:125.

An extension for the delivery of VR&E assistance at a key transition point for veterans is through the VetSuccess on Campus program. This program provides support to student veterans in completing college or university degrees. VetSuccess on Campus has developed into a program that places a full-time Vocational Rehabilitation Counselor and a part-time Vet Center Outreach Coordinator at an office on campus specifically for the student veterans attending that college. These VA officers are there to help the transition from military to civilian and student life. The VetSuccess on Campus program is designed to give needed support to all student veterans, whether or not they are entitled to one of VA's education benefit programs.

In FY 2015, Congress must provide the Vocational Rehabilitation and Employment Service with sufficient funding to support an adequate number of FTEE to meet growing demand of the program and achieve its current caseload target of one counselor for every 125 veteran clients and equitably allocate resources among VAROs in a manner to achieve that target. This includes assuring that as other programs, such as the VetSuccess on Campus staffed with tenured VR&E counselors, the workforce gaps left behind at the ROs are backfilled to keep pace with local workload demands.

IT Enhancements

In addition, the VBMS was ultimately intended to include all of VBA's business lines so that no matter where a veteran or survivor applied for benefits, the VBMS would seamlessly connect them to all benefits they may be entitled to receive. While some programs, such as Education Service, have developed adequate IT systems in recent years, others, especially the Vocational Rehabilitation and Employment (VR&E) service, are in dire need of a complete IT overhaul. VR&E's processing system, called the Corporate Winston-Salem, Indianapolis, Newark, Roanoke, Seattle (CWINRS) system, is incapable of managing the many needs of this program. Rather than invest in short-term upgrades and patches, the IBVSOs believe that VBMS development for VR&E should be accelerated.

VBA must complete the full development and integration of the VBMS to the AMC, BVA, and Court of Appeals for Veterans Claims as well as to the other VBA business lines and in particular VR&E.

The IBVSOs are pleased that the Administration's budget request for FY 2015 is approximately \$200 million more than the FY 2014 IT funding, and we support that level of funding. More importantly, Congress must ensure that from the total IT funding made available to VBA, that VR&E receives the necessary resources and support to upgrade its antiquated IT systems.

RECOMMENDATIONS FOR IMPROVEMENTS TO VA BENEFITS

Annual Cost-of-Living Adjustment (COLA)

Congress has annually authorized increases in compensation and dependency and indemnity compensation (DIC) by the same percent as Social Security is increased.

Under current law, the government monitors inflation throughout the year and, if inflation occurs, automatically increases Social Security payments by the percent of increase for the following year, which the Congress then applies to veterans' programs.

While Congress has always increased compensation and DIC based on inflation, there have been years when such increases were delayed, which puts unnecessary financial strain on veterans and their survivors.

The IBVSOs urge Congress to enact legislation indexing compensation and DIC to Social Security COLA increases.

End Rounding Down of Veterans' and Survivors' Benefits Payments

In 1990, Congress, in an omnibus reconciliation act, mandated that 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 that policy.

The cumulative effect of this provision of the law effectively levies a tax on totally disabled veterans and their survivors. Congress should repeal the current policy of rounding down veterans' and survivors' benefits payments.

On November 21, 2013, with the President's signature, the Veterans' Compensation Cost-of-Living Adjustment Act became Public Law 113-52. The Act provided a 1.5% increase in veterans' disability compensation, DIC and other related veterans benefits, effective December 1, 2013. Unlike COLAs in the past, this COLA did not include the provision of rounding down increases to the nearest whole dollar amount.

The IBVSOs urge Congress not to return to a policy of rounding down veterans' and survivors' benefits payments.

Reject Any Proposal to Use the "Chained CPI"

In the past year, there has been much discussion about replacing the current CPI formula used for calculating the annual Social Security COLA with the Bureau of Labor Statistics (BLS) new formula commonly termed the "chained CPI." Such a change would be expected to significantly reduce the rates paid to Social Security recipients, and thereby help to lower the federal deficit. Since the Social Security COLA is also applied annually to the rates for VA disability compensation, DIC, and pensions for wartime veterans and survivors with limited incomes, its application would mean systematic reductions for millions of veterans, their dependents and survivors who rely on VA benefit payments. The IBVSOs urge Congress to reject any and all proposals to use the "chained CPI" for determining Social Security COLA increases, which would have the effect of significantly reducing the level of vital benefits provided to millions of veterans and their survivors.

The IBVSOs also note that the CPI index used for Social Security does not include increases in the cost of food or gasoline, both of which have risen significantly in recent years. While no inflation index is perfect, the IBVSOs believe that VA should examine whether there are other inflation indices that would more appropriately correlate with the increased cost of living experienced by disabled veterans and their survivors.

End Prohibition against Concurrent Receipt of VA Disability Compensation and Military Longevity Retired Pay

Many veterans retired from the armed forces based on longevity of service must forfeit a portion of their retired pay, earned through faithful performance of military service, before they receive VA compensation for service-connected disabilities. This is inequitable—military retired pay is earned by virtue of a veteran’s career of service on behalf of the nation, careers of usually more than 20 years. Entitlement to compensation, on the other hand, is paid solely because of disability resulting from military service, regardless of the length of service. Most nondisabled military retirees pursue second careers after serving in order to supplement their income, thereby justly enjoying a full reward for completion of a military career with the added reward of full civilian employment income. In contrast, military retirees with service-connected disabilities do not enjoy the same full earning potential since their earning potential is reduced commensurate with the degree of service-connected disability.

In order to place all disabled longevity military retirees on equal footing with nondisabled military retirees, there should be no offset between full military retired pay and VA disability compensation. To the extent that military retired pay and VA disability compensation offset each other, the disabled military retiree is treated less fairly than is a nondisabled military retiree by not accounting for the loss in earning capacity. Moreover, a disabled veteran who does not retire from military service but elects instead to pursue a civilian career after completing a service obligation can receive full VA disability compensation and full civilian retired pay—including retirement from any federal civil service position.

While Congress has made progress in recent years in correcting this injustice, current law still provides that service-connected veterans rated less than 50 percent disabled who retire from the armed forces on length of service may not receive disability compensation from VA in addition to full military retired pay. The IBVSOs believe the time has come to remove this prohibition completely. Congress should enact legislation to repeal the inequitable requirement that veterans’ military longevity retired pay be offset by an amount equal to the disability compensation awarded to disabled veterans rated less than 50 percent, the same as exists for those rated 50 percent or greater.

SURVIVOR BENEFITS

Increase DIC for Surviving Spouses of Service Members

The current rate of compensation paid to the survivors of certain deceased veterans rated permanently and totally disabled and deceased service members is inadequate and inequitable. Under current law, the surviving spouse of a veteran who had a total disability rating is entitled to the basic rate of DIC. A supplemental payment is provided to those spouses who were married for at least eight years during which time the veteran was rated permanently and totally disabled.

However, surviving spouses of veterans or military service members who die before the eight-year eligibility period, or who die on active duty, respectively, only receive the basic rate of DIC.

Insofar as DIC payments are intended to provide surviving spouses with the means to maintain some semblance of financial stability after losing their loved ones, the rate of payment for service-related deaths of any kind should not vastly differ. Surviving spouses, regardless of the status of their sponsors at the time of death, face the same financial hardships once deceased sponsors' incomes no longer exist. Congress should authorize DIC eligibility at increased rates to survivors of service members who died either before the eight-year eligibility period passes or while on active duty at the same rate paid to the eligible survivors of totally disabled service-connected veterans who die after the eight-year eligibility period.

Repeal of the DIC-SBP Offset

The current requirement that the amount of an annuity under the Survivor Benefit Plan (SBP) be reduced on account of, and by an amount equal to, DIC is inequitable. A veteran disabled in 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. This benefit indemnifies survivors, in part, for the losses associated with the veteran's death from service-connected causes or after a period of time when the veteran was unable, because of total disability, to accumulate an estate for inheritance by survivors.

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 the veteran's military retirement pay to purchase a survivor's annuity. This is not a gratuitous benefit, but is purchased by a retiree.

Upon the veteran's death, the annuity is paid monthly to eligible beneficiaries under the plan. 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 believe this offset is inequitable because no duplication of benefits is involved. Payments under the SBP and DIC programs are made for different purposes. Under the SBP, coverage is purchased by a veteran and at the time of death, paid to his or her surviving beneficiary. On the other hand, DIC is a special indemnity compensation paid to the survivor of a service member who dies while serving in the military, or a veteran who dies from service-connected disabilities. In such cases, DIC should be added to the SBP, not substituted for it. Surviving spouses of federal civilian retirees who are veterans are eligible for DIC without losing any of their purchased federal civilian survivor benefits.

The offset penalizes survivors of military retirees whose deaths are under circumstances warranting indemnification from the government separate from the annuity funded by premiums paid by the veteran from his or her retired pay.

Congress should repeal the inequitable offset between DIC and the SBP because there is no duplication between these two distinct benefits.

Retention of Remarried Survivors' Benefits at Age 55

Congress should lower the age required for remarriage for survivors of veterans who have died on active duty or from service-connected disabilities to be eligible for retention of DIC to conform with the requirements of other federal programs.

Current law allows retention of DIC on remarriage at age 57 or older for eligible survivors of veterans who die on active duty or of a service-connected injury or illness. Although the IBVSOs appreciate the action Congress took to allow restoration of this rightful benefit, the current age threshold of 57 years is arbitrary.

Remarried survivors of retirees of the Civil Service Retirement System, for example, obtain a similar benefit at age 55. This would also bring DIC in line with SBP rules that allow retention with remarriage at the age of 55. Equity with beneficiaries of other federal programs should govern Congressional action for this deserving group. Congress should enact legislation to enable survivors to retain DIC on remarriage at age 55 for all eligible surviving spouses.

Mr. Chairman, that concludes my statement and I would be happy to answer any questions you or other members of the Committee may have.