

JOSEPH A. VIOLANTE, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
ON BEHALF OF THE INDEPENDENT BUDGET
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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Chairman Murray, Ranking Member Burr and Members of the Committee:

On behalf of the Disabled American Veterans and our 1.2 million members, all of whom are wartime disabled veterans, I am pleased to be here today to present the recommendations of The Independent Budget for the fiscal year 2012 budget in the area of veterans' benefits. As you know, The Independent Budget is a collaboration amongst the DAV, AMVETS, Paralyzed Veterans of America and Veterans of Foreign Wars.

First, however, I want to congratulate you, Chairman Murray, on your selection to lead this great Committee. I also want to welcome back the Committee's Ranking Minority Member, Richard Burr. The DAV looks forward to working together with both of you, as well as all of the returning and new members of the Committee, to improve the lives of our nation's veterans, particularly disabled veterans, their families and survivors.

I also want to extend a special "Aloha" to former Chairman Akaka. Your leadership over the past four years contributed to historic achievements for veterans, including enactment of the Veterans Health Care Budget Reform and Transparency Act of 2009 and the Caregiver and Veterans Omnibus Health Services Act of 2010.

For the past 25 years, The Independent Budget has provided Congress and the Administration with budget and policy recommendations to strengthen programs serving America's veterans. I note with appreciation that Public Law 111-275, the Veterans Benefits Act of 2010, which was enacted in the last Congress, contained a number of provisions addressing recommendations made to this Committee by The Independent Budget. In particular, the new law includes an increase in the automobile grant from \$11,000 to \$18,900; an expansion of eligibility for Aid and Attendance benefits for veterans suffering from traumatic brain injury; an increase in Supplemental Service-Disabled Veterans' Insurance (SDVI or "RH") from \$20,000 to \$30,000; and an increase in Veterans Mortgage Life Insurance (VMLI) for disabled veterans from \$90,000 to \$150,000 effective October 1, 2011, with a 2012 increase to \$200,000. Each of these and many other provisions in this new law will make a real difference in the lives of thousands of

disabled veterans and their families and we thank this Committee for helping to enact this legislation.

SUFFICIENT STAFFING FOR THE VETERANS BENEFITS ADMINISTRATION

Madame Chairman, for fiscal year 2012, The Independent Budget recommends only modest increases in personnel levels for the Veterans Benefits Administration (VBA), and those increases are targeted at Vocational Rehabilitation and Employment (VR&E) and the Board of Veterans Appeals (BVA). Over the past couple of years, with strong support from Congress, VBA's Compensation and Pension (C&P) Service has seen a significant increase in personnel to address the rapidly rising workload they face. It is important to note that this large increase in claims processors could actually result in a short-term net decrease in productivity, due to experienced personnel being taken out of production to conduct training, and the length of time it takes for new employees to become fully productive. While we do not recommend additional staffing increases at this time, we do recommend that VBA conduct a study on how to determine the proper number of full-time employees necessary to manage its growing claims inventory so that claims are decided accurately and in a timely manner.

The Independent Budget does, however, recommend that Congress authorize at least 160 additional full-time employees for the VR&E Service for fiscal year (FY) 2012, primarily to reduce current case manager workload. A 2009 study by the Government Accountability Office (GAO) found that 54 percent of Department of Veterans Affairs Regional Offices (VAROs) reported they had fewer counselors than they needed and 40 percent said they had too few employment coordinators. VR&E officials indicated that the current caseload target is 1 counselor for every 125 veterans, but that ratio is reported to be as high as 1 to 160 in the field. An increase of 100 new counselors would address that gap. Given its increased reliance on contract services, VR&E also needs an additional 50 full-time employee equivalents (FTEE) dedicated to management and oversight of contract counselors and rehabilitation and employment service providers. In addition, VR&E has requested at least 10 FTEE in FY 2012 to expand its college program --"Veteran Success on Campus," and we support that request.

With the number of claims for benefits increasing over the past several years, so too is the number of appeals to the BVA. On average, BVA receives appeals on 5 percent of all claims, a rate that has been consistent over the past decade. With the number of claims projected to rise significantly in the coming years, so too will the workload at BVA, and thus the need for additional personnel. Funding for the BVA must rise at a rate commensurate with its increasing workload so it is properly staffed to decide veterans' appeals in an accurate and timely manner.

CLAIMS PROCESSING REFORM: GET IT RIGHT THE FIRST TIME

The VBA is at a critical juncture in its efforts to reform an outdated, inefficient, and overwhelmed claims-processing system. After struggling for decades to provide timely and accurate decisions on claims for veterans' benefits, the VBA over the past year has started down a path that may finally lead to essential transformation and modernization, but only if it has the leadership necessary to undergo a cultural shift in how it approaches the work of adjudicating claims for veterans benefits.

The number of new claims for disability compensation has risen to more than 1 million per year and the complexity of claims have also increased as complicated new medical conditions, such as traumatic brain injury, have become more prevalent. To meet rising workload demands, The Independent Budget has recommended, and Congress has provided, significant new resources to the VBA over the past several years in order to increase their personnel levels. Yet despite the hiring of thousands of new employees, the number of pending claims for benefits, often referred to as the backlog, continues to grow.

As of January 31, 2011, there were 775,552 pending claims for disability compensation and pensions awaiting rating decisions by the VBA, an increase of 289,081 from one year ago. About 41 percent of that increase is the result of the Secretary's decision to add three new presumptive conditions for Agent Orange (AO) exposure: ischemic heart disease, B-cell leukemia, and Parkinson's disease. Even discounting those new AO-related claims, the number of claims pending rose by 171,522, a 37 percent increase of pending claims over just the past year. Overall, there are 331,299 claims that have been pending greater than VA's target of 125 days, which is an increase of 147,930, up more than 80 percent in the past year. Not counting the new AO-related, over 50 percent of all pending claims for compensation or pension are now past the 125-day target set by the VBA.

Worse, by the VBA's own measurement, the accuracy of disability compensation rating decisions continues to trend downward, with their quality assurance program, known as the Systematic Technical Accuracy Review (STAR) reporting only an 83 percent accuracy rate for the 12-month period ending May 31, 2010. Moreover, VA's Office of Inspector General found additional undetected or unreported errors that increased the error rate to 22 percent. Complicating the Department's problems is its reliance on an outdated, paper-centric processing system, which now includes more than 4.2 million claims folders.

Faced with all of these problems, VA Secretary Shinseki last year set an extremely ambitious long-term goal of zero claims pending more than 125 days and all claims completed to a 98 percent accuracy standard. Throughout the year he repeatedly made clear his intention to "break the back of the backlog" as his top priority. While we welcome his intention and applaud his ambition, we would caution that eliminating the backlog is not necessarily the same goal as reforming the claims-processing system, nor does it guarantee that veterans are better served.

The backlog is not the problem, nor even the cause of the problem; rather, it is only one symptom, albeit a very severe one, of a much larger problem: too many veterans waiting too long to get decisions on claims for benefits that are too often wrong. If the VBA focuses simply on getting the backlog number down, it can certainly achieve numeric success in the near term, but it will not necessarily have addressed the underlying problems nor taken steps to prevent the backlog from eventually returning. To achieve real success, the VBA must focus on creating a veterans' benefits claims-processing system designed to "get each claim done right the first time." Such a system would be based upon a modern, paperless information technology and workflow system focused on quality, accuracy, efficiency, and accountability.

Recognizing all of the problems and challenges discussed above, we have seen some positive and hopeful signs of change. VBA leadership has been refreshingly open and candid in recent statements on the problems and need for reform. Over the past year, dozens of new pilots and

initiatives have been launched, including a major new IT system that is now being field-tested. The VBA has shared information with the veterans service organizations (VSOs) about its ongoing initiatives and sought feedback on these initiatives. These are all positive developments.

Yet despite the new openness and outreach to the VSO community, we remain concerned about VBA's failure to fully integrate service organizations in reforming the claims process. VSOs not only bring vast experience and expertise about claims processing, but our local and national service officers hold power of attorney for hundreds of thousands of veterans and their families. In this capacity, VSOs are an integral component of the claims process. We make the VBA's job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources to develop and adjudicate them. VBA leadership must commit to a true partnership with service organizations, and infuse this new attitude throughout the VBA from central office down to each of the 57 regional offices.

Madame Chairman, the VBA must also change how it measures success and rewards performance in a manner designed to achieve the goal of "getting it right the first time." Unfortunately, most of the measures that the VBA employs today, whether for the organization as a whole, or for regional offices or employees, are based primarily on measures of production, which reinforces the goal of ending the backlog. VBA must change how it measures and reports progress and success so that there are more and better indicators of quality and accuracy. VBA must also continue to review employee performance standards to ensure that it creates incentives and accountability to achieve quality and accuracy, not just increased speed or production.

PILOT PROGRAMS

As the VBA moves forward with dozens of pilots and initiatives designed to modernize and streamline the claims-processing system, it is imperative that the VBA have a systematic method for analyzing and integrating "best practices" that improve quality and accuracy, rather than just those that may increase production. One of the most important new initiatives is the use of templates for medical evidence, which VBA calls Disability Benefits Questionnaires (DBQs). There are currently three DBQs that have been approved for use in claims for the three new presumptive conditions associated with Agent Orange exposure: ischemic heart disease, Parkinson's disease, and B-cell leukemia. An additional 76 DBQs are in various stages of the development and approval process. We support the use of DBQs as a method to streamline and improve the quality and timeliness of decisions; however, it is crucial that DBQs are properly completed, either by VA or private medical examiners. VBA employees must be properly trained so they understand that DBQs are but one piece of evidence that must be considered in the development and decision-making process. VBA's rating specialists must properly consider the evidentiary weight and value of all evidence related to the claim and address it adequately in the reason and bases of the subsequent decision.

One of the major new claims process reform initiatives is the Fully Developed Claims (FDC) program, which began as a pilot program mandated by Public Law 110-389, and was rolled out to all VAROs last year. We were pleased that VBA modified the FDC application process at our request so that a veteran could make an informal notification to the VBA of his or her intention to file a FDC claim, thereby protecting the earliest effective date for receipt of benefits. However, we have been hearing numerous reports from the field that local ROs are not allowing such

informal claims to be made. We have also been told that the participation level of veterans in the FDC program remains low. We continue to believe in the FDC program and urge this Committee to work with us and VBA to address the obstacles to its success.

In order to synthesize the "best practices" from all of the ongoing pilots, VBA recently started a new Integration Laboratory at their Indianapolis Regional Office. Given all of the pressure to "break the backlog" by increasing production, we have concerns about whether the VBA will successfully extract and then integrate the best practices from so many ongoing initiatives. Given the enormous pressure to reduce the backlog, we are concerned that there could be a tendency to focus on process improvements that result in greater production rather than those that lead to greater quality and accuracy.

Congress must continue to provide aggressive oversight of the VBA's myriad ongoing pilots and initiatives to ensure that practices adopted and integrated into a cohesive new claims process are judged first and foremost on their ability to help VA get claims "done right the first time."

TRAINING AND QUALITY CONTROL

Madame Chairman, two longstanding weaknesses of VBA's claims adjudication process are training and quality control, which should be linked to create a single continuous improvement program, both for employees and for the claims process itself. Quality control programs can identify areas and subjects that require new or additional training for VBA employees and better training programs for employees and managers should improve the overall quality of the VBA's work.

VBA's primary quality assurance program is the STAR program. The STAR program was last evaluated by the VA Office of Inspector General (OIG) in March 2009, with the OIG finding that STAR does not provide a complete assessment of rating accuracy. Although the STAR reviewers found that the national accuracy rate was about 87 percent, the OIG found additional errors and projected an overall accuracy rate of only 78 percent. In addition to rectifying errors found by the OIG, we recommend that the VBA establish a true quality control program that looks at claims "in-process" in order to determine not just whether a proper decision was made, but how it was arrived at in order to identify ways to improve the system. The data from all such reviews should be incorporated into the VBA's new information technology systems being developed so that analysis can provide management and employees important insights into processes and decisions. This in turn would lead to quicker and more accurate decisions on benefits claims, and most important, the delivery of all earned benefits to veterans, particularly disabled veterans, in a timely manner.

Training is essential to the professional development of an individual and tied directly to the quality of work they produce, as well as the quantity they can accurately produce. Veterans service organization officers have been told by many VBA employees that meeting production goals is the primary focus of management, whereas fulfilling training requirements and increasing quality is perceived as being secondary. An overemphasis on productivity must not interfere with the training of new employees who are still learning their job.

The Government Accountability Office (GAO) recently conducted a study to determine the appropriateness of training for experienced claims processors and the adequacy of VBA's monitoring and assessment of such training. Of particular interest are GAO findings that experienced claims processors' had concerns with the training received—specifically the hours, amount, helpfulness, methods, and timing of training. Likewise, as the GAO report pointed out, there is very little done by the VBA to ensure the required training is completed or to assess the adequacy and consistency of the training, nor to properly ascertain the total number of employees who have met the annual training requirement. In fact, only one VARO met the annual training requirement and nine VAROs had less than half their employees meet the annual training requirement. It is simply unacceptable to have only one VARO meeting the most basic requirement of ensuring that all its employees complete 80 hours of training. VBA must place greater emphasis on training by implementing stricter monitoring mechanisms for all VAROs and ensuring that they are held accountable for failure to meet this minimal standard.

Madame Chairman, Public Law 110-389, the “Veterans’ Benefits Improvement Act of 2008,” required the VBA to develop and implement a certification examination for claims processors and managers; however, today there are still gaps in the implementation of these provisions. While tests have been developed and piloted for Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs), additional tests need to be developed and deployed for Decision Review Officers and supervisory personnel. None of these certification tests are mandatory for all employees, nor are they done on a continuing basis.

The VBA cannot accurately assess its training or measure an individual's knowledge, understanding, or retention of the training material without regular testing. It is important, however, that all testing and certification be applied equally to employees and to the people who supervise and manage them. All VBA employees, coaches, and managers should undergo regular testing to measure job skills and knowledge, as well as the effectiveness of the training.

Equally important, testing must properly assess the skills and knowledge required to perform the work of processing claims. Many employees report that the testing does not accurately measure how well they perform their jobs, and there have been reports that significant numbers of otherwise qualified employees are not able to pass the tests. VBA must ensure that certification tests are developed that accurately measure the skills and knowledge needed to perform the work of VSRs, RVSRs, decision review officers, coaches and other managers.

Successful completion of training by all employees and managers must be an absolute requirement for every VARO and must be a shared responsibility of both employees and management. Managers must be held responsible for ensuring that training is offered and completed by all of their employees. However it is also the responsibility, as well as part of the performance standard, for employees to complete their training requirements. Managers must provide employees with the time to take training and employees must fully and faithfully complete their training as offered. Neither should be able or pressured to just “check the box” when it comes to training.

NEW VBA INFORMATION TECHNOLOGY SYSTEMS

Madame Chairman, undoubtedly the most important new initiative underway at the VBA is the Veterans Benefits Management System (VBMS), which is designed to provide the VBA with a comprehensive, paperless, and ultimately rules-based method of processing and awarding claims for VA benefits, particularly disability compensation and pension. Following initial design work, the VBMS had its first phase of development in Baltimore last year where a prototype system was tested in a virtual regional office environment. The first actual pilot of the VBMS was begun in November 2010 at the Providence, Rhode Island Regional Office. The six-month pilot program began with simulated claims and was scheduled to begin working on actual “live” claims early this year. A second six-month pilot is expected to begin in May 2011 at the Salt Lake City Regional Office, which will build on the work begun at Providence. A third pilot is scheduled to begin in November 2011 at an undesignated location, and the final national rollout of the VBMS is scheduled to take place in 2012.

Although the development and deployment of a modern information technology (IT) system to process claims in a paperless environment is long overdue, we have concerns about whether the VBMS is being rushed to meet self-imposed deadlines in order to show progress toward “breaking the back of the backlog.” While we have long believed that the VBA’s IT infrastructure was insufficient, outdated, and constantly falling further behind modern software, Web, and cloud-based technology standards, we would be equally concerned about a rushed solution that ultimately produces an insufficiently robust IT system.

Given the highly technical nature of modern IT development, we would urge Congress to fully explore these issues with the VBA and suggest that it could be helpful to have an independent, outside, expert review of the VBMS while it is still early enough in the development phase to make course corrections, should they be necessary.

To be successful, the VBMS must include the maximum level of rules-based decision support feasible at the earliest stages of development in order to build a system capable of providing accurate and timely decisions, as well as include real-time, quality control as a core component of the system. VBA must also commit to incorporating all veterans’ legacy paper files into the paperless environment of the VBMS within the minimum amount of time technically and practically feasible.

DISABILITY COMPENSATION AND QUALITY OF LIFE

The Institute of Medicine (IOM) Committee on Medical Evaluation of Veterans for Disability Compensation published a report in 2007, “A 21st Century System for Evaluating Veterans for Disability Benefits,” recommending that the current VA disability compensation system be expanded to include compensation for nonwork disability (also referred to as “noneconomic loss) and loss of quality of life. Nonwork disability refers to limitations on the ability to engage in usual life activities other than work. This includes ability to engage in activities of daily living, such as bending, kneeling, or stooping, resulting from the impairment, and to participate in usual life activities, such as reading, learning, socializing, engaging in recreation, and maintaining family relationships. Loss of quality of life refers to the loss of physical, psychological, social, and economic well-being in one’s life.

The IOM report stated that, "... Congress and VA have implicitly recognized consequences in addition to work disability of impairments suffered by veterans in the Rating Schedule and other ways. Modern concepts of disability include work disability, nonwork disability, and quality of life (QOL)..." The congressionally-mandated Veterans Disability Benefits Commission (VDBC), established by the National Defense Authorization Act of 2004 (Public Law 108-136), spent more than two years examining how the rating schedule might be modernized and updated. Reflecting the recommendations of the IOM study, the VDBC in its final report issued in 2007 recommended that the, "... veterans disability compensation program should compensate for three consequences of service-connected injuries and diseases: work disability, loss of ability to engage in usual life activities other than work, and loss of quality of life."

The IOM Report, the VDBC (and an associated Center for Naval Analysis study) and the Dole-Shalala Commission (President's Commission on Care for America's Returning Wounded Warriors) all agreed that the current benefits system should be reformed to include noneconomic loss and quality of life as a factor in compensation.

The Independent Budget recommends that Congress finally address this deficiency by amending title 38, United States Code, to clarify that disability compensation, in addition to providing compensation to service-connected disabled veterans for their average loss of earnings capacity, must also include compensation for their noneconomic loss and for loss of their quality of life. Congress and VA should then determine the most practical and equitable manner in which to provide compensation for noneconomic loss and loss of quality of life and then move expeditiously to implement this updated disability compensation program.

ELIMINATION OF CONCURRENT RECEIPT FOR ALL DISABLED VETERANS

Madame Chairman, 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.

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 compensation and full civilian retired pay—including retirement from any federal civil service. A veteran who honorably served and retired for 20 or more years and suffers from service-connected disabilities due to disability should have that same right.

Congress should enact legislation to repeal the inequitable requirement that veterans' military longevity retired pay be offset by an amount equal to their rightfully earned VA disability compensation if rated less than 50 percent.

REPEAL OF OFFSET AGAINST SURVIVOR BENEFIT PLAN

When a disabled veteran dies of service-connected causes, or following a substantial period of total disability from service-connected causes, eligible survivors or dependents receive Dependency and Indemnity Compensation (DIC) from 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' service. Unlike many retirement plans in the private sector, survivors have no entitlement to any portion of the member's retired pay after his or her death. Under the Survivor Benefit Program (SBP), deductions are made from the member's retired pay to purchase a survivors' annuity. Upon the veteran's death, the annuity is paid monthly to eligible beneficiaries under the plan. If the veteran died of 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 his or her military service or followed from the requisite period of total service-connected disability, the SBP annuity is reduced by an amount equal to the DIC payment. Where the monthly DIC rate is equal to or greater than the monthly SBP annuity, beneficiaries lose all entitlement to the SBP annuity.

We strongly 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, a dependent purchases coverage that would be paid in the event of the death of the service member. On the other hand, DIC is a special indemnity compensation paid to the survivor of a service member who dies while serving or a veteran who dies from service-connected disabilities. In such cases, VA indemnity compensation should be added to the SBP, not substituted for it.

We note that surviving spouses of federal civilian retirees who are veterans are eligible for dependency and indemnity compensation without losing any of their purchased federal civilian survivor benefits. The offset penalizes survivors of military retired veterans 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 offset between DIC and the SBP.

In addition, Congress should lower the age required for survivors of veterans who died from service-connected disabilities who remarry to be eligible for restoration of dependency and indemnity compensation to conform with the requirements of other federal programs. Current law permits the VA to reinstate DIC benefits to remarried survivors of veterans if the remarriage occurs at age 57 or older or if survivors who have already remarried apply for reinstatement of DIC at age 57. Although we appreciate the action Congress took to allow this restoration of rightful benefits, 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. We believe the survivors of veterans who died from service-connected disabilities should not be further penalized for remarriage and that equity with beneficiaries of other federal programs should govern Congressional action for this deserving group.

VA SCHEDULE FOR RATING DISABILITIES

The amount of disability compensation paid to a service-connected disabled veteran is determined according to the VA Schedule for Rating Disabilities (VASRD), which is divided into 15 body systems with more than 700 diagnostic codes. In 2007, both the VDBC, as well as the IOM Committee on Medical Evaluation of Veterans for Disability Compensation in its report “A 21st Century System for Evaluating Veterans for Disability Benefits,” recommended that VA regularly update the VASRD to reflect the most up-to-date understanding of disabilities and how disabilities affect veterans’ earnings capacity.

In line with these recommendations, the VBA is currently engaged in the process of updating the 15 body systems, beginning with mental disorders and the musculoskeletal system. Additionally, it has committed to regularly updating the entire VA Schedule for Rating Disabilities every five years.

In January 2010, the VBA held a Mental Health Forum jointly with the Veterans Health Administration (VHA), which included a VSO panel. In August 2010, the VBA and VHA held a Musculoskeletal Forum, which also included a VSO panel. Just a few weeks ago, a series of four public forums were held in Scottsdale, Arizona over the course of two weeks on four additional body systems. The Arizona sessions in particular, were far removed from the public and offered little opportunity for most VSOs to observe, much less offer any input.

While we are appreciative of such efforts, we are concerned that except for these initial public forums, VBA is not making any substantial efforts to include VSO input during the actual development of draft regulations for the updated rating schedule. Since the initial public meetings, the VBA has not indicated it has any plans to involve VSOs at any other stage of the rating schedule update process other than what is required once a draft rule is published, at which time they are required by law to open the proposed rule to all public comment. We strongly believe that the VBA would benefit from the collective and individual experience and expertise of VSOs and our service officers throughout the process of revising the rating schedule. In addition, since the VBA is committed to a continuing review and revision of the rating schedule, we believe it would be beneficial to conduct reviews of the revision process so that future body system rating schedule updates can benefit from “lessons learned” during prior body system updates.

Madame Chairman and Members of the Committee, this concludes my statement and I would be happy to answer any questions you may have.