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STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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Mr. Chairman, Ranking Member and Members of the Committee:
I am pleased to have this opportunity to appear before you on behalf of the Disabled American Veterans (DAV), to address problems and suggest solutions to the Department of Veterans Affairs (VA) disability claims process.

The claims process is complex as a result of the scope of benefits that the VA is mandated to consider and potentially deliver. The DAV has presented this Committee with our comprehensive suggestions for what we have dubbed the 21st Century Claims Process. Our suggestions would hel reduce the Veterans Benefits Administration claims backlog.

DAV's 21st Century Claims Process represents an ambitious but achievable goal. The proposal benchmarks certain milestones be achieved by VA with assistance from Congress. Essentially, our plan focuses on creation of digital architecture to receive and manage all claims, as well as legislative changes to streamline the process.

The legislative recommendations are not only vital to the success of this proposed process, but will also bring cost-savings efficiency to the current claims process—efficiency perhaps equaling more than 100,000 reduced work hours annually and reducing initial average claims processing time by at least 30-90 days.

We have shared this proposal with committee staff, current and former VA officials, and other veterans' service organizations. Their recommendations were incorporated where feasible.

In DAV's plan, the initial claims process (pre-appellate stage) essentially consists of adjudication stage one, adjudication stage two, and a rating team. Adjudication teams one and two will perform functions similar to the current triage and predetermination teams, but in a revised and more efficient format.
The backbone of the entire 21st Century Claims Process is the Imaging Scanning Center (ISC)/ drop box-mail point and a data-centric claims management system. An opportunity to benchmark an effective system records management system and data-centric application with adjudication features can be found at the Social Security Administration.

In our current draft of this process, all paper claims and paper in support of claims will be routed to the ISC for immediate imaging and inclusion in the electronic record. The electronic records

warehouse center should be housed centrally and accessible by all points in VBA. The ISC and electronic records center (electronic warehouse) will be linked directly to each other with a dedicated and secure, high-speed connections.

Another benefit to the proposed system would be that any evidence received by the ISC would be viewable in the official record the following day. It currently takes many days, or even weeks, for VA to incorporate new evidence into a claims folder. Lost or incorrectly destroyed records would be a problem of the past. In addition, data-centric forms would be developed.

Upon receipt of the claim by "team one," the claim would be analyzed on a data-centric form with one of the design features displaying the veteran's intent with respect to the type of benefit(s) claimed. This will facilitate immediate establishment of "end product codes" (or viable replacement system). In addition to utilizing data-centric forms for rapid claims identification and establishment, such data-centric forms and resulting codes will also be utilized to determine the kind of "notice" VA is required to send the claimant, and (as near as possible) the type of assistance VA is required to offer the claimant in developing the case.

For example, consider a veteran requesting an increased rating for a single service-connected disability that does not have supporting private treatment records (PTRs), and therefore only needs a current VA examination. The claims form would clearly annotate that the veteran is requesting an increased rating for XYZ disability and has not received treatment outside of VA. Under the current process, the veteran is required to undergo the entire development process, despite that fact that the veteran only requires a current VA examination. Therefore, legislative amendments to VA's "duty to notify/assist" are necessary so as not to require VA to undertake futile development in such a case.

If the same scenario occurred but the veteran had PTRs, such info must be clearly indicated on the claims form. The modified notification letter would then inform the veteran that VA requests he/she obtain the PTRs and submit them to VA (mailed to ISC) within 30 days. The same notification would also clearly and in understandable language inform the veteran that if, and only if, he/she cannot or will not obtain PTRs, then VA will assist if the veteran submits VAF 2 1-4142 (enclosed with notification only in cases where PTRs are indicated on the claims form).

In addition to the this change regarding development of private records, another legislative change to current Duty to Assist requirements should be incorporated that would allow the VA on its own to waive all notice and assistance under the Veterans Claims Assistance Act (VCAA) of 2001 when the VA determines that the evidence of record is sufficient to award all benefits sought. Such a change would be instrumental in expediting numerous types of claims wherein the VA must currently follow all VCAA requirements despite having evidence sufficient to award benefits. (E.g., certain claims under 38 C.F.R. § § 3.22, DIC benefits for survivors of certain veterans rated totally disabled at time of death; 3.309, Disease subject to presumptive service connection; 3.312, veteran's death considered service-connected when the evidence establishes disability was either the principal or contributory cause of death; 3.350, Special monthly compensation; 4.16, Disability Ratings for Compensation Based on Individual Unemployability; 4.28, temporary total rating based on convalescence; 4.29, Ratings for service-connected disabilities requiring hospital treatment or observation.; 4.30, Convalescence ratings; etc).

The recommendation to allow the VA to waive, on its own, all notice and assistance for claims when the VA can award all benefits sought should be utilized in conjunction with section 221 of Public Law 110-389, the Veterans Benefits Improvement Act of 2008. This section, among other things, directs the Secretary to carry out a pilot program at four VA regional offices to assess the feasibility and advisability of providing to claimants and their representatives a checklist of information and evidence required to substantiate a claim.

However, if utilized in conjunction with this recommendation, such a checklist could be crafted in accordance with specific regulations as mentioned above. A memorandum of understanding (MOU) could then be drafted between the VA and all service organizations housing representatives within each regional office. The MOU should specify that each representative screen cases that qualify under certain prescribed guidelines, and then deliver such cases directly to one or two designated VA rating specialists for no less than a two-week turn around for rating such a case.

In the 1990s, VBA conducted a pilot program in the St. Petersburg regional office under the title, "Partner Assisted Rating and Development System." (PARDS). Our recommendation is similar to the PARDS pilot.

This approach would not require VA employees to spend valuable time screening cases that could qualify under this expedited plan. It would also engage representatives in a more structured and less interest-conflicting manner. If executed properly and maximized to its fullest potential, such a procedure could have the potential to produce close to 100,000 rating decisions per year within two weeks processing time.

Regarding other claims, the items team one can complete under this plan will require one to three days, but should not require more than one week. Under the current disability timeline, these same functions take 44 days on average.

Following completion of team one functions, the electronic claim immediately goes to team two. With the exam requested and the notification sent to the claimant (or waived), team two will require little or no action on the case. Team two serves primarily as a more advanced stage of development for those cases with more complexity, such as those requiring stressor or other service information verification, development of private records, or complexities returned from the rating team. Team two will not be forced to deal with many of the activities that complicate functions of its current equivalent, the pre-determination team. Therefore, team two will be able to take more time and potentially produce more accurate rating decisions for more complex cases.

The actions of teams one and two must take place in a fluid, but accurate manner. If executed properly, many cases received by VA will be ready to rate within 30 days because the notice response (to the current VCAA process) will be complete as will any required compensation and pension (C&P) examinations. The rapid initiation and synchronized completion of these two milestones are the keys to success in this revised process.

Many cases will inevitably require extended processing times due to development that cannot be streamlined because of inter-agency roadblocks, (i.e., combat-stressor development from the

Department of Defense's Center for Research of Unit Records). However, many other cases, such as ones similar to the examples above, could be ready to rate much faster than 60 days because of considerably fewer developmental requirements.

The 21st Century Claims Process achieves, on average, at 30 days what the current paper-locked, procedure-heavy system achieves at approximately 1 50-160 days.

Once ready to rate within 30 days, the final rating team will have 30 days in which to issue a decision, a process that currently takes 13 days on average. With more time to review cases by the rating teams, contained within a much shorter overall processing time, decision makers can focus far more on quality than the current system allows, but without sacrificing production standards. This process will be greatly enhanced by even a modest rules-based automated rating system—one that will quickly and accurately process cases wherein there is nearly no room for debate, such as hearing loss and tinnitus ratings or paragraph 29/30 (hospitalization and convalescence) ratings, among others.

When VA issues a rating decision, an appeal election letter will be included. This will prevent VA from having to mail more than 100,000 letters annually to claimants appealing their decision and will reduce the appellate processing time by 60 days. The letter will explain that any notices of disagreement submitted without electing a post-decision review (DRO) process will automatically be reviewed under the traditional appeal process. (The same thing currently happens if a claimant does not respond to the appeal election letter). This could be accomplished either by a legislative or administrative change. If addressed legislatively, 38 U.S.C. 5104(a) would be modified to permit inclusion of an appeal election letter. As noted earlier, the VA does have the option, through proper rule-making procedures, to amend current guidance and make an administrative change to accomplish the same task.

A claimant wishing to appeal a decision will have 180 days in which to do so versus the current one year. This will require a legislative change. We realize that some may impulsively draw several inferences onto this idea. Those inferences will likely be misplaced—our ambitious goal is to take every opportunity in which to bring efficiency to VA's entire claims process so that it can better serve our nation's disabled veterans today and in the future. We must be open to change for such a goal to succeed.

To put this issue into perspective, the average time it took the VA to receive a notice of disagreement (NOD) in 2008 was 41 days. In fact, 92,000 out of just over 100,000 NODs were received within the first six months of 2008.

This is also an opportunity to bolster certain statutory rights for which the law is currently silent. When amending the appellate period from one year to 180 days, Congress must include an appellate period extension clause and equitable tolling clause to the appropriate section of law concerning NODs.

Specifically, we recommend changing the law so that an appellant may, upon request, extend his/her appellate period by six months beyond the initial six months. We also suggest an amendment to provide for equitable tolling of the appellate period in cases of mental or physical disability so significant to have prevented a VA claimant from responding within the specified time. Again,

the Social Security Administration has a generous good cause exemption that could apply here as well.

If the appeal is not resolved, the VA will issue a Statement Of the Case with an amended VAF-9. The amendment will explain that evidence submitted after the appeal has been substantiated to the Board of Veterans Appeals (Board) will be forward directly to the Board and not considered by the regional office unless the appellant or his/her representative elects to have additional evidence considered by the Regional Office (RO). This opt-out clause merely reverses the standard process without removing any choice/right/etc from an appellant. This change will result in drastically reduced appellant lengths, much less appellant confusion, and nearly 100,000 reduced VA work hours by eliminating the requirement to issue most supplemental statements of the case. A
legislative change, amending 38 U.S.C.A 7104 in a manner that would incorporate an automatic waiver of jurisdiction of Regional Office jurisdiction authorizing VA to allow the veteran to instead opt-out of his/her case being transferred to the BVA.

The Appeals Management Center (AMC) is essentially a failure and should be disbanded. The AMC received nearly 20,000 remands from the Board in fiscal year (FY) 2008. By the end of FY 2008, the AMC had slightly over 21,000 remands on station. By the end of January 2009, they had approximately 22,600 remands on station. The AMC completed nearly 11,700 appeals, out of which 9,811 were returned to the Board, 89 were withdrawn, and only 1,789 were granted. In fact, 2,500 appeals were returned to the AMC at least a second time because of further errors in carrying out the Board's instructions, over a 25-percent error rate. This means the AMC's error rate was higher than its grant rate. Such a poor record of performance cannot be allowed to exist anywhere in the VA claims process. Returning these cases to their respective jurisdictions will help ensure accountability, and most likely reduce the number of cases that proceed to the Board.

The VA will require an additional "administrative team" that is not technically part of the claims or appeals process teams. This groups' function will be to handle daily tasks required by VA but that are not necessarily part of the "claims process." These tasks include subordinate or administrative functions such as complying with records' requests under the Freedom of Information Act, serving as attorney fee coordinators, responding to informal claims, and many others that are administrative only. Currently, post- or pre-adjudication teams handle many functions for which they do not receive work credit and/or are otherwise not a required part of the claims process. Placing these functions under the responsibility of an administrative team dedicated solely for such tasks will free up resources that can be utilized specifically for claims processing, resulting in increased efficiency

ADMINISTRATIVE/LEGISLATIVE CHANGES
1. Amend 38 U.S.C. § 5103A (b) to indicate that VA will assist a claimant in obtaining private medical records when such assistance is requested by the claimant on a form prescribed by the Secretary. This will pave the way for some of the changes discussed above. (process time saved —30 to 90 days (estimate) on average; work hours saved—unknown but very significant.)
2. Amend 38 U.S.C. §§5 103, 5103A to allow the VA to on its own waive all VCAA requirements when it determines that evidence of record is sufficient to award all benefits sought. (Process time and work hours saved are unknown but very significant.)

3. Title 38 U.S.C.A. § 5 104(a) states, among other things, that when VA notifies a claimant of a decision, "[t]he notice shall include an explanation of the procedure for obtaining review of the decision." 38 U.S.C.A. § 5 104(a). An appeal election choice is part of that notice; therefore, the VA could modify 38 C.F.R. § 3.2600 in order to facilitate the changes suggested above. (process timed saved—60 days per appeal (estimate); work hours—approximately 50,000 (estimate).)
4. Congress should decrease the period in which a VA claimant may submit a timely notice of disagreement to the VA following the issuance of a VA rating decision from one year to six months by amending 38 U.S.C. § 7105.
5. Amend 38 U. S.C.A. § 7104 in a manner that would specifically incorporate an automatic waiver of RO jurisdiction for any evidence received by the VA, to include the Board, after an appeal has been certified to the Board following submission of a VA Form 9, unless the appellant or his/her representative expressly chooses not to waive such jurisdiction. (Process time saved—60 to 180 (estimate) days for affected appeals at local offices; up to 2 years for appeals otherwise subject to remand; work hours—in excess of 50,000 at local offices (estimate), unknown but significant at the Board)
6. Average total savings, 30 to 90 days pre-appellate stage. Average total savings for pre and post appellate cases (cumulative); 90 days minimum in most cases and as much as 90 to 330 days pre-remand. Potentially 3 years post remand for affected cases.
All of the above changes can and should be implemented as soon as possible. They will adapt to the current process and produce short term results.
7. Disband the Appeals Management Center and return remanded appeals to original rating team.
8. VA will be required to amend its claims form (VAF 2 1-526) as well as create and specify the form that must be used (post 2 1-526) for all re-opened and new formal claims.

CONCLUSION
We are confident these recommendations, if enacted, will help streamline the protracted claims process and drastically reduce undue delays. Some of recommendations contained herein may appear novel and/or controversial at first; they may even draw criticism. However, such a response would be misdirected. These recommendations are carefully aimed at making efficient an inefficient process without sacrificing a single earned benefit.
Mr. Chairman, we have provided your staff as well as the staffs of Chairman Filner, Ranking Member Buyer, and Ranking Member Burr, with a copy of the DAV's proposal.