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**STATEMENT OF
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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
March 10, 2020**

Chairman Pappas, Ranking Member Bergman and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this legislative hearing of the Subcommittee on Oversight and Investigations. As you know, DAV is a non-profit veterans service organization comprised of over one million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

This year DAV is celebrating its centennial anniversary, marking 100 years of service and support for America's injured and ill veterans and their families. In 1920, Judge Robert Marx, a disabled infantry officer of World War I, Army veteran and Cincinnati Superior Court judge, together with several hundred fellow veterans, formed the Disabled American Veterans of the World War (DAVWW) in order to rally their collective voice in the halls of Congress and help their fellow disabled veterans. Since then, DAV has played a crucial role working with Congress to create and strengthen our nation's system of veterans benefits and services.

To fulfill our mandate of service to America's injured and ill veterans and the families who care for them, DAV employs a corps of 247 national service officers (NSOs), all of whom are wartime service-connected disabled veterans who successfully completed their training through our 16-month on-the-job training program. DAV NSOs are situated in space provided by the Department of Veterans Affairs (VA) in all its regional offices as well as other VA facilities throughout the nation.

With the addition of our chapter service officers, department service officers and transition service officers as well as county veteran service officers accredited by DAV, all totaled, DAV has 3,872 trained benefits advocates on the front lines providing much-needed claims services to our nation's veterans, their families and survivors. With the generous support of a grateful American public and public-spirited businesses, DAV is proud to provide these services, without cost, to any veteran, dependent or survivor in need. DAV is equally proud that over one million veterans have chosen DAV to represent them and assist with their VA claims for benefits.

During 2019, DAV NSOs interviewed over 349,000 veterans and their families, filed over 223,000 new claims for benefits and obtained more than \$21 billion in benefits for the wounded, injured and ill veterans we represented before the VA. Based on this collective experience and knowledge of the VA claims and appeals process, DAV is pleased to offer our views on the bills under consideration by the Subcommittee.

DAV is a resolution-based organization and can only support or oppose legislation or policies based on resolutions introduced and adopted by our national membership at each year's national convention.

Based on DAV Resolution No. 108, supporting reforms related to recovery of debts by VA and DAV Resolution No. 122, in support of waiving additional amounts of debt created by VA's lack of timely action, we strongly support H.R. 5245, the Stopping Harm and Implementing Enhanced Lead-Time for Debts (SHIELD) for Veterans Act.

H.R. 5245 would provide a bar on the recovery of certain payments or overpayments made by VA based on delays in processing of certain information, extending the notification of debt collections from 30 to 90 days, as well as provide a prohibition on the VA to charge fair interest and administrative cost charges for debts relating to benefits programs.

The bill states, "the Secretary may not collect all or any part of an amount owed to the United States by any individual under any program under the laws administered by the Secretary if the amount is owed for any payment or overpayment that was caused by the amount of time taken by the Department, or by any employee of the Department, to process information provided by or on behalf of the individual." This would provide critical protection for veterans and claimants.

We understand that in an imperfect claims processing system, there will be overpayments and that it is a reasonable expectation that recipients of such overpayments are required to repay that debt; however, we believe that a significant portion of overpayments can be reduced or avoided. When VA's lack of timely action causes additional overpayments, it is unreasonable to place the resultant debts and financial hardships on veterans and beneficiaries.

One of the most frequent causes of overpayments and debts is dependency changes. Even timely reporting of a removal of a dependent will create at least one month of an overpayment. If VA delays the processing of that request to remove the dependent, it creates an additional amount of debt that the veteran or beneficiary is responsible to repay.

A review of VA's M21-1 adjudication manual lists all dependency actions as non-rating work end products (EP). EPs are specific codes to identify types of claims or actions required, and VBA uses this system to monitor and manage its workload. However, non-rating work EPs are not considered part of VBA's backlog and reporting

of days pending for processing. This means that non-rating work EPs are of the lowest priority to VBA and receive the least amount of attention.

By failing to place the appropriate attention to dependency claims, VBA has created additional avoidable amounts of overpayments. The VA Office of the Inspector General (OIG) report of September 28, 2007, "Audit of Veterans Benefits Administration Controls to Minimize Compensation Benefits Overpayments" indicated that between January 2004 and March 2006, an estimated \$50.8 million in overpayments were avoidable. The OIG report also found that the main reason for the delay in processing dependency status changes is due to its classification as non-rating claims and a low priority for VBA.

An example of VA's lack of timely action creating additional debts is displayed by a veteran who sought a waiver of the recovery of an overpayment in the amount of \$19,877.30. The veteran's wife died in July 2006 and the veteran notified the VA of his wife's death twice, the last being in October 2007. However, the VA did not take action until August 2015 and notified the veteran of his debt over \$19,000.00. The veteran appealed the denial of his waiver of the debt.

In the Board of Veterans' Appeals (Board) decision of April 2018, the Board found, "VA bears significant fault in the creation of overpayment as it appears that the Veteran notified VA of his wife's death in 2007 and yet there was a significant delay before the appropriate reduction of his monthly compensation benefits was implemented. In contrast, while the Veteran had constructive notice of overpayment, he has provided credible testimony that he was unaware that he was in receipt of overpayment. **In balancing faults, it is by far easier for VA to discontinue the dependency compensation payments rather than for the Veteran to learn of them and try to return them** [emphasis added]. Additionally, while the collection of debt may not deprive the Veteran of basic necessities, it would nevertheless be against equity and good conscience for the Veteran to have to repay such a large debt in light of RO's failure to timely discontinue dependency compensation benefits." The Board waived the additional amount created by the VA's lack of timely action in the amount of \$10,017.

Another significant cause of VA overpayments and debts is incarceration. Federal law requires VA to reduce compensation and pension benefits for veterans incarcerated in a federal, state, or local penal institution in excess of 60 days. Effective the 61st day of incarceration, VA must reduce compensation benefits for veterans convicted of a felony and discontinue pension benefits for veterans convicted of a felony or misdemeanor. VA reduces compensation benefits to the 10 percent disability rate for veterans rated 20 percent service connected or more. For veterans whose service-connected disability rating is 10 percent, VA reduces the benefit payment by one-half.

As previously discussed, the importance of timely VA action on reported changes for veterans' benefits can prevent additional amounts of debt. VA also considers incarceration adjustments as low priority and non-rating work EPs.

In June 2016, the OIG issued the report “Audit of Compensation and Pension Payments to Incarcerated Veterans.” It determined that between July 2008 and June 2015, VA’s ineffective actions in processing incarceration adjustments resulted in significant improper payments totaling more than \$100 million. These improper payments then became the veteran’s responsibility to repay.

According to the OIG, VA did not place priority on processing incarceration adjustments because VA did not consider these non-rating claims to be part of the disability claims backlog. Both VA Central Office staff from Compensation Service and the Office of Field Operations as well as VARO service center managers and staff consistently reported that incarceration adjustments were not a high priority.

VA’s lack of timely action creating additional debts for incarcerated veterans is evidenced by a veteran who was in receipt of VA compensation benefits for service-connected disabilities evaluated at 10 percent disabling. In June 2002, VA was advised through a computer matching system the veteran was incarcerated following conviction on two felonies. The veteran was incarcerated on March 4, 1996. The 61st day following incarceration was May 3, 1996. The VA advised the veteran of the debt of \$4201.46. The veteran was denied a waiver of the debt and appealed to the Board of Veterans Appeals.

In their decision of July 2019, the Board determined, “**The weight of fault in creation of the debt lays with the VA. VA was informed in a reasonable amount of time of the Veterans incarceration but did not act on it for approximately six years. Moreover, as noted above, no fault has been attributed to the Veteran in the creation of this debt.**” [emphasis added] The decision further added, “The evidence weighs in favor of the debtor. That the Veteran bore no fault in the creation of the debt and collection of the debt would result in some degree of financial hardship outweighs the fact that the overpayment was a form of unjust enrichment and that collection of the debt would not defeat its purpose. Accordingly, recovery of the overpayment would be against equity and good conscience.” The decision granted the veteran a waiver of the debt of \$4201.46.

Another major cause of VA overpayments and debts is drill pay adjustments. Members of the reserves and the National Guard are eligible to receive VA compensation for their illnesses and injuries related to their active military service.

VA policy allows veterans who receive disability benefits and military training pay in the same fiscal year (FY) to choose the benefit they prefer and waive the other. The veterans do not have a choice between active duty pay and disability benefits. Disability benefits are suspended during time on active duty.

When veterans choose to receive military training pay, VA must reduce the veterans’ disability benefits to account for the number of days in training. VA refers to these disability benefit payment adjustments as “drill pay adjustments.” Most veterans

choose to receive military training pay because it is typically greater than the disability benefit. Although veterans or the Department of Defense (DOD) may notify the VA, in many instances, the veteran will receive both, creating the overpayment.

In June 2016, VA began an automated disability benefit adjustment process in response to an OIG report that found that VA was not completing drill pay adjustments in a timely manner. The automated disability benefit adjustment process is initiated after each fiscal year when the Department of Defense (DOD) notifies VBA of veterans who received VA disability benefits and military pay during the same fiscal year. Adjustments for drill pay in FY 2016 were completed in FY 2017 and FY 2018. DOD provides the total number of days paid for military duty but does not separate military training days from active duty days. Adjusting disability benefits for the period the veteran is on active duty is a different and separate process from the drill pay adjustment.

In the recent OIG report of February 11, 2020, "Veterans Received Inaccurate Disability Benefit Payments after Reserve or National Guard Drill Pay Adjustments," it was estimated that there were approximately 97,800 disability benefit adjustments based on automated proposals from May 10, 2017, through July 31, 2018, for military pay received in FY 2016. VA inaccurately processed about 10,400 adjustments (11 percent) resulting in an estimated \$14.2 million in improper payments.

The report further noted that if VA continues to make errors at the rate identified and at payment rates in effect at the time of the report, VA would administer an estimated \$71.1 million in inaccurate disability benefit payments for drill pay adjustments for FY 2017 through FY 2021.

As clearly indicated, VA continues to create additional amounts of debt, mostly due to their lack of timely action. DAV fully supports the bar of collection of amounts if caused by the amount of time taken by the VA, or by any employee of the VA. H.R. 5245 would apply the Congressional intent of title 38, United States Code, § 5302, noting that there should be no recovery of payments or overpayments of any benefits under VA law if that recovery would be against equity and good conscience and due to no fault of the veteran or claimant. This is consistent with the noted cases by the Board of Veterans Appeals.

DAV supports the proposed extension of time from 30 to 90 days for responding to VA debt notices. At the September 2019 HVAC Oversight and Investigations Subcommittee hearing, VA Assistant Secretary for Management and Chief Financial Officer Jon Rychalski admitted that VA communication about debt and overpayments isn't always understood. "The letters are not that clear, to be honest," he said, adding that the entire agency's debt collection process is "too clunky and too confusing." Extending the notification of debt collections from 30 to 90 days will provide additional time for veterans and claimants to understand the debt notices and respond in an appropriate and timely manner before VA starts collecting the debt from their monthly payments. We concur with the plan to improve notification and communication of debts.

Per title 38, United States Code, § 5315, VA will charge interest and administrative costs on its debts. However, in a July 1992 decision, VA's then Deputy Secretary decided that VA would not charge interest on compensation and pension debts. This decision continues to be VA policy and is reported annually in VA's notes to the Consolidated Financial Statements.

H.R. 5245 would codify that 1992 decision and prohibit the charge of fair interest and administrative costs on debts relating to a loan, loan-guaranty, or loan insurance program; a disability compensation program; a pension program; or an educational assistance program. DAV agrees with the proposed prohibition on the VA to charge fair interest and administrative costs charges for debts relating to benefits programs. This would ensure the protections put in place in 1992 will continue to be VA policy into the future.

As noted above, DAV is a resolution-based organization. We do not have resolutions addressing H.R. 1133, H.R. 4949, H.R. 5843, and the discussion draft to require VA to report to Congress how it will address issues related to the Office of the Chief Financial Officer. Therefore, we take no position on any of these matters.

Mr. Chairman, this concludes my testimony on behalf of DAV. I would be happy to answer any questions you or other members of the Subcommittee may have.