STATEMENT OF

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BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS

WITH RESPECT TO

"VA's Development and Implementation of Policy Initiatives"

WASHINGTON, DC NOVEMBER 29, 2018

Chairman Bost, Ranking Member Esty, and members of the Subcommittee, on behalf of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our comments on evaluating the Department of Veterans Affairs' (VA) methods for developing and implementing policy changes.

As the VFW National Veterans Service (NVS), which was established in 1919, begins its second century of service to our nation's veterans and their families, the VFW is encouraged by VA's efforts to modernize and update the disability claims process. We take into account a number of challenges, both technical and administrative, that VA has had to overcome to arrive where we are today. Yet, despite our support for some changes and opposition to others, we feel the process is headed in the right direction overall. Our philosophy in dealing with VA's cumbrous bureaucracy has always been "praise when you can, be critical when you must" if it is in the best interest of our veterans. Lately, we have found ourselves more on the critical side than we would like.

The VFW has consistently held that VA speeding to completion of its claims workload for the sake of reducing volume is precarious for both VA and our claimants. It does no good to deliver benefits to veterans faster if the decisions made are incomplete or inaccurate. It is futile to implement policies for the sake of implementing policies and declare mission accomplished. Often, employees are just becoming comfortable with the former system only to be forced to employ a new system or business process in the name of efficiency.

Over the last three years, VA has rolled out programs that in theory were intended to alleviate a number of claims and appeals related issues. The VFW and our partner veterans service organizations (VSOs) cautioned VA on numerous occasions about the pitfalls of rapid development. We are appreciative of VA's efforts in seeking VSO input for newly developed platforms. Yet in the final analysis, despite our repeated attempts urging VA to assess shortfalls

and take corrective action before programs went fully operational, we have seen VA forced to play catch up time and time again.

The VFW has been concerned since the implementation of the Veterans Benefits Administration's National Work Queue (NWQ), and other programs, about how VA evaluates its workforce and products. Why do some claims seem to move smoothly through the system while others are bogged down due to misunderstood guidance or improper application of the law? We have not discerned why, other than pointing to one consistency: inconsistency in the system. We are well aware this is going to take place, but up until the decision was made to "level the playing field" we had the ability to mitigate irregularities at the local level.

Since the implementation of NWQ, VSOs have been restricted more than ever in locally resolving problems at the VA Regional Office (VARO). In Pittsburgh, we worked through our local representative to resolve a foreign claims issue, or so we thought. VA failed to properly evaluate a claimed condition in 2015, pushing the veteran into a lengthy appeal process that affected other subsequent claims. After going through the normal protocols, the end result was that VA would not correct the issue locally. However, our local advocate was instructed that if we contacted the White House veterans' helpline, the case would be given priority and the proper attention it should have been given without the roadblocks.

In all my years as a VA-accredited veteran service officer, this is one of the most absurd responses I have heard from VA staff on an issue that could have been easily resolved. To be frank, the VFW has been doing this work longer than VA. We pride ourselves in the advocacy we can provide to our claimants. But what happens when VA no longer permits its employees to do the right thing locally? I fear that the drive to NWQ, while well intentioned, has only amplified problems with VA inconsistency. The goal in leveling the playing field was to ensure veterans received consistent, timely, quality decisions. The playing field is certainly more level today, but not in the way we intended. Instead, we see shoddy work from all corners of VA with little accountability for what has gone wrong in the process. We see VARO leadership that is hamstrung from doing the right thing because it may make the national system look bad. This is no way to serve veterans.

As with any new implementation, training is paramount to success. Unfortunately, this is a shortcoming in VBA on a number of levels. Across the VFW's field offices, our staff continues to see little consistency in the application of law or the Code of Federal Regulations. The VFW is acutely aware of instances where the intent of a regulatory change is crystal clear but applied irregularly at the majority of VAROs.

One recent and ongoing example is the acceptance of electronic signatures. VA transitioned claims submissions to an electronic format. VSOs asked repeatedly if a "wet signature" was required or if an electronic facsimile was acceptable. VBA Office of Field Operations (OFO) advised us that a signature created on a VA-approved signature pad would be acceptable, and we alerted our field staff. Despite our best efforts to comply, we almost immediately began to receive reports that claims were being rejected at certain VAROs due to veterans not physically signing the form. Needlessly wasted time had to be taken from claim processing for VACO to issue corrective guidance to those offices that were in error, despite prior notification being sent

to the field and guidance being clearly published in the M21-1, the standard operating procedure for adjudicating claims. Despite clear guidance from VBA on this matter, we still receive sporadic reports from the field that this has not been completely resolved. Similarly, each time VA updates its standard claims forms, we receive reports that VAROs immediately stop accepting the previous version both in paper and electronic formats, even though this directly contradicts VA's own rules allowing for continued use of recently expired forms. If VA is earnest in seeking to establish a fully electronic claims process as they have touted over the past few years, they need to ensure consistency across the VAROs in allowing for electronic submissions.

Another instance of a breakdown in development and implementation is dependency claims. This has been an issue for years, and one that seems highly inconsistent. Some dependency claims move quickly through rules-based processing. But there seems to be no consistency when a dependency claim may be off-ramped, or even if a dependency claim will be addressed in a timely manner. We cite an example regarding a veteran living in Maryland whose claim was adjudicated through VA's NWQ across several VAROs. The veteran meets the schedular requirements for additional compensation for dependents. The VARO in Iowa denied his claim based on a 21-686c that was filed with his original application stating that he did not meet the criteria upon filing, citing erroneous M-21 references that failed to reinforce why VA did not address the dependency issue when adjudicating the veteran's claim. This is preposterous and speaks to the larger training issue of VA staff.

We received a number of reports from our office in Boise where veterans have had to endure multiple examinations for the same disability over and over. All seemingly attempting to reach a conclusion that was desired by VA. In another example, a supplemental claim was submitted electronically to VA for a specific veteran. The claimants direct deposit information was already of record and, therefore, not included on the application as he was already being paid. Upon receipt of this new application, VA deleted his current banking data and set him up to receive a physical check exposing him to potential fraud, benefit and identity theft. On the same day, VA was notified by our office that another of our claimants needed to adjust his income and net worth for pension purposes. This veteran also received a letter from VA telling him that his direct deposit information had been updated and he would now receive a hard copy check to his home address.

Intent to File

From the inception of the policy change in 2015 until the end of fiscal year 2017, it was discovered that 17 percent, or nearly 23,000 ITFs received by VA were improperly processed. This resulted in more than $72 million in underpayments to deserving veterans. A senior VA manager reported that this program was deployed within 6 months from inception and development, which affected VBAs business model, and those six months were not enough to produce sound guidance. VA's own Office of Inspector General OIG) reported that mandatory intent to file (ITF) training, which was not made available to VA staff until January 2017, was deficient. Despite VA knowing that it had hastily and indiscriminately fielded a flawed product, it took more than two years to update their Veterans Benefits Management System (VBMS) to assist rating personnel when assigning effective dates based on ITFs.

The under secretary for benefits acknowledged that there were errors involving proper processing of ITFs, and agreed to implement recommendations made by the VAOIG. This notwithstanding, the under secretary did not agree that most errors occurred because standard operating procedures had been published. The VFW does not concur; neither does the OIG. Regardless of rules having been published in the M21-1, VBMS User Guide and Delta Training, the under secretary held that "standard operating procedures were unnecessary for this critical new approach to claims processing." The OIG found that to be perplexing, as do we.

Military Sexual Trauma

On August 24, 2018, the VFW released a statement critical of the handling of nearly 18,000 improperly decided claims related to military sexual trauma (MST) that VA had received over the previous 36 months. VA leaders assured us that a review would be conducted to determine what course of action VA would take to make these dually victimized claimants whole. While the headlines were alarming and reprehensible, the VFW was not surprised by any of the OIG's findings. In our reading of the report, we determined that, like most claims that are improperly adjudicated, these claims seemed more the result of careless development rather than a deeper systemic problem or bias against victims of MST. In fact, VA's own figures on MST claims processing show the year covered by the OIG investigation was actually more successful in adjudicating MST claim grants than prior years.

The VFW finds it inexcusable that claimants who have experienced this type of trauma and whom may have explained their circumstances several times could be forced to relive the experience due to untrained adjudicators; adjudicators who must adhere to unrealistic timelines; or adjudicators who are beholden to a flawed work credit system. The VAOIG concurs with our position that inaccurate claims decisions related to MST may lead to additional psychological harm to MST victims.

In all of these scenarios, the VFW maintains that proper, consistent, and pointed training will result in better outcomes for VA and its customers. Benefits Assistance Service (BAS) has testified before this very committee, as recently as two weeks ago, that it delivers training in a number of ways and on a number of topics to better serve veterans. If in fact the training were effective and overseen, we probably would not be in the current situation. VA needs to get it right the first time, every time. The welfare of our veterans requires it. Thousands of man hours and millions of dollars have been spent on modernization, yet despite VA's best efforts, it continues to find ways to put corners on a circle. If quality training is not developed and implemented, and so-called efficiencies overseen, veterans and their families pay the price. As said in our opening statement, the VFW has been embedded in the claims process for longer than VA has existed. We have always been able to provide local mediation to assist VA in getting it right, only to be told in the name of efficiency that we can no longer do that.

In closing, the VFW does believe that VBA is headed in the right direction philosophically in establishing a fully electronic and easily accessible claims process. However, VA still has significant problems in the system that need to be addressed, starting with the unrealized efficiencies of NWQ and the seeming lack of authority for VAROs to resolve claims issues at the lowest possible level.

With the inconsistencies the VFW has seen over the past couple of years, it becomes clear that the efficiencies and innovations that VA seems extraordinarily proud of do not exist in the eyes of veterans and the family members who continue to suffer delays and denials due to incorrect rating decisions. We hope this subcommittee takes a hard look at these issues and works to resolve them in a way that truly benefits veterans.

Mr. Chairman, this concludes my testimony. Again, the VFW thanks you and Ranking Member Esty for the opportunity to testify on these important issues before this subcommittee. I am prepared to take any questions you or the subcommittee members may have.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any federal grants in Fiscal Year 2018, nor has it received any federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.