STATEMENT OF THE HONORABLE DAVID J. SHULKIN, M.D.

BEFORE THE

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

WITH RESPECT

TO THE TOXIC WORLD OF PRESUMPTIVE SERVICE CONNECTIVE DETERMINATIONS: WHY SHOULD OUR VETERANS WAIT?

WASHINGTON, DC December 9, 2020

Chairwoman Luria, Ranking Member Bost, and members of the subcommittee, I appreciate the opportunity to provide my perspectives on this important matter involving our country's veterans. Like you and our fellow citizens, I share the belief that we all have a responsibility to support those who have served and sacrificed for the rest of us. I very much appreciate the Committee's efforts to improve this system for veterans.

We spend over $100 billion a year on our benefits programs for our veterans. Costs for these programs have more than quadrupled since the year 2000. Yet we spend far too little time determining if these programs could be run more efficiently and provide more support for the dollars already expended.

As Secretary of the Department of Veterans Affairs in the Trump administration, and as UnderSecretary of the Veterans Health Administration in the Obama administration, I learned firsthand that the Department of Veteran Affairs is an essential and extraordinary resource for our country's veterans. The thousands of men and women who work in the Department are by and large passionate about their service and work hard to deliver the benefits that our veterans have earned. However, the system they work in is often complex and bureaucratic – to the point that it can be difficult to ensure that veterans get the benefits that they need and deserve.

When I was Secretary, I heard from numerous veterans and their families, about the difficulties they face in navigating the VA system. These difficulties translate into delays, and these delays translate into veterans going without the help they need, sometimes for years.

First, I want to acknowledge the tremendous progress in benefits administration that the VA has been made in recent years. Information systems have been updated and modernized, decisions are made faster, claims are processed quicker, and the appeals process and the work done by the Board of Veteran Appeals has greatly improved. However, the VA disability compensation system is still in dire need of reform.

As Secretary, I had announced my intent to undertake this challenge, but I unfortunately did not have time to complete it before leaving the VA.

The VA disability approval process is be frustrating and slow — from obtaining copies of military service records to undergoing a comprehensive evaluation known as the Compensation and Pension examination, which is used to assign a disability rating from 0-100 percent.

The exam itself was first conceived in the 1940's. It has only been modified through iterative changes and sometimes fails to properly acknowledge some of the most common issues facing today's veterans, such as post-traumatic stress (PTS).

Veterans who are dissatisfied with initial decisions often seek higher ratings on appeal. Despite real progress by VA in recent years, the backlog of appeals remains large and thousands of veterans wait on a system impeded by legislative restrictions and its own bureaucracy. This perpetuates an adversarial relationship between the veteran and VA. Many veterans who struggle to obtain an initial benefits decision become locked into a complicated process requiring them to prove their level of disability and associated needs.

Few incentives exist in the current system for veterans to improve their health status and decrease their disability rating. Under current policies, veterans that improve their health status face the possibility of losing benefits and support services. These disincentives may pose barriers to the veterans' seeking employment in the workforce.

A recent study published in The National Bureau of Economic Research found that that changes broadening disability compensation eligibility were associated with a decrease in workforce participation among disabled veterans. This lies in stark contrast to the large body of evidence suggesting that employment has a clear positive effect on veterans' physical and mental well being.

In my view the way our benefits system operates is backwards. It requires a veteran to prove that her disability or injury was service-related, and in many cases, that the association between an exposure and an adverse health consequence has been scientifically validated. This process leaves an individual veteran to fight a process and system that is often too much for her to take on. Many veterans just give up or never bother in the first place.

The system I wanted for our veterans was a system that would be more proactive rather than reactive. It would have relied upon the available documentation and science when readily available, but when it was not available but seemed to be plausible, would give the veteran immediate access to services and benefits. In other words, the veteran would be given the benefit of doubt. If or when new information was available, or when new scientific data became known, the decision could be revisited. This would mean that many more veterans could receive assistance up until there data showed clearly that they were not entitled to it. Just imagine if we had done this with Vietnam Veterans with respect to Agent Orange. Instead of thousands of veterans waiting decades for help until the science confirmed that they did in fact deserve the help, they could have received benefits while

they waited for the science to confirm what we already suspected. Many waited decades and others died without ever getting the benefits and support that they deserved. So as a short-term measure, I wholeheartedly support efforts currently underway to grant veterans access to healthcare while benefits decisions are being assessed and determined.

Disability compensation should be aligned with efforts to facilitate improvements in veterans' health and financial security. As Secretary, I was working on this issue with Dr. Kyle Sheetz, a White House Fellow in 2017 and 2018, along with assistance from a Wharton professor. We were working on a system that would grant a disability benefit to those injured or disabled at the time of application without having to go through the complex array of examinations, assessments, hearings and appeals. The concept, rooted in the science of behavioral economics, would get veterans benefits sooner, streamline the administrative processes, and ultimately save the taxpayer money. Again, this process was cut short before completion.

In order to build a system that works better for veterans, I believe we are going to have to start to model and test new compensation approaches to modernize the benefits system. As Dr. Sheetz and I wrote about in an editorial to the Hill in 2019, we suggested that several policy principles (referenced below) should be considered by VA and Congress:

1. Disability ratings should be updated to reflect contemporary workforce needs. The current system places a high priority on physical attributes necessary for manual labor and does not acknowledge present day opportunities for many disabled veterans to hold jobs in an increasingly digital economy.

2. VA should make better use of its vast data to make more personalized disability compensation determinations. Utilizing what has become commonplace in the private sector, predictive analytic models can allow VA to tailor compensation more accurately. These systems may also predict which veterans will need more resources later in life due to individual characteristics or known disability profiles. Using these data to provide better initial determinations would allow VA to move away from a cumbersome and expensive appeals and re-rating process.

3. VA should utilize best practices in behavioral economics to incentivize decisions that promote well-being and financial independence. Veterans should be incentivized to access healthcare when needed (*e.g.*, PTS treatment). There should be simpler and more efficient linkages between the disability and the healthcare systems. When appropriate, the disability system should be integrated with programs that provide service dogs, adaptive sports and other programs that help veterans regain functional and financial independence.

4. VA should facilitate savings plans in the form of an individualized retirement account to reduce financial uncertainty for veterans unable to participate in the workforce. With defaults that favor saving, VA can make it easier for veterans to plan for the long-term financial implications of returning from service with significant disability.

5. The benefits program should test a lump sum payment option. Lump sum payments can provide veterans with the resources needed to buy a house, start a business, or make other decisions that require capital resources up front. Lump sum payments are also advantageous to taxpayers because they can reduce future liabilities and create greater financial certainty over long lifetimes.

In addition, I believe veterans should have access to their Individual Longitudinal Exposure Record (ILER). This access would allow veterans to more easily obtain documentation that is often required in the disability process. One of the reasons I fought hard as Secretary to get a single instance of the electronic health record for VA and DoD was to allow veterans, and their providers, to have simple access to information related to the health of an individual whether on active duty or veteran status. This implementation, currently underway, is going to be helpful in future determinations.

In regards to the current system, we too often are seeing different standards being applied in the determinations of benefits decisions. As Secretary I had examined the issue of new presumptive conditions for veterans who had been exposed to Agent Orange. I had reviewed the extensive reports that had been recently released by the National Academy of Science and I believed that by applying the correct standards that new presumptives should be granted for bladder cancer, hyperthyroidism, and Parkinson like syndromes. I did not feel that I could make a determination at that time on hypertension, since more data was needed. However, despite my recommendations in 2017, the Office of Management and Budget decided that they believed that I was not using the appropriate standards for this determination, and the effort was stalled. I am pleased to hear that these presumptives may be included in the next NDAA as part of a Senate amendment. But once again, veterans waited too long for help.

I also believe that there was a similar issue in 2016, when I served as VA's UnderSecretary of Health. I had input into the process of a presumptive condition for Gulf War Veterans with Brain Cancer. After the review of data from a VA advisory committee and input from me, it was my understanding that Secretary McDonald had recommended granting this presumptive condition. While I was not directly involved in this at the time, it is my understanding that the Office of Management and Budget had a different interpretation of the data, and the presumptive did not move forward. Then as Secretary, I had made the decision to move forward with this presumptive once again, but I was unable to accomplish this prior to leaving VA.

Congress first determined presumptive conditions for veterans in 1921, when it established coverage for members of the military who had acquired tuberculosis or had developed psychosis. Additional presumptives have been established in the more recent past, particularly following the passage of the 1991 Agent Orange Act. However, throughout history, the issues concerning how presumptive condition determinations are made have remained complex and ambiguous. Adding to the confusion is the reality that the current process is not controlled by any one group or organization, but rather represents a confluence of influencers into the process. Once money and politics is considered, this leads to inconsistent decision-making for no decisions being made at all.

The history and the issues involved in this presumptive decision-making process are long, and it is not possible for me to review all of the relevant issues here today. As Secretary, I had determined that when clear scientific associations are not possible to determine, the correct standard was "more likely than not" in making these decisions. Others however felt that the standard should be a "significant scientific association." We have seen this just recently in the issue regarding Burn Pits. The VA has said that they are unwilling to move forward on presumptives for veterans with Burn Pit exposure as they do not believe that there is enough data to make this determination. The National Academy of Sciences has released a report saying that no such data is available on which to make a determination. Again the veterans are caught in the middle and are left waiting. They wait even when there is a low likelihood of new data becoming available.

It is my opinion that Congress should legislatively improve clarity around this process. It should make the standard clear on presumptions so there is no longer inconsistency in the standards and in the interpretation of decision-making. Second, Congress should put timeframes around this decision-making, so years do not pass without a clear direction being determined. Finally, while these legislative efforts are underway, veterans should not have to wait; they should be granted access to healthcare services and benefits where VA determines that a condition is "more likely than not" related to the veteran's service.

Reforming veterans' benefits will be challenging, but it is necessary. The status quo not only does not work for too many and leaves the system at too great a risk of becoming financially unsustainable. If this occurs, I fear that reactionary funding cuts would harm veterans and compromise public trust in upholding our responsibility to caring for our veterans. The commitment Americans have to our veterans is too important to forgo needed reforms.

Madam Chairman, thank you for the privilege today of testifying before the Subcommittee. This concludes my remarks and I am eager to answer any questions this Subcommittee may have.

Sincerely,

David Shulkin MD

David J. Shulkin, M.D.