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**STATEMENT OF
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FOR THE RECORD OF THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 10, 2024**

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

DAV (Disabled American Veterans) is grateful to provide testimony for the record for this legislative hearing concerning twelve different pieces of legislation. DAV is a congressionally chartered and Department of Veterans Affairs (VA) accredited veterans service organization (VSO). We provide meaningful claims support free of charge to more than 1 million veterans, family members, caregivers and survivors.

To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every VA regional office (VARO) as well as other VA facilities throughout the nation, including the Board of Veterans' Appeals (Board).

We are pleased to provide our views on the bills impacting service-disabled veterans, their families and the programs administered by the VA that are under consideration by the Subcommittee.

H.R. 1083, the Caring for Survivors Act

Created in 1993, Dependency and Indemnity Compensation (DIC) is a benefit paid to surviving spouses of service members who die in the line of duty or veterans who die from service-related injuries or diseases. DIC provides surviving families with the means to maintain some semblance of economic stability after losing their veteran.

Increase DIC Rates

When a veteran receiving compensation passes away, not only does the surviving spouse have to deal with the loss of the veteran, they also have to contend with the loss of annual income. This loss can be devastating, especially if the spouse was also the veteran's caregiver and reliant on that compensation as their sole income source.

Survivors who rely solely on DIC benefits face significant financial hardships after the death of their loved one. For example, a veteran who is married and receiving compensation at the 100% rate would be paid \$3,946 a month. Once that veteran passes away, the survivor would only be eligible to receive \$1,612.75 a month, a loss of nearly \$28,000 a year.

In contrast, monthly benefits for survivors of federal civil service retirees are calculated as a percentage of the civil service retiree's Federal Employees Retirement (FERS) or Civil Service Retirement System (CSRS) benefits, up to 55%. This difference presents an inequity for survivors of our nation's heroes compared to survivors of federal employees. The death benefit is about \$33,000 annually for federal employees compared to DIC at \$19,353 in 2024.

The Caring for Survivors Act would increase the rate of compensation for DIC to 55% of a totally disabled veteran's compensation to correspond with what federal employee survivors receive, thus providing parity for veterans' survivors and families.

Reduce the 10-Year Rule for DIC

If a veteran is 100% disabled, to include unemployable, for 10 consecutive years before their death, their surviving spouse and minor children are eligible for DIC benefits even if the death is not considered service connected.

Conversely, if that veteran dies due to a nonservice-connected condition before they reach 10 consecutive years of being totally disabled, their dependents are not eligible to receive the DIC benefit. This happens even though many surviving spouses put their careers on hold to act as primary caregivers for the veteran, and now with the loss of their loved one, they could potentially be left destitute. DAV believes the requirement of 10 years is arbitrary.

The Caring for Survivors Act would modify the DIC program and institute a partial DIC benefit starting at five years after a veteran is rated totally disabled and reaching full entitlement at 10 years. This would mean if a veteran is rated as totally disabled for five years and dies, a survivor would be eligible for 50% of the total DIC benefit, increasing until the 10-year threshold and the maximum DIC amount is awarded.

DAV strongly supports the Caring for Survivors Act, consistent with DAV Resolution Nos. 039 and 241. We urge Congress to provide parity for DIC compensation in comparison to federal programs and establish equity concerning the current 10-year rule.

H.R. 2911, the Fairness for Servicemembers and their Families Act

The Fairness for Servicemembers and their Families Act would require the VA to periodically review and report on the maximum coverage available under the

Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs.

From 2006 to 2023, the maximum insurance value available for servicemembers and veterans remained static, diminishing its value for military families affected. H.R. 2911 would improve the financial safety net for veterans, servicemembers, and their families by helping to ensure coverage amounts for the SGLI and the VGLI account for changes in economic trends. Specifically, it would help ensure the maximum group insurance available to servicemembers and veterans account for rising costs by requiring the Secretary to submit a report to Congress indicating the buying power of the current maximum coverage against fiscal year 2005 dollars using data from the Bureau of Labor and Statistics.

DAV supports the Fairness for Servicemembers and their Families Act based on DAV Resolution No. 530, calling for reform to life insurance benefits for veterans.

H.R. 3651, the Love Lives On Act

The Love Lives On Act would restore payment of dependency and indemnity compensation (DIC) to surviving spouses who remarry before the age of 55. This legislation would also not allow the termination of annuity payments to surviving spouses solely on the basis of them remarrying. In the case of a spouse that has remarried prior to the age of 55 and before this act becomes law, payments would be resumed. This legislation would also entitle a surviving spouse the opportunity to use the commissary and exchange stores. H.R. 3651, also expands the definition of a surviving spouse and dependent for entitlement to certain benefits, to include veterans benefits and Tricare.

DAV strongly supports the Love Lives On Act in accordance with DAV Resolution No. 241. Removing the remarriage age for surviving spouses has been a long-standing issue for DAV. Surviving spouses who are currently in receipt of DIC benefits should not have to worry about losing their benefits if they remarry before age 55.

H.R. 7100, the Prioritizing Veterans' Survivors Act

The Office of Survivors Assistance (OSA) was established by Public Law 110-389, in October 2008, to serve as a resource regarding all benefits and services furnished by VA to survivors and dependents of deceased veterans and members of the Armed Forces. Additionally, it serves as a principal advisor to the Secretary of Veterans Affairs, working to promote the use of VA benefits, programs, and services to survivors while ensuring that they are properly supported as stated in VA's mission.

On January 30, 2024, Josh Jacobs, VA Under Secretary for Benefits, testified before the House Veterans' Affairs Committee. In his written testimony he noted, "In February 2021, OSA was moved under the Veterans Benefits Administration (VBA) to better align OSA's work with survivors, outreach, and survivors' monetary benefits

under the program office that has oversight of several benefit programs available to survivors.”

The Prioritizing Veterans’ Survivors Act would require the removal of the OSA from VBA and place it directly within the office of the VA Secretary. DAV does not have a specific resolution or a position on this legislation. Our concern lies directly with survivors and dependents receiving the appropriate resources and maximum benefits available.

H.R. 7150, Survivor Benefits Delivery Improvement Act of 2024

Following the passage of P.L. 117-168, the Sergeant First Class Heath Robinson Honoring Our Promise to Address Comprehensive Toxics Act of 2022, known as the PACT Act, VA extended outreach to 385,000 potential survivors who may be impacted. Since then, as of January 1, 2024, VA has received 13,768 DIC claims related to presumptive conditions. A total of \$116 million has been awarded in retroactive benefits to survivors. However, we question if VA reached out to all of the impacted survivors in all locations?

The Survivor Benefits Delivery Improvement Act would require VA to collect demographic data on the survivor population. This could assist VA with outreach to very specific populations. Additionally, this legislation directs VA to develop an outreach program for survivors to make sure that every survivor knows what benefits are available to them.

DAV supports H.R. 7150 in accordance with DAV Resolution No. 241. The onus should not be on survivors to reach out to VA during a difficult time. VA should make every effort to inform all survivors of the resources and benefits available to them.

H.R. 7777, the Veterans’ Compensation Cost-of-Living Adjustment Act

The Veterans’ Compensation Cost-of-Living Adjustment (COLA) Act would increase compensation rates for VA benefits, including clothing allowance, and dependency and indemnity benefits paid to survivors and families of service members who died in the line of duty or suffer from a service-related injury or disease.

Many service-disabled veterans and their families depend on VA compensation benefits just to make ends meet. This COLA will benefit wounded, injured and ill veterans, their families and survivors by helping to maintain the value of VA benefits.

DAV strongly supports H.R. 7777, in accordance with DAV Resolution No. 226. To avoid any potential delays in applying the increase, we urge swift passage of the Veterans’ COLA Act. Without annual COLAs, many disabled veterans, who sacrificed their own health and family life for the good of our nation, may not be able to maintain the quality of life they and their families deserve.

H.R. 7793: Veterans Appeals Options Expansion Act

The Veterans Appeals Options Expansion Act would address several areas of concern DAV has raised regarding the VA's rejection of claims based on submittal of the wrong form and the increasing backlog of appeals at the Board of Veterans Appeals.

Effective March 24, 2015, VA amended its adjudication regulations adding the Standard Claims and Appeals Forms Regulation, which requires all claims to be on the appropriate VA form. If the veteran uses the wrong form, VA sends a letter to acknowledge they received a claim but noting it was on the wrong form. Further, VA will not accept the submission of the wrong form as an informal claim or as an Intent to File (ITF), thus not establishing the veteran's potential effective date for a grant of benefits.

H.R. 7793, provides, "If an individual with a claim for benefits under the laws administered by the Secretary submits to the Secretary a form under paragraph (1) that is not the correct form prescribed by the Secretary for such claim, the Secretary shall treat such form as an intent to file a claim under section 3.155 of title 38, Code of Federal Regulations, or successor regulation."

This is consistent with recommendations DAV made in our testimony before the Subcommittee on March 20, 2024. We stated, "DAV believes there should never be a wrong door at VA and we recommend that VA reconsider the standardized forms requirement or take an approach that will either accept the wrong form as an Intent to File or if all of the needed information is provided VA should process and decide the claim."

DAV strongly supports this proposed change; however, VA regulations only allow a veteran to have one pending ITF at a time. Therefore, this change could have a negative impact on effective dates as the most recent ITF would negate an already established ITF. We recommend that the language be amended to consider this potential complication and ensure that a veteran's effective date, already established by an ITF, is not impacted.

Additionally, the Veterans Appeals Option Expansion Act would allow veterans to switch Board dockets at any time before their appeal has been assigned to a Board decision-maker. Further, it would require the Board to promptly notify veterans when they have submitted untimely evidence and the consequences of doing so, and would prevent veterans from being moved to the back of the Board's line after the Board sends those veterans' claims back to VBA.

The Board noted in its final FY 2023 quarterly report, published on its website, that 103,245 appeals were decided while receiving over 101,000 new appeals. There were 24,145 legacy appeals pending and over 180,000 pending AMA cases totaling 208,155 appeals pending on October 1, 2023. Of the appeals pending, it noted that AMA appeals on a direct route were pending an average of 577 days, AMA appeals

with evidence were pending an average of 682 days and AMA appeals requesting a hearing were pending an average of 700 days. Given the backlog of appeals and those that have been pending for years, there should be an alternative option for veterans.

DAV supports the Veterans Appeals Option Expansion Act in accordance with DAV Resolution No. 220. We believe any appeals reform must preserve or enhance veterans' due process rights and ensure that adjudications are fair, accurate, timely and of acceptable quality.

H.R. 7816, the Clear Communication for Veterans Claims Act

The Clear Communications for Veterans Claims Act would require the VA Secretary to enter into an agreement with a federally funded research and development center, (FFRDC), which are owned by the federal government, but operated by contractors, including universities, nonprofit organizations, and industrial firms.

The subject for the FFRDC is the notices and letters issued by the VA to veterans and other claimants. As we highlighted in our testimony before this Subcommittee on March 20, 2024, "it is evident that these letters speak a language that veterans cannot always translate."

Additionally, we recommended that VA take a new look at its letters by concentrating on the language for the reader and not the legal requirements. We suggested the use of focus groups populated with veterans and veterans service organizations to assist in developing language that is understood and clearly conveys information and the intent of the letter.

VA letters should not be structured in a way that induces confusion, anxiety or frustration for veterans. DAV fully supports the Clear Communications for Veterans Claims Act in accord with DAV Resolution No. 220, which calls for meaningful claims and appeals reform.

Discussion Draft—The Veterans Appeals Efficiency Act

This proposed bill, the Veterans Appeals Efficiency Act, would require several reporting and tracking requirements for VBA and the Board to include tracking and maintaining information on Higher Levels Reviews, Supplemental Claims and Notices of Disagreement. Further, it would require tracking on claims pending in the National Work Queue not assigned to an adjudicator, cases remanded by the Board, AMA cases pending a hearing and when a decision-maker did not comply with the Board's decision.

The draft legislation contains other noteworthy requirements such as improvements to the Board, a study and report on common questions of law or fact before the Board and an independent assessment of potential modifications to the authority of the Board.

In principle, DAV would support tracking and reporting information on claims and appeals in order to help resolve the current lengthy timeline for pending appeals. Based on DAV Resolution No. 220, DAV could support this proposed legislation. However, we have concerns over any potential changes to the authority of the Board. The independent review has the ability to provide insights to the process, but before any changes to the Board's authority are contemplated, the VSO and stakeholder community must be engaged in thoughtful and deliberate conversations over any such changes.

Medical Nexus Examinations for Toxic Exposure Risk Activities as Addressed in Discussion Draft—Medical Disability Examination Improvement Act & Discussion Draft—Toxic Exposures Examination Improvement Act

For more than 100 years, our servicemembers have been exposed to hazardous environments and toxins, often resulting in negative health impacts, which require future health care and benefits. Historically, it takes VA and Congress decades to establish recognized toxic exposures and related diseases.

Our sense of duty to them must be heightened as many of the illnesses and diseases due to these toxic exposures may not be identifiable for years, even decades, after they have completed their service. When VA and Congress do not recognize toxic exposures or presumptive diseases, toxic exposed veterans are placed at a severe disadvantage in trying to establish direct service connection for diseases. The PACT Act included in Title 38, United States Code, section 1168, which requires VA to provide a medical nexus examination for toxic exposed veterans if the evidence is not sufficient to establish direct service connection. This removed a barrier for toxic exposed veterans, without this, many claims will be denied without VA requiring an examination or a medical opinion.

Currently, the statute states that if a veteran submits a claim for a condition due to toxic exposures, the VA will provide the veteran an examination as indicated. However, provisions in the Discussion Draft—Medical Disability Examination Improvement Act, would change this statute by redefining who is eligible for the medical nexus opinion. The proposal would change veteran to covered veteran. The statute defines a covered veteran as only those noted directly in the PACT Act.

DAV would not support this proposed change in the Discussion Draft—Medical Disability Examination Improvement Act, as it is defining a toxic exposed veteran with restrictions and limitations for the purpose of a medical nexus examination. Thus, not every toxic exposed veteran would fit in this definition, including those exposed toxins at Ft. McClellan, veterans exposed to PFAS or other toxins. We argue that the Congressional intent of the law was to cover all toxic exposed veterans not just a smaller group of veterans.

The Discussion Draft—Toxic Exposures Examination Improvement Act, would also make changes to section 1168 of Public Law 117-168, that does not honor the

heightened sense of duty to toxic exposed veterans. This proposal would remove the current requirement, “if the evidence is not sufficient to establish direct service connection.” It would change it to “such evidence does not contain sufficient medical evidence for the Secretary to make a decision on the claim”. While this would reduce the number of examinations VA would be required to conduct, it creates a barrier for toxic exposed veterans trying to establish direct service connection for a toxin-related disease.

DAV would not support this proposed change in the Discussion Draft—Toxic Exposures Examination Improvement Act. It takes VA and Congress decades to establish toxic exposure related diseases and this proposed change would remove an advantage toxic exposed veterans were guaranteed by the PACT Act.

Discussion Draft—The Veterans Claims Quality Improvement Act

The proposed bill, the Veterans Claims Quality Improvement Act, would provide for certain revisions to the manual of the Veterans Benefits Administration and aims to improve the quality of the adjudication of claims for benefits.

Specifically, it would require the VA General Counsel to review and comment on any revisions to VBA manuals addressing the adjudication of claims. Additionally, it would require the VA General Counsel to develop a training program and provide training for any employees responsible for drafting rules, guidance, or any other types of issuances.

The proposed bill would also require the Chairman of the Board to establish a program to ensure the quality of Board decisions with a requirement to report to the House and Senate Veterans’ Affairs Committee annually.

In accordance with DAV Resolution No. 220, we support the discussion draft as currently written to strengthen VBA adjudication manuals, Office of General Counsel opinions, and training programs, which could result in an overall improvement of decisions within VBA and the Board.

In closing, Mr. Chairman, we thank you for the opportunity to submit a statement for the record addressing our concerns on the twelve bills being considered by the Subcommittee.