



**Paralyzed Veterans
of America**



**JOINT STATEMENT OF
THE CO-AUTHORS OF *THE INDEPENDENT BUDGET*:
DISABLED AMERICAN VETERANS
PARALYZED VETERANS OF AMERICA
VETERANS OF FOREIGN WARS
BEFORE
SUBCOMMITTEE ON MILITARY CONSTRUCTION, VETERANS
AFFAIRS AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
WITH RESPECT TO
“U.S. Department of Veterans Affairs Budget Request for Fiscal Year 2021”
MARCH 10, 2020**

Chairwoman Wasserman Schultz, Ranking Member Carter, and members of the subcommittee, the co-authors of *The Independent Budget (IB)*—DAV (Disabled American Veterans), Paralyzed Veterans of America (PVA), and Veterans of Foreign Wars (VFW) — are pleased to present our views regarding the President’s fiscal year (FY) 2021 funding request for the Department of Veterans Affairs (VA), including advance appropriations for FY 2022.

Prior to the Administration’s budget request, the *IB* released its comprehensive VA budget recommendations for all discretionary programs for FY 2021, as well as advance appropriations recommendations for medical care accounts for FY 2022.¹ The recommendations also include

¹ The full *IB* budget report addressing all aspects of discretionary funding for VA can be downloaded at www.independentbudget.org.

funding to implement the VA MISSION Act of 2018, Public Law (P.L.) 115-182, and other reform efforts. The *IB* urges Congress to continue vigorous oversight of VA to ensure an accurate assessment of its true needs. Our own FY 2021 estimates affirm that these needs continue to grow.

For FY 2021, the *IB* recommends \$114.8 billion in total discretionary budget authority for the VA. This recommendation is \$4.4 billion more than the Administration's request and an 18% increase over FY 2020. After reviewing the Administration's budget request for VA, which provides a 13% increase, we believe the request falls short of meeting the needs of America's veterans in light of the requirements of the VA MISSION Act, increasing need for medical care, claims and appeals processing, information technology (IT) modernization and construction needs.

The Administration's FY 2021 request for all VA medical care of approximately \$95.6 billion is \$2.8 billion less than the *IB* estimates is necessary to fully meet the demand by veterans for health care during the fiscal year. For FY 2021, the *IB* recommends approximately \$98.4 billion in total medical care funding and approximately \$100.6 billion for FY 2022. This recommendation reflects the necessary adjustments to the baseline for all Medical Care program funding of the preceding fiscal year, increases based on new and existing workload, and the 3.1% federal pay adjustment, among other things. Our recommendation did not assume any funds remaining in the Veterans Choice Fund established by section 802 of P.L. 113-146, the Veterans Access, Choice, and Accountability Act of 2014 (VACAA) based on P.L. 116-94, the Further Consolidated Appropriations Act, 2020, and subsequent appropriations for the section 802 account.

Medical Services. — For FY 2021, the *IB* recommends \$64.4 billion for VA Medical Services. This recommendation is a reflection of multiple components including the current services estimate, the increase in patient workload, and additional medical care program costs:

- The current services estimate reflects the impact of projected uncontrollable inflation on the cost to provide services to veterans currently using the system. This estimate also assumes a 3.1% increase for pay and benefits across the board for all VA employees in FY 2021.
- Our estimate of growth in patient workload is based on a projected increase of approximately 65,000 new unique patients. These patients include priority group 1–8 veterans and covered non-veterans, which we estimate the cost to be approximately \$991 million.
- The *IB* believes that there are additional projected medical program funding needs for VA totaling over \$2.1 billion. Specifically, an additional \$328 million to provide additional centralized prosthetics funding (based on actual expenditures and projections from the VA's Prosthetics and Sensory Aids Service); \$200 million to expand and improve services for women veterans; \$20 million to support VA's authority for reproductive services including in vitro fertilization (IVF); \$779 million to implement eligibility expansion of the VA comprehensive caregiver support program; \$776 million to close the reported vacancies for both outpatient mental health and Patient Aligned Care Team (PACT) by 10%.

The Administration's FY 2021 budget request for VA Medical Services, including collections, of \$60.4 billion is approximately \$4.0 billion below the *IB* recommendation. Although the Administration's request reflects an apparent increase of 10% over FY 2020 funding levels, the *IB*

believes that when taking into account the increased cost to maintain current services and anticipated increases in workload, as well as increased costs inside VA due to the VA MISSION Act, that the requested increase is not enough. Of great concern to our members is the timeline Congress set out in the VA MISSION Act for expanding its comprehensive caregiver support program has clearly not been met. The delay in certifying the IT solution to support expansion of the caregiver program and VA's failure to timely publish a Notice of Purpose Rulemaking raises troubling concerns about VA's ability to fully implement the caregiver expansion. Severely injured World War II, Korean War, and Vietnam War veterans and their family caregivers have waited nearly a decade for equal treatment and it is simply unacceptable to ask them to wait longer.

In terms of funding, the Administration's FY 2021 request included approximately \$1.2 billion for VA's comprehensive caregiver support program. Because this request represents an overall increase of \$485 million over FY 2020, it is noteworthy that \$650 million is to implement the eligibility expansion required under the VA MISSION Act; thus, we are concerned this request assumes a reduction in the number of existing program participants—approximately 20,000 approved family caregivers. The *IB* recommends appropriating \$779 million for FY 2021 for the phase-one expansion scheduled towards the end of FY 2020, with only a small portion of the expansion cost absorbed in FY 2020. The *IB*'s recommendation is based on the Congressional Budget Office estimate for preparing the program, including increased staffing and IT needs, and the beginning of the first phase of expansion. To continue the expansion, the *IB* recommends \$1.4 billion for FY 2022.

Medical Community Care. — The *IB* recommends \$18.2 billion for this account for FY 2021, which includes the growth in current services. We note the volatility in obligations within this account particularly for contractual services, for which the vast majority of obligated funds are spent. In addition, our recommendation does not assume any funds remaining in the Veterans Choice Fund established by section 802 of the VACAA based on P.L. 116-94. For FY 2022, the *IB* recommends \$18.7 billion for Medical Community Care.

The Administration's FY 2021 budget authority request for Medical Community Care of \$20.4 billion is comprised of \$3.2 billion increase over FY 2020 funding, an estimated increase of \$247 million in medical community care collections from \$537 million to \$784 million, and \$1.1 billion remaining in the Veterans Choice Fund account. We have serious doubts whether projected to actual spending will converge given the volatility in obligations within this account, the transfer of administrative responsibilities for certain regional networks and provider coverage, and new responsibilities VA is assuming under the new Veterans Community Care Program. Most concerning to the *IB* is VA's proposal to increase non-VA care by nearly 25% next fiscal year compared to just over a 10% funding increase for care provided at VA medical facilities because we believe that veterans prefer to get care from VA providers than through the Veterans Community Care Program.

Medical and Prosthetic Research. — The Administration's request of \$787 million is nearly \$82 million below the *IB* recommendation of \$860 million. The request represents a 2% cut, at a time when medical research inflation is increasing in excess of 2%. The VA Medical and Prosthetic Research program is widely acknowledged as a success, with direct and significant contributions to improved care for veterans and an elevated standard of care for all Americans. This research

program is also an important tool in VA's recruitment and retention of health care professionals and clinician-scientists to serve our nation's veterans. This reduction would diminish VA's ability to provide the most advanced treatments available to injured and ill veterans in the future, one of VA's core missions.

Vocational Rehabilitation and Employment (VR&E). — This program was authorized to hire an additional 174 FTEs in FY 2019 and implemented workforce increases and tech modernization. In order to ensure the 1 to 125 ratio is maintained nationally and even within each VA regional office or region, for FY 2021, the *IB* recommends \$17.2 million for 156 FTE for VR&E, 87% of which are Vocational Rehabilitation Counselors (VRCs). As recently reported, VRCs can spend 60% of their time with administrative functions, thus necessitating the addition of administrative staff.

However, in the recent Administration's budget request, it was indicated that with guidance in the FY 2020 Appropriations Act, 2020, VBA will also reallocate 166 FTE to VR&E, a result of decreased resources required to process legacy appeals, to support anticipated program growth and maintain the 1:125 counselor-to-veteran ratio at the station level. To be clear, the 1:125 ratio is based on VRCs and not administrative staff. The Administration's proposal would not increase the number of VRCs, only administrative staff. While we agree that an increase in administrative staff is warranted, the number of FTE for VRCs needs to be addressed as well.

Board of Veterans' Appeals (BVA).—For FY 2021, the *IB* recommends approximately \$218 million for the BVA, an increase of approximately \$36 million over the estimated FY 2020 appropriations level, which reflects funding for current services with increases for inflation and federal pay raises and an additional 100 FTE.

In February 2019, the Veterans Appeals Improvement and Modernization Act (AMA), P.L. 115–55, took full effect, making significant changes in how veterans appeal VBA claims decisions, both within VBA and at the Board of Veterans' Appeals (BVA). There are currently 17,000 pending AMA hearings with the Board and 59,000 pending legacy hearings, for a total of 66,000 pending hearings. In FY 2019, BVA conducted a record number of 22,743 hearings, a 38% increase over the prior year. Even at that rate, it will take three years to hold all hearings for legacy appeals and yet not address the current 17,000 pending AMA appeals with requested hearings, not to mention the additional AMA appeals received during those three years.

The Administration's budget request would not increase staffing at the Board. It indicates VA expects to lose 29 FTE, based on attrition, in FY 2021. However, as the number of backlog hearings has not drastically been reduced and many of the legacy hearings have been pending for years, we are recommending an increase of 100 FTE for the Board to address the 66,000 pending hearings.

Information Technology (IT). — VA relies extensively on information technology to meet day-to-day operational needs. At Congress' direction, over a decade ago, VA centralized all IT budget authority, management, and development under a chief information officer (CIO). It is now one of the few agencies of its size with a CIO that has complete IT authority affecting the entire organization. Centralization mandated fiscal discipline, security, standardization, and

interoperability. Yet little oversight, if any, has been conducted of this organization since centralization and its performance in supporting VA's statutory missions, including benefits and health care delivery, research, and education and training of health professions. For FY 2021, the IBVSOs recommend approximately \$4.3 billion for the administration of the VA's IT program to meet the need to sustain VistA for an estimated 7–10 years after initial operating capabilities are attained at initial sites for replacing VistA.

For several years, the VA has indicated the development of IT applications remains under VA's three separate administrations — VBA, VHA, and the National Cemetery Administration (NCA); however, the development funding has been in decline over the last five years. In nominal dollars since 2014, total development funding has been reduced by over 40% while the overall funding has increased by 6%. We are pleased VA is requesting an increase of \$68 million in development activities. The *IB* similarly recommends \$150 million, of which \$65 million would be provided to VA's Education Services and the remaining \$85 million to OIT, to develop an IT system capable of handling today's difficult tasks, and tomorrow's upcoming changes. In addition, we recommend IT development funding of \$15 million for FY 2021 for the BVA's Case Flow, which currently does not have all the functionalities needed to replace the legacy Veterans Appeals Control and Locator System (VACOLS).

To support the electronic health record modernization efforts in FY 2021, the *IB* recommends \$2.48 billion, which includes \$180 million to support accelerated deployment of Cerner Millennium Scheduling System. These amounts are also based on VA's deployment schedule estimating FY 2021 resource needs to complete initial operating capability sites and deployment throughout the remainder of VISN 20 and 22, and initiating deployment in VISN 21.

Construction Programs. — The Administration's FY 2021 request for VA's construction programs of \$1.9 billion dollars is a deeply disappointing retreat in funding to maintain VA's aging infrastructure. At the Senate Committee on Veterans' Affairs hearing on March 26, 2019, in response to Senator Manchin's question about VA's "decrease in funding levels for construction programs," Secretary Wilkie stated that he estimates VA will need, "\$60 billion over the next five years to come up to speed." This backlog is confirmed by VA's FY 2021 budget submission, which states that VA's, "Long-Range SCIP plan includes 3,595 capital projects that would be necessary to close all currently-identified gaps with an estimated magnitude cost of between \$49-\$59 billion not including activation costs." However, VA's FY 2021 budget request for major and minor construction combined is just over \$1.9 billion, significantly below the true need stated by the Secretary and identified by SCIP. At a time when VA is seeking to expand its capacity by hiring additional doctors, nurses, clinicians and supporting staff, it is absolutely critical that VA continue to invest in the infrastructure necessary for them to care for veterans.

Some major construction projects have been on hold or in the design and development phase for years. Additionally, there are outstanding seismic corrections that must be addressed. Thus, the *IB* recommends \$2.7 billion for VA's FY 2021 major construction, over \$1.4 billion more than VA's request.

To ensure VA funding keeps pace with all current and future minor construction needs, the *IB* recommends Congress appropriate an additional \$760 million in FY 2021 for minor construction

projects. It is important to invest heavily in minor construction because these are the types of projects that can be completed faster and have a more immediate impact on services for veterans. VA's FY 2021 request of \$400 million is significantly less it has requested in previous years, and will only allow the critical infrastructure backlog to continue to grow.

Non-Recurring Maintenance (NRM) had seemed to slip through the cracks within the construction space in previous years. VA's FY 2021 request of \$1.8 billion in budget authority for NRM, however, is a significant increase from previous years. NRM projects are often necessary maintenance that is preventative in nature and saves equipment and facilities from reaching failure points. Heavy investment in NRM is a wise expenditure because spending money to maintain equipment and buildings ensure longevity and costs a fraction of having to replace buildings with new construction. The *IB* is pleased VA has requested to invest in this critical concern.

A congressionally mandated research infrastructure report shows a total cost of \$99.5 million in Priority 1 deficiencies having an immediate need for correction within one year, such as correcting life-safety hazards, returning components to normal service or operation, stopping accelerated deterioration, and replacing items that are at or beyond their life cycle. The total cost to correct Priority 1-5 deficiencies is estimated at \$207.1 million. Accordingly, the *IB* recommends a minimum of \$99.5 million for FY 2021 to correct all Priority 1 deficiencies.

Grants for state extended care facilities, commonly known as state home construction grants, are a critical element of federal support for state veterans' homes. For FY 2021, the *IB* recommends \$250 million for grants for state extended care facilities to fund approximately half of the federal share of projects on the FY 2020 VA State Home Construction Grants Priority List for Group 1, those that have already secured their required state matching funds.

National Cemetery Administration.— The *IB* commends the Administration for requesting a \$31-million-dollar increase in appropriations for NCA to account for its obligation to manage 156 national cemeteries and to meet a continued increase in demand for burial space which is not expected to peak until 2022. NCA continues to expand and improve the national cemetery system, to include a plan to open additional burial sites in 2021. NCA has also inherited 11 Army post cemeteries which it must perpetually maintain. VA's request of \$360 million for NCA operations and maintenance is \$24 million more than the *IB* recommendation of \$336 million.

Additionally, NCA has undertaken the task of creating a digital memorial page for each veteran interred in a VA national cemetery as part of the Veterans Legacy Memorial. This much needed expansion of the national cemetery system will help to facilitate the projected increase in annual veteran interments and will simultaneously increase the overall number of graves being maintained by NCA to more than 4 million by 2021. The *IB* strongly believe that VA national cemeteries must honor the service of veterans and fully support NCA's National Shrine initiative, which ensures our nation's veterans have a final resting place deserving of their sacrifice to our nation. The *IB* also support NCA's Veterans Legacy Program (VLP), which helps educate America's youth about the history of national cemeteries and the veterans they honor. Recently enacted P.L. 116-107, which authorizes NCA to provide grants as part of VLP, may enable VA to significantly expand VLP and ensure more veterans can have their stories preserved in perpetuity.

Administration Legislative Proposals. — The IBVSOs strongly oppose four benefits related legislative proposals included in the budget that would reduce benefits to disabled veterans that were earned through their service:

1. Effective Date Simplification for Claims for Increased Evaluation:

VA seeks to amend title 38, United States Code, § 5110(b)(3) to make the date of receipt of a claim the effective date for an increased rating. While VA states this is a simplification of claims for increase, this proposed amendment would take away billions of dollars from veterans by disallowing entitlement to an increased evaluation prior to the date of claim.

Title 38, United States Code, § 5110(b)(3) states, “the effective date of an award for increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability has occurred, if application is received within one year from such date.”

For example, if medical evidence establishes entitlement to an increase rating eight months prior to the date the claim for VA benefits was submitted, the effective date for benefits granted will be that date eight months prior. By eliminating this statutory provision, VA would virtually discredit any medical evidence prior to the date of claim on claims for increase and negatively impact effective dates for individual unemployability. Not only would this bear directly on retroactive compensation, this proposal would also confound certain protections and other ancillary benefits based on effective dates.

The Administration’s proposal would reduce anticipated disability compensation to veterans by \$678 million in 2021, \$3.5 billion over five years, and \$7.5 billion over 10 years. We strongly oppose this attempt to “simplify” effective dates for claims for increase particularly when the result will be billions of dollars in lost disability compensation for those who were injured or made ill in service.

2. Limit Disability Evaluations to Criteria within the VA Schedule for Disabilities (VASRD):

VA seeks to amend title 38, United States Code, § 1155 so that disability evaluations can only be established based on criteria within the VASRD and effectively eliminate extra-schedular consideration.

Extra-schedular cases are not defined by statute but in 38, Code of Federal Regulations, § 3.321(b)(1). It notes that to accord justice to the exceptional case where the schedular evaluation is inadequate to rate a single service-connected disability, an extra-schedular evaluation commensurate with the average impairment of earning capacity due exclusively to the disability is to be considered. The governing norm in these exceptional cases is a finding that application of the regular schedular standards is impractical because the disability is so exceptional or unusual due to such related factors as marked interference with employment or frequent periods of hospitalization.

The United States Court of Appeals for Veterans Claims (Court) has set out a three-part test, based on 38, Code of Federal Regulations, 3.321(b)(1) for determining whether a claimant is entitled to an extra-schedular rating: (1) the established schedular criteria must be inadequate to describe the severity and symptoms of the claimant's disability; (2) the case must present other indicia of an exceptional or unusual disability picture, such as marked interference with employment or frequent periods of hospitalization; and (3) the award of an extra-schedular disability rating must be in the interest of justice. *Thun v. Peake*, 22 Vet. App. 111 (2008), *affd*, *Thun v. Shinseki*, 572 F.3d 1366 (Fed. Cir. 2009).

The VASRD does not contemplate every disease or disability, nor does it provide an evaluation for every set of symptoms and complications caused by each disability. This proposal would eliminate any veteran attempting to be afforded justice for the severity and symptoms of an unusual disability picture that provides marked interference with employment or frequent hospitalizations. This is an attempt to avoid the precedence as established by the Court.

The Administration's proposal would reduce anticipated disability compensation to veterans by \$74.7 million in 2021, \$1.1 billion over five years, and \$4.2 billion over 10 years. We strongly oppose this attempt to "simplify" effective dates for claims for increase particularly when the result will be billions of dollars in lost disability compensation for those who were injured or made ill in service.

We oppose any proposal that would eliminate extra-schedular consideration as it will not consider veterans' with unusual disability pictures based on marked interference with employment or frequent hospitalizations and effectively tip the scales of justice against them.

3. Round-Down of the Computation of the Cost-of-Living Adjustment (COLA) for Service-Connected Compensation and Dependency and Indemnity Compensation (DIC) for Five Years:

In 1990, Congress, in an omnibus reconciliation act, mandated veterans' and survivors' benefit payments be rounded down to the next lower whole dollar. While this policy was initially limited to a few years, Congress continued it until 2014. While not significant at the onset, the overwhelming effect of 24 years of round-down resulted in veterans and their beneficiaries losing billions of dollars.

In the Administration's proposed budget for FY 2020, the Administration sought legislation to round-down the computation of COLA for five years. This would have cost beneficiaries \$34 million in 2020, \$637 million for five years, and \$2 billion over 10 years.

The Administration's proposed budget for FY 2021 is seeking to round-down COLA computations from 2021 to 2026. The cumulative effect of this proposal levies a tax on disabled veterans and their survivors, costing them money each year. When multiplied by the number of disabled veterans and DIC recipients, millions of dollars are siphoned from these deserving individuals annually. All told, the government estimates that it would cost beneficiaries \$39 million in 2020 and \$677 million for five years and \$2.2 billion over 10 years.

Veterans and their survivors rely on their compensation for essential purchases such as food, transportation, rent, and utilities. Any COLA round-down will negatively impact the quality of life for our nation's disabled veterans and their families, and we oppose this and any similar effort. The federal budget should not seek financial savings at the expense of benefits earned by disabled veterans and their families.

4. Elimination of Payment of Benefits to the Estates of Deceased Nehmer Class Members and to the Survivors of Certain Class Members:

VA seeks to amend title 38, United States Code, § 1116 to eliminate payment of benefits to survivors and estates of deceased Nehmer class members. If a Nehmer class member, per 38 Code of Federal Regulations, § 3.816, entitled to retroactive benefits dies prior to receiving such payment, VA is required to pay any unpaid retroactive benefits to the surviving spouse or subsequent family members. This proposed legislation would deny veterans' survivors and families' benefits that would have otherwise been due to their deceased veteran family member as a result of exposure to these toxic chemicals while in service. It is outrageous that the Administration would deny compensation payments due to a surviving spouse. We adamantly oppose this or any similar proposal that may be offered.

The *IB* supports one of VA's legislative proposals regarding VA approved Medical Foster Homes (MFH). This proposal would require the VA to pay for service-connected veterans to reside in VA approved MFHs.

MFHs provide an alternative to long-stay nursing home (NH) care at a much lower cost. The program has already proven to be safe, preferable to veterans, highly veteran-centric, and half the cost to VA compared to NH care. Aligning patient choice with optimal locus of care results in more veterans receiving long-term care in a preferred setting, with substantial reductions in costs to VA. This proposal would require VA to include MFH in the program of extended care services for the provision of care in MFHs for veterans who would otherwise encumber VA with the higher cost of care in NHs.

Many more service-connected veterans referred to or residing in NHs would choose MFH if VA paid the costs for MFH. Instead, they presently defer to NH care due to VA having payment authority to cover NH, while not having payment authority for MFH. As a result of this gap in authority, VA pays more than twice as much for the long-term NH care for many veterans than it would if VA was granted the proposed authority to pay for MFH. This proposal would give veterans in need of NH level care greater choice and ability to reside in a more home-like, safe environment, continue to have VA oversight and monitoring of their care, and preferably age in place in a VA-approved MFH rather than a NH. The proposal does not create authority to cover veterans who reside in assisted living facilities.

MFH promotes veteran-centered care for those service-connected veterans who would otherwise be in a nursing home at VA expense, by honoring their choice of setting without financial penalty for choosing MFH.

Thank you for the opportunity to submit our views on the Administration's budget request for VA. We firmly believe that unless Congress acts to increase VA's funding for FY 2021 and 2022, veterans will be forced to wait longer for benefits and services leaving unfulfilled the promises made to those who have served and sacrificed defending our country.