

**EXAMINING HOW VBA CAN EFFECTIVELY  
PREVENT AND MANAGE OVERPAYMENTS**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON DISABILITY  
ASSISTANCE AND MEMORIAL AFFAIRS**

OF THE

**COMMITTEE ON VETERANS' AFFAIRS**

**U.S. HOUSE OF REPRESENTATIVES**

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## **EXAMINING HOW VBA CAN EFFECTIVELY PREVENT AND MANAGE OVERPAYMENTS**

**Wednesday, October 25, 2017**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON DISABILITY ASSISTANCE  
AND MEMORIAL AFFAIRS,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 10:30 a.m., in Room 334, Cannon House Office Building, Hon. Mike Bost, [Chairman of the Subcommittee] presiding.

Present: Representatives Bost, Coffman, Radewagen, Bergman, Esty, and Brownley.

### **OPENING STATEMENT OF HONORABLE MIKE BOST, CHAIRMAN**

Mr. BOST. Good morning and welcome. This is the oversight hearing of the Subcommittee on Disability Assistance and Memorial Affairs, and we will now come to order.

Today we are looking at the overpayments and how they impact veterans. An overpayment is when the VA gives a veteran too much money. For example, some disabled veterans receive additional compensation to help with expenses of their eligible dependents, such as their spouse. When a veteran informs the VA that they are divorced, the VA should immediately process a change in the dependent's status, which will lower the veteran's compensation payment. But if the VA doesn't process the change for several months, the veteran may end up owing VA thousands of dollars.

Naturally, this can be a big problem for the veteran and his family, his or her family, especially if they can't afford to pay it back. On the other hand, if the veteran doesn't repay the money, the taxpayer has to foot the bill.

This hearing will review the reasons overpayments are created and how VA can prevent them, such as if the overpayment is caused by the VA's mistake or a delay in processing a claim.

We will look also at a troubling trend: the growth in the amount of overpayments over the past 2 years. After all, the taxpayers, we have invested more than \$1 billion for the VBMS and other technology to improve the efficiency and accuracy in the last 5 years. All this new technology should reduce the number of overpayments, yet in fiscal year 2015 VA issued about \$350 million in overpayments; in fiscal year 2016, the amount increased to more than \$600 million. And I think that we may have the right to ask why overpayments have increased and what VA is doing to reduce them.

We will also look into the Department's debt collection process to ensure that the VA is being both fair to the veteran and a good steward of the taxpayer dollars. An important part of this process is how VA notifies the veteran of an overpayment.

During the September 13th Subcommittee legislative hearing, several VSO witnesses testified that veterans often don't receive the debt notification notice. This is a problem, because a veteran who doesn't receive the notice may miss important deadlines to dispute or mitigate the debt.

I am also concerned that the debt notices don't clearly explain how veterans can dispute the debt. If a veteran doesn't agree with the debt, it is also only fair that the veteran has the chance to prove that he or she doesn't actually owe the money before the VA starts withholding their payments.

So, we have a lot of ground to cover this morning. I am looking forward to having this constructive discussion about how to better prevent overpayments and, if the overpayment is unavoidable, to ensure that the VA is being fair to the veteran while still protecting the taxpayers.

Again, I want to thank everyone for being here.

I now want to recognize Ranking Member Ms. Esty for her opening statements.

**OPENING STATEMENT OF HONORABLE ELIZABETH ESTY,  
RANKING MEMBER**

Ms. ESTY. Thank you, Mr. Chairman.

Over the past 4 years, the VBA has made significant progress reducing the backlog in disability benefits claims. Congress asked the agency to do this, to reduce the backlog, and we know that you have worked over time to do so.

When non-rating work piled up during that time, VBA recognized this and whittled down the backlog from more than 100,000 claims to 14,000 in the last 2 years, but now it is time to make some important changes in VA's management of overpayments.

In particular, it is time to recognize that most often overpayments result from a delay in processing changes to a veteran's status, be it the birth of a child, death, return to active duty, incarceration, or other reasons.

What I hope to hear today from the VA is how it hopes and plans to reduce these delays by improving, for example, the matching agreements that you have with the Social Security Administration, with the IRS, and the Department of Justice. I also hope to hear how the VA can improve communication, which the Chairman has already recognized and we have talked about several times here in this Committee, communication between the Veterans Benefits Administration and the Veterans Health Administration on getting an integrated records system. And, most importantly, I hope to hear what changes are in the works in how the VBA and the so-called Debt Management Center communicates with veterans by letter when an overpayment occurs.

Elderly veterans on fixed incomes who have just lost a life partner should not be receiving a letter from the VA that they owe a debt. I think particularly about the World War II veterans in my district. And the shame that is associated with a word like debt

when they are grieving the loss of a life partner of 50, 60, or 70 years. We can and we must do better.

Younger veterans receiving drill pay while they are continuing to serve in the Guard and Reserve after leaving active duty should not be owed that they owe a, quote, "debt," which is essentially the result of a lag time between communication between DoD and VA.

We all recognize that overpayments must be reclaimed from veterans and their survivors when they occur. The law requires this and it is our responsibility in Congress as stewards of the tax dollars to ensure that we have the resources to provide benefits to the veterans, according to law, who deserve it. And we do recognize that the VA has taken steps to make it easier for veterans to notify VA of changes in their status.

But with all of that said, the current recoupment process needs improvement. We need to make sure that veterans and their families are respected in this process. They have served this country. Oftentimes, they have notified some portion of the VA about this change. It is not unreasonable for them to assume that the entire agency knows of this. So we have to find a better way to move forward to integrate those systems.

The notices need to be clear, they need to be respectful, they need to be timely, and we need to ensure that they actually are received by the veteran as quickly as possible. As you know, we had a hearing, recently on a proposal to require VA to use certified mail to be processed. We understand your estimate would make that extremely expensive. We would like to see that money go into benefits, but we want to work with you in ensuring that our veterans receive timely, clear, respectful, helpful notice, and that we work to reduce the number of occasions in which overpayments occur and the speed with which they are resolved.

So, again, we appreciate you being with us here today, in the spirit of cooperation and getting this right for the veterans who have given so much to our country.

Thank you, and I yield back.

Mr. BOST. Thank you, Ms. Esty.

I ask that all other Members waive their opening remarks, as per the Committee's custom.

And I want to welcome the witnesses that are joining us here this morning and thank you for taking the time to be here today.

Joining us from the VA is Mr. Willie Clark, who is the Deputy Under Secretary for Field Operations. He is accompanied by Beth Murphy, the Director of Compensation Services, and by Ms. Roberta Lowe, Acting Director of the Debt Management Center.

Testifying on behalf of The American Legion is Mr. David Spivey, who is Deputy Director of the National Veterans Affairs and Rehabilitation Division.

Also joining us today is Mr. Shane Liermann, the Assistant National Legislative Director for the DAV.

We also have John Towles, who is the Deputy Director of the National Legislative Services for the VFW.

Welcome to all of you. I want to remind the witnesses that your complete written statement will be entered into the hearing record.

Mr. Clark, you are now recognized for 5 minutes.

**STATEMENT OF WILLIE C. CLARK, SR.**

Mr. CLARK. Good morning, Chairman Bost, Ranking Member Esty, and Members of the Subcommittee. We appreciate the opportunity to address the process by which the VA manages overpayments that are incurred by veterans who are in receipt of disability compensation and pension benefits.

Joining me today is Beth Murphy, Director of Compensation Service, and Roberta Lowe, the Acting Director of VA's Debt Management Center.

Today, I will discuss reasons for overpayments and how to minimize them, how VA notifies veterans about them, and steps VA has taken to assist veterans with repayments of subsequent overpayments. Finally, I will discuss VA's policy regarding overpayment collection and the processes by which veterans can arrange repayment or waivers of the established overpayments.

Overpayments are considered improper payments under the Improper Payment Elimination and Reduction Act of 2010. VA is required by law to retroactively recover the overpayments to the extent the veteran or beneficiary was not entitled to receive these monetary payments.

Overpayments may occur when veterans or beneficiaries fail to notify VA in a timely manner of certain circumstances or life events, such as divorce, incarceration, return to active duty, or other loss of dependent status. They may also occur when VA gets notified, but is not able to process the claim in a timely manner. It is important to note, VA does not establish overpayment when VA employees make processing errors. Such cases are resolved as administrative errors and are not required to be recouped.

Before an overpayment is established, VA is required by law to provide the process notice to the veteran or beneficiary of the proposed adjustment in benefits. The beneficiary then has 60 days to submit evidence and may also request a hearing. After the due process period expires, all evidence is reviewed and a final decision is made, and a notification letter with applicable appeal rights is sent. If there has been an overpayment, the beneficiary also receives a letter explaining the overpayment and repayment options.

VBA beneficiary overpayments are serviced by VA's Debt Management Center. The DMC contact center counselors work with veterans and beneficiaries to resolve overpayments through extended payment plans, benefit offsets, waivers, compromises, dispute resolution, and hardship refunds.

Veterans can request a waiver of the overpayment within 180 days of receiving the overpayment notice from the DMC. Waivers received timely are sent to the VBA Committee on Waivers and Compromises. The COWC considers elements such as fault, unjust enrichment, and financial hardship when deciding the waiver request. Completed waiver decisions are then returned to DMC for processing.

VA has taken several steps to minimize overpayments. VA's data-matching agreements allow other Federal agencies to transmit critical feeds timely and efficiently. Automatic notification was implemented in 2016 to notify Guardsmen and Reservists they are not entitled to receive drill pay and VA disability compensation for the same periods of time. VA includes important reminders in ben-



efits decision letters regarding the need to inform VA of changes in status or life events that impact monthly payment amounts.

These measures have improved the management and timeliness of these adjustments.

As of April 2017, the National Work Queue is distributing non-rating claims based upon capacity across field offices. Non-rating claims are worked faster, reducing the time administrative adjustments wait to be processed.

Additionally, VBA appreciates Congress' support in providing resources to dedicate staff specifically to the non-rating workload. VBA has used these resources prudently across the Nation to lower the non-rating inventory.

These changes have improved performance, dropping overall non-rating inventory by 23 percent and a 19percent increase in the average number of days pending, reducing the drill pay claims inventory by 58 percent and improving the timeliness of dependency claims by 50 percent.

In closing, we still have much work to do to remain focused on continuing our work to minimize overpayments. VA is committed to improving this process and the impact that it has on veterans.

Mr. Chairman, this concludes my statement. We would be pleased to respond to questions you or the Ranking Member Esty or other Members of the Subcommittee may have.

[THE PREPARED STATEMENT OF MR. CLARK APPEARS IN THE APPENDIX]

Mr. BOST. Thank you, Mr. Clark.

Mr. Spivey, you are recognized for five minutes for your statement.

#### **STATEMENT OF DAVID G. SPIVEY**

Mr. SPIVEY. Chairman Bost, Ranking Member Esty, and distinguished Members of the Subcommittee on Disability and Memorial Affairs, on behalf of National Commander Denise H. Rohan and The American Legion family, we thank you for the opportunity to testify on behalf of The American Legion.

VA has 12 non-rating resource teams throughout the country which handle special cases such as emergency care claims. VA has in recent months seen a significant drop in number of pending claims and average days processing time by channeling dependency work through the non-rating resource teams. The American Legion recommends that VA continue to assign a high priority to dependency claims, because we see a substantial number of preventable overpayments created when VA fails to process the loss of one or more dependents on a timely basis.

VA employees with whom we have spoken are of the opinion that, by concentrating dependency claims among these 12 teams, gains in efficiency have been achieved.

With regard to data integration and overpayments, many of the complications associated with a veteran incurring a VA-based debt are caused by the lack of an integrated records system within VA. The American Legion recommends that VA implement a system that all VA administrations can access for the most up-to-date contact information regarding veterans or other VA claimants.

Mr. Chairman, the Legion thinks that a veteran should only have to notify one VA facility of an address change. Additionally, VA and DoD should integrate through data systems to allow for reported changes in dependency or address information to be shared seamlessly between the two departments. A DoD-VA dependency match would prevent overpayments in cases where a military retiree updates his or her dependency status with DoD, but does not notify VA.

Although the National Work Queue has been a controversial topic among the Veterans Service Organizations, we have come to appreciate some advantages in managing workload to reflect changing priorities. If used properly, the National Work Queue can be a valuable tool to help VA reduce overpayments resulting from delayed processing of dependency claims.

Currently, delays in VA processing of dependency claims result in overpayments, for example, where a divorced veteran submits a request to remove the ex-spouse or stepchildren and VA fails to take timely action, sometimes for months or even years. This can largely be attributed to dependency claims being, in our view, under-prioritized vis-a-vis other types of claims. More recently, however, dependency claim delays have been exacerbated because they are not assigned a high priority. In order to prevent these types of overpayments and minimize the resulting debt, VA should give dependency claims that involve the removal of a dependent a higher priority in the National Work Queue.

Our service officers in the field have been told by VA staff who process claims that they avoid processing dependency claims due to the low point value assigned by the VA work credit system, and the current weight assigned for these claims creates a disincentive when trying to meet the daily production standard. Therefore, we believe there would be fewer or smaller overpayments generated if the 57 VA regional offices were adequately staffed and the VA work credit system for dependency claims were adjusted to allow for full and proper development.

Overpayments also occur from delays and adjudication errors for veterans on the Fugitive Felon Program list. Under the Fugitive Felon Program, VA is required to terminate benefits for veterans identified as a "fugitive felon," which is defined by statute as "an alleged commission of a felony or issuance of a felony warrant." A veteran alleged to have committed a misdemeanor act that results in the issuance of a misdemeanor warrant does not meet the definition of a fugitive felon under this statute.

Improper development by VA, such as failure to obtain the court records, can lead to incorrect assumptions that the warrant was issued for a felony and result in improper termination of benefits and creation of overpayments.

Chairman Bost, Ranking Member Esty, and distinguished Members, The American Legion appreciates the opportunity to testify, and I would be happy to answer any questions you might have.

Thank you.

[THE PREPARED STATEMENT OF MR. SPIVEY APPEARS IN THE APPENDIX]

Mr. BOST. Thank you, Mr. Spivey.

Mr. Liermann, can you please begin your testimony on behalf of the DAV?

**STATEMENT OF SHANE L. LIERMANN**

Mr. LIERMANN. Chairman Bost, Ranking Member Esty, and Members of the Subcommittee, thank you for inviting DAV to testify at today's hearing on VA's management of veterans' overpayments.

Having recently been promoted to DAV's legislative staff, this is my first congressional testimony, but not the first time I have advocated for veterans.

While working for DAV at four different VA regional offices, the Board of Veterans Appeals, as well as the Debt Management Center, I have spent the last 19 years providing representation to veterans and their families seeking their earned benefits.

Mr. Chairman, overpayments by VA and the resultant debts owed by veterans often cause severe financial hardship for veterans and their families. In many cases, the burden of repaying these debts can negatively impact a veteran's quality of life, put them at risk of homelessness, and affect their access to VA health care.

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 pay that debt. However, we believe that a significant portion of overpayments, particularly for dependency changes and incarcerated veterans, could be reduced or avoided if the VA had better policies, processes, and oversight of their workforce.

For example, the OIG report of September 2007 indicated that between 2004 and 2006 an estimated additional \$50 million in overpayments were created by the VA and were avoidable. Another example, the June 2016 OIG report determined that between 2008 and 2015, VA's ineffective actions in processing incarcerated veteran adjustments resulted in additional overpayments totaling more than \$100 million, and that another \$200 million in additional VA-created overpayments could accrue from 2016 to 2020 unless VA addresses the root cause.

As the OIG reports concluded, and we agree, one of the biggest causes of overpayments is that VBA does not place sufficient priority on processing dependency changes or incarceration adjustments, as they consider these non-rating claims to be a lower priority when compared to rating claims for disability compensation.

In order to help VA prevent overpayments from being made, we offer the following recommendations:

One, VA must place higher priority or timely controls on processing dependency changes and incarceration adjustments. While deciding original claims and veterans' claims is critical, so is reducing VA's creation of additional debt for veterans.

Two, apply the principle of constructive knowledge. When any part of VA has possession of the required evidence to change the dependency status or to adjust for incarcerated veterans and fails to act timely, VA must waive the amount of additional debt created by VA's lack of timely action.

Three, apply the principle of constructive knowledge throughout the entire Federal Government by accepting information provided

by other Federal agencies such as the IRS, Federal Bureau of Prisons, and the Department of Defense.

Lastly, we recommend automatically applying apportionments to veterans' families at the 61st day of incarceration for a felony. Under current law, the dependent family of incarcerated veterans can apply for an apportionment of the amount withheld from the veteran. Making this automatic would lessen hardships placed on families and would help to prevent large overpayments being made to incarcerated veterans.

In addition, as we testified to the Subcommittee in September, enactment of H.R. 3705, the Veterans Fair Debt Notice Act, would help veterans better understand and address debts to VA by requiring VA to utilize certified mail and plain language in debt collection activities.

Finally, Mr. Chairman, while overpayments certainly have a negative impact on the Federal budget, we are more concerned that these debts can sometimes result in catastrophic outcomes for financially stressed veterans and their families. We believe that the actions outlined by the OIG in our recommendation can help to eliminate these discrepancies and lessen the burdens that VA overpayments have placed on too many veterans and their survivors.

This concludes my testimony. I would be pleased to answer any questions you or Members of the Subcommittee may have.

[THE PREPARED STATEMENT OF MR. LIERMANN APPEARS IN THE APPENDIX]

Mr. BOST. Thank you, Mr. Liermann.

And, Mr. Towles, you are now recognized for 5 minutes for the VFW, please.

#### **STATEMENT OF JOHN TOWLES**

Mr. TOWLES. Thank you. Chairman Bost, Ranking Member Esty, and Members of the Subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States and its Auxiliary, thank you for the opportunity to provide our remarks on how the Veterans Benefits Administration can effectively prevent and manage overpayment.

The glacial speed at which the VA moves is nothing new to the VFW or the Members of the Subcommittee. Normally, bureaucratic redundancies that exist within organizations are meant to serve as a protective mechanism, as they can promote proper oversight, accountability, and thoroughness. With regards to VA, however, especially as it relates to overpayments and debt recoupment issues, how they are addressed, these processes only make matters worse for some veterans due to the time sensitivity of the issue and the number of other offices within the VA that must be contacted.

In the past year, the VFW's National Veterans Service has directly assisted more than 200 veterans who have experienced issues stemming from overpayments. According to our estimates, 60 percent of the cases where NVS has intervened has resulted in the veteran being granted either partial or full relief from the debt from the VA's Debt Management Center.

In our experience, we have found that overpayments most often occur with GI Bill benefits when a veteran's enrollment status

changes at his or her college. If a student decides that they are having a difficult time meeting their educational obligations and chooses to switch to part-time, it is the responsibility of the school, not the veteran, to notify the VA. In the event that the school fails to notify VA of the change in status, the veteran will continue to receive full living stipend and the school will continue to be paid full-time for the tuition.

Once their error is noticed, VA will send an ambiguously-worded notification of overpayment to the veteran, which also provides basic options for repayment. If the veteran is unable to contact VA to establish that the debt is erroneous, make a repayment in a timely manner, or enter into a payment agreement with VA, their debt is then sent to collections and VA will garnish payments from their disability compensation benefits until the debt is satisfied.

While the veteran does have the ability to seek relief by filing for a waiver, VA's inability to provide the veteran clear and concise information regarding their debt in a timely manner significantly hinders the veteran's ability to take action in order to prevent the VA from taking further action, such as negative credit reporting.

In one recent case, an administrative error by the VA triggered a \$32,000 overpayment for a California National Guardsman. The veteran did everything that he could do on his own to rectify the situation, including notifying the VA that he was being over-paid. The veteran filed a waiver to have the debt discharged; however, the waiver was denied and his disability compensation was garnished. It was not until he contacted the VFW's One Student Veteran Office, which successfully intervened on his behalf, that the debt was properly discharged and the monies that were withheld from his disability were returned.

Another case involved a retired military officer whose daughter was using his transferred GI Bill benefits. Due to misinterpretation of its own regulations, the VA sent notification stating that the veteran now owed \$100,000 as a result of a reduction in rank following his retirement. It was not until the VFW contacted VA Education Services and the DMC directly and explained to them that despite the reduction in rank, he still completed 20 years of qualifying service, and that he was not obligated to repay any of the monies.

To be blunt, there is absolutely no excuse for VA not to know its own regulations or how to effectively implement them, but yet here we are. Had these veterans not have contacted the VFW, there is a significant chance they would still be fighting to get this debt cleared. These are just two of the many situations in which the VFW utilizes our cadre of highly trained and professional service officers to better serve veterans, but it is our position that veterans should not be erroneously overpaid in the first place.

The VFW suggests that VA work to streamline the collections process by; one, ensuring that the contact information VA is using for the veteran is current and up to date; two, clarifying the eligible criteria for a waiver; three, outlining in easy-to-understand terms the steps needed to request a payment plan; and, four, repealing the need for a veteran to submit a financial status report in the event that the debt cannot be repaid over the course of a year.

Additionally, the VFW feels as though VA should take the additional steps regarding the notification and recoupment process: One, VA must ensure that any and all recoupment actions are suspended once the veteran files an appeal with the DMC, as per the regulations; two, VA must ensure that if the overpayment is found to be erroneous, that any damaging information sent to the credit reporting bureaus be corrected immediately; three, in the event that a veteran contacts DMC of an overpayment, the veteran should not be held liable for the repayment after such notification is made. There is absolutely no excuse for VA not fixing the problem as soon as it is notified. Four, VA must ensure that regional office and DMC staff are trained to conduct proper due diligence, and are better trained in VA's debt management and collections procedures and protocols. Finally, if VA is going to set a timeline for the veteran to prove that his or her overpayment is erroneous, the VA should send as much pertinent information as possible regarding the nature of the debt to the veteran, along with the notification letter.

Chairman Bost, Ranking Member Esty, and Members of the Subcommittee, this concludes my testimony. I look forward to answering any questions that you may have.

Thank you.

[THE PREPARED STATEMENT OF MR. TOWLES APPEARS IN THE APPENDIX]

Mr. BOST. Thank you, Mr. Towles. And, once again, thank you all for being here, and I'm going to go ahead and start opening with questions.

Mr. Spivey, can you please explain, because when you gave in your testimony that you recommend that the VA allows veterans to remove their benefits through e-benefits, can you expand on that, and why do you think it is that they need to do that?

Mr. SPIVEY. Thank you for the question, Chairman Bost.

We, of course, as veterans' advocates, want the world to be as simple as possible for our Nation's heroes; therefore, the system should be as user-friendly as we can possibly make it. Of course, this does play into the topic of overpayments, because where we make it difficult for veterans to notify VA of the loss of a dependent, the longer delay that causes, the greater the overpayment.

So, for these reasons, we think that modifying e-benefits to allow removal of a dependent would be a very strong step forward.

Mr. BOST. Mr. Clark, do we currently allow the removal of benefits through e-benefits?

Mr. CLARK. Sir, I will have to—Chairman Bost, I would have to take that for the record, but we do allow changes to be made within e-benefits. In fact, over 140 benefit updates were done through e-benefits and I would have to check to see if the removal of a dependency, but I know adding a dependent and several others, divorces, that we can do.

So I would have to specifically take that for the record.

Mr. BOST. Okay, and I will take that answer for the record. But if the answer is no, I would like to know why not, because I think in today's world there is no reason why, I mean, almost everybody

gets on the computer and can program and work with any benefit and/or any bank account that they receive.

And maybe the VSOs, do you know right now, do they have the opportunity to do that?

Mr. LIERMANN. Actually, we looked into this prior to the hearing, Chairman, and the VA does not currently allow you to remove a dependent in e-benefits. You can make the additions, but since the e-benefits and adding a dependency is what they refer to as rules-based, they can add them, however, but in order to remove a dependent usually requires more information such as divorce decrees, death certificates, and that is not part of the rules-based environment. So, currently, they do not allow them to remove them through e-benefits.

Mr. BOST. So maybe then what we need to do is look into the possibility of a rules change that would allow that to occur and, if you need more information, then provide the slots necessary in the program and/or a follow-up note that those will be sent. So, just a thought.

Mr. Clark, next question is, the taxpayers have an interest, an investment of more than \$1 billion in the new technology that I spoke about in my opening statement. Why are we missing the boat and how is it that we went from \$350 million, we put the new system in place, now we have got \$700 million in overpayments on 2017, and how is this happening? Do you have a clue?

Mr. CLARK. Chairman Bost, we have completed more non-rating claims in the last 3 years than we ever have in our history and it is as a result of the technology that Congress has given us the resources, IT resources, and employees, over 600 employees to process more claims. And as a result of the rules-based processing, I mentioned that adding a dependent, and I will take for the record, whether the removal of a dependent, if we could do, and how long it would take us to get an update to the system to get that done, but all of those have allowed us to run our inventory from which was at over 270,000 3 years ago to less than 80,000.

So, VBMS, the National Work Queue, these are IT systems that we have used and employed to allow us to produce more work. And as a result of producing more work, what has happened is, it has allowed us to get to claims faster and when we do that, it will create more overpayments. That is one of the reasons we are doing that.

Mr. BOST. Okay. I am having trouble following that line of logic, okay. You have got a new system and the new system is so good that you are having overpayments?

Mr. CLARK. Well, what it is allowing us to do is to get to the back—the inventory of work that we have in our system.

Mr. BOST. So, those overpayments were occurring before; they just weren't—we were just not catching them?

Mr. CLARK. Well, sir, what was happening is because of our inefficiencies. And we are getting better. We are getting better. But because it took us a while and these cases lagged, then it created more overpayments and as a result of our being able to get to this work quicker, then it has caused more overpayments.

But here is one of the things that we have done—several of the things that we have done, and I will turn it over to Ms. Lowe after this to speak to this, we are certainly empathetic to the individuals that have received these overpayments, but we have a responsibility to—Congress mandates that we recoup these monies—but we need to be sure that we are clear and concise in our communications with our beneficiaries and make sure that when we do communicate, we explain the reason for the overpayment and then we offer up options. And we have a myriad of options that we can do that when we do contact the beneficiaries.

So, we are excited about that. We do realize that we still have a long way to go, but we—thanks to the IT resources and the employees that you have given us, we have been able to work more of these claims than we have in our history.

Ms. Lowe, would you like to—

Mr. BOST. I am way over on my time and so I am going to turn it over to Ms. Esty and see if she wants to go ahead and go that way.

Ms. ESTY. Thank you very much. I will let you finish that and pick up with my questions. Thank you.

Ms. LOWE. Yes. The Debt Management Center has made several improvements since August. Now, for a compensation and pension debt, we automatically put that on a 12-month payment plan. We do not take the entire benefit check from veterans any longer.

We have extended our hours of our contact center from—we are now open from 6:30 in the morning to 8:00 p.m. Monday through Friday; 7:00 a.m. to 3:30 p.m. on Saturday; and we are open on days like Columbus Day and Veterans Day so our veterans can reach us.

We have also worked recently to soften our collection letters and make them clearer and more concise for our veterans. So, we are very pleased with those improvements.

Ms. ESTY. Thank you very much. And I want to thank all of you for your testimony, again, in the spirit of trying to reduce the number of overpayments and get them resolved as quickly as possible. I know everybody at the table and everybody here on the dais shares that commitment.

I wanted to pick up with the question about, dependencies and incarceration, the two main issues that we are seeing a lot of overpayments. According to what I have on record, Social Security and IRS have standing arrangements, matching arrangements with VBA, but that is not the case for DOJ or the Bureau of Prisons. If that is not the case, why not, and how can we change that?

Mr. CLARK. I will defer to Ms. Murphy to speak to that.

Ms. MURPHY. Yes, good morning. We do work and have computer-matching agreements over the years with Bureau of Prisons and with IRS to get state information about incarceration, so those efforts have been ongoing and we do use that information as input so we can go determine whether these veterans are incarcerated and have been convicted and then we send the due process notice and take it from there.

In the due process notice, we do remind them that the families are able to apply for the apportionments, so we do make those reminders, and also that once they are released from the facility that



they should come back to us, so we can reinstate their benefits. So we do include reminders along the way. We do share information with bureau of—with the Department of Justice to get their Bureau of Prison information.

Ms. ESTY. Well, I think we are hearing, however, some testimony, suggesting that that perhaps could be better and so if you need authority from us or resources, you should let us know what it is—

Ms. MURPHY. Certainly.

Ms. ESTY [continued]. —that would actually make that even more effective than that—

Ms. MURPHY. Okay.

Ms. ESTY [continued]. —and reduce the time lag, which is part of what we are looking at.

Ms. MURPHY. Yes, ma'am.

Ms. ESTY. I want to return to, actually, I think it was Mr. Spivey's point. Several of you raised the point that if you notify any part of VA about a change in address, the entire agency should be aware of that.

So, is it the case now and if it is not, why shouldn't it be the case, that if a veteran calls or has a medical appointment, VA is required to verify the contact information. Why do we not, at that time, have the veteran on the phone just go through and click through every single box, every portion of the VA that ought to be receive that same notice?

Could we do that? What would be involved in doing that while you have already got somebody providing notice at that time?

Ms. MURPHY. So, if I could just continue? I agree with you that that is the most veteran-centric way and that is something that I think we are all interested in doing. I am not the technician on the IT side and I am aware that there are efforts that have been underway over the past couple of years to get to that point where we could have one central place where the, you know, official address for the veteran is housed. I am not aware of what the current status of that effort is. We had have to check on that, but I know it is something that we think is the right thing to do for veterans and it would be something that we would have to continue to get to.

Ms. ESTY. We had a discussion, several of us earlier in the week, about this. Do we have—Ms. Lowe, I think this is for you. Looking at the letters that are sent out now and I think about the widow in Waterbury, Connecticut who gets something from Debt Collection Service; that is a terrifying phrase right there and it feels offensive and it is not their fault. They—as far as they knew, they notified and they were not aware of the overpayment.

Is there a legal reason why it needs to be referred to as debt? Can we change it to overpayment or payment management center or something else? Because these terms matter. We are talking about our veterans, so I would like to find ways for both, clarity, but respect in these letters that meets the letter of the law, but also the spirit with which we should be handling these unintentional overpayments, because that is what we are talking about, unintentional overpayments.

Ms. LOWE. Yes, we checked with our general counsel and there is flexibility within the statutes to use terms other than debt.

Claim is an example of what they used. So we will look into that and see about removing the word debt from our letters and things like that.

Ms. ESTY. Thank you. I see I am over time, but we would love to, to work with you, because language matters to people and I think it will feel different if those letters come out in a way that encourages, reminds them of our service, apologies that there is this delay and ask for their assistance in resolving it. Thank you very much.

Mr. BOST. Thank you, Ms. Esty.

General Bergman, you are recognized.

Mr. BERGMAN. Thank you, Chairman Bost.

I don't care who answers this question; you can all answer or none. What percentage of the veterans that are applying for benefits and not reporting changes are trying to game the system to their advantage? Probably a very small percentage, right? You are absolutely right. And I agree with you.

The point is, we are putting our veterans and their families in a situation where our processes and our procedures don't allow them to be part of the solution. When you think about the technology that we have today, what percentage of it we are utilizing and moving forward on, we are behind. We are way behind.

So, within the VA—and I assume, Mr. Clark, you are the senior—are you the senior representative from VA here today?

Mr. CLARK. Yes, sir, I am.

Mr. BERGMAN. Okay. Good. I will just direct my questions to you and you can do like you have done before, defer them if you don't want to answer them. But the point is, what, with what is going on within VBA, that actually incentivizes your people working within VBA to make the change necessary when they see a need for change; for example, you cannot, when I heard say, remove, a dependent, right? You can add a dependent through the, know, the e-system, but you can't remove one.

Have we done anything—in this case, the we is you, in VA to look at, maybe you can't eliminate every situation where it is necessary for someone to remove a dependent; you need some paperwork. Have we spent any time at all looking at those other things that we could allow a veteran to remove a dependent that, you know, the paperwork could be as simple as a photo copy—something? We do everything with our cell phones now. We could download it, the image right into the system.

Are you doing anything?

Mr. CLARK. Yes, sir, we are. Again, I want to reiterate that we are trying to get better. We are processing—

Mr. BERGMAN. Do you have a plan to get better? It is not enough to try. You know, to try to complete an operation or a mission is not enough. You have to have a plan to where you are going. You have to have a—you know, you plan it, you execute it, you adjust in the middle of the operation, if you will, and then you do an after-action to make sure that you improve from it.

Is there—you might call it a POA&M, a plan of action and milestones—does VBA have such a vision, a document, a strategy, a mission statement, whatever it is, to do that?

Mr. CLARK. We have a strategy and when we have suggestions and we have ideas or—

Mr. BERGMAN. But is it being updated as you do—as you try something? Does someone say, Okay, we have tried this now for 6 months. Has it worked? Is there a benefit?

Mr. CLARK. Well, sir, again, I am going to take back for the record, you know, operating on the assumption that we cannot, at least, our BPS is not—IT is not able to remove a dependent, but each of our regional offices have employees dedicated to do this work and Congress has authorized us over 600 FTEs specifically for non-rating claims. So this work is being done.

Mr. BERGMAN. So, if we, all of our Members here of the Committee, if we went back to our districts and wanted to go to one of these centers where these folks were working—you maybe not all of us may not have one in our district, but some of us will—could we walk in there and see how it works and interact with these people; get an hour with them or half hour, whatever, to talk about what has been implemented, what has worked, what hasn't worked, what motivation they have to make it better tomorrow?

Mr. CLARK. Yes, sir. We invite Members of Congress and staffers to visit our regional offices. We get visits regularly.

Mr. BERGMAN. Well, I will tell you what. I see my time is running out. I would ask for you, VBA, to provide a list to the Committee of where these physical places are where people are working to try to do this, because if there is—I don't care if it is in my district or not, my district is—I go through a lot of other districts just to get to my district. I would love to stop in and see one.

I yield back.

Mr. BOST. Thank you, Mr. Bergman.

And from the chair, I am going to ask that if you say the strategy is in place, could you get us a flowchart of the strategy of what you have got in place and how it is that you are going to implement it, so that we know where we are headed with this, okay.

With that, Ms. Brownley?

Ms. BROWNLEY. Thank you, Mr. Chairman.

I just wanted to go back to the notification letters and I think it was stated that you have made some adjustments to the letters that are a little bit more user friendly. I am not hearing that from the veteran population that that is, indeed, the case. So, I certainly would like to see, you know, the previous letter and the improved letter so that I can take a look at it and make my own assessment of whether it is more user friendly.

But it does seem to me that the letters kind of come to the veterans and they are accused and they are guilty. And it doesn't feel very good to the veteran because the veteran is looking to the VA for help and assistance, not to be accused and found guilty by a letter and a letter that I am still hearing is still very sort of legalese and not very user friendly so the veteran can really understand what is going on.

In addition to that, wondering whether the letter also includes what the veteran's rights are and how to adjudicate and/or appeal to what they may have been accused of. And are you making that very clear in terms of what their rights are?

Ms. LOWE. Yes, we do send out up to 3 letters notifying veterans of that and our counselors at the Debt Management Center provide the due process and when they call in or email us, we provide them—go over their options on how to file a waiver, how to file an appeal, how to request an audit, and all of those different things. So, yes, we do provide that and all of those different things.

So, yes, we do provide that and we would be happy to provide you the former and the current letters that—from the Debt Management Center. And I believe VBA has their notification letters. There is a two-step process. VBA establishes the debt and then once it is transferred to the Debt Management Center, we provide the veteran their due process.

Ms. BROWNLEY. And what happens when the letter goes to a wrong address?

Ms. LOWE. The post office returns that letter to the Debt Management Center and we, then, research to see if there are any newer addresses in like the VHA system or the post office has a forwarding address that we can send the letter to. If that doesn't work and we are unsuccessful, we go to LexisNexis and request to see whether they have an updated address for the veteran.

Ms. BROWNLEY. So, Mr. Liermann, you said it was your first time testifying today. You did a very fine job and gave very concrete recommendations, I think, in your testimony, so thank you for that.

One of your recommendations, I think you called it a principle of constructive knowledge, basically, communicating internally within the VA. I certainly had an issue in my district with a veteran who had gotten notice that they had a debt and it was with regards to the G.I. Bill and it was the VA's fault. He had gone to school back in the '70s and then applied for the G.I. Bill in the 2000s and then determined he went to school, he utilized the benefits and then was determined that all of that money had to be repaid because he had gotten it.

So, the VA had authorized these payments to him. And in trying to resolve this in our casework at home, there was one department, the Debt Management Center that said, No, absolutely, you are wrong; you owe us the money. The regional office said, No, you are right; we did wrong. We need to rectify the situation.

So, it was clear to me that there wasn't really any clear communication going on between the two departments. So, I guess my question is, you know, what are you doing to make improvements there?

Mr. CLARK. We have begun better communication with the Debt Management Center. To your point, our letters, we have realized that both, our letters at VBA and the letters from the DMC were not clear, they weren't concise, and they weren't compassionate. So, Ms. Lowe has spoken about our efforts to revise those letters and add additional options so we have a gentler, kinder approach that when we find overpayments, that we deal with those overpayments, because we know that they are traumatic.

Now, Congress expects us to recoup monies and we will do that, but we have to do a better job. But we are refining those letters. We continue to do that and we are communicating now with the DMC. Because the DMC just collects monies that the VBA has said that are overpaid. So, once our Committee on Waivers and Com-

promises does the appropriate investigation and taking a look, and establishes the proper amount of the overpayment, then we submit data over to the Debt Management Center and then they effectuate collection.

So, we—our communication has greatly improved and this is why we are seeing, you know, we are seeing a lot more collections go out, or at least overpayments being worked. But they are working expeditiously.

Ms. BROWNLEY. And when did this improvement start?

Mr. CLARK. We started this year. This is current that I am speaking about.

Ms. BROWNLEY. Thank you. My time is up. I yield back.

Mr. BOST. Thank you, Ms. Brownley.

Ms. RADEWAGEN, you are recognized.

Ms. RADEWAGEN. Thank you, Mr. Chairman.

I, too, want to add my welcome to the panel today. Thank you very much for being here.

My question is for Secretary Clark. Does the VA have statistics on where veterans who are receiving these incorrect payments live and if so, how do the numbers for the U.S. territories and remote or rural areas compare to the rest of the country?

Mr. CLARK. Yes, we do have numbers, but I don't necessarily have numbers for that region of the world, but we will certainly—I will take that for the record and get those numbers to you.

Ms. RADEWAGEN. Thank you very much.

Mr. Chairman, I yield back.

Mr. BOST. Mr. Coffman?

Mr. COFFMAN. Thank you, Mr. Chairman, and thank you all for your testimony today.

What would you say—I am going to go to the VA first and then go to the VSOs—what is the biggest category in terms of overpayment?

Mr. CLARK. The biggest category, drill pay, then dependency; those are the top two, sir.

Mr. COFFMAN. And define drill pay, again.

Mr. CLARK. Drill pay is an overpayment developed—the law does not allow the concurrent receipt of drill pay and compensation simultaneously. So, once we are alerted about those concurrent payments, then we go back to the claimant to recoup these monies.

Mr. COFFMAN. And how long, in the situation of drill pay, how long does that usually—how long does—so, if something retires and then they are drawing disability and they are drawing their retirement, but they don't reach the threshold in terms of disability to be able to draw it, how long does that usually go before you are able to catch it?

Mr. CLARK. Okay. And I will turn that over to Ms. Murphy, please.

Ms. MURPHY. Good morning. So, regarding drill pay, these are folks who are doing weekend drills or their two weeks during the year. And I think this is one category since it is—

Mr. COFFMAN. Okay.

Ms. MURPHY [continued]. —such a large source of overpayments, where we have done some of the most and some of the best work recently. So, what used to happen was we had focused on the rat-

ing claims and we were backed up a bit on the drill pay estimates, over several years—

Mr. COFFMAN. Uh-huh.

Ms. MURPHY [continued]. —so that when we did get to these, we were recouping large amounts from folks and we just took it out of the next check. So, you wouldn't—you just wouldn't get a check for several months until those monies were recouped.

This year, starting in '16 and now in '17, we are doing a couple of things that are very different. Number one is we are using automation so that we send the letters out, the due process letters up front, and then we give the 60-day due process period. If we don't hear back or we don't get any different information, we, then, are using automation to make those adjustments. So this last time, we did that—and we do this on an annual basis right now—we had about 100,000 adjustments that needed to happen.

Mr. COFFMAN. Wow.

Ms. MURPHY. We were able to automate 86,000 of those. So they were very timely and also, that is 86,000 actions that our employees didn't have to do on drill pay and they could go do something else.

Mr. COFFMAN. Okay. So, is it—okay.

Ms. MURPHY. So, it is the use of automation and timeliness improvements and we are working with DoD to aim to be a monthly process.

Mr. COFFMAN. Okay. So, if I understand it right, then, it is not really retirees, so to speak, where it could occur, but it is so many—

Ms. MURPHY. Guard and Reserves.

Mr. COFFMAN [continued]. —on active duty or they are in the Guard and Reserve and they are deployed—

Ms. MURPHY. Exactly.

Mr. COFFMAN [continued]. —then they—and then they apply for disability, right?

Ms. MURPHY. Sure.

Mr. COFFMAN. And then at some latter point, they receive it, but they are also a drilling guard and reservist—

Ms. MURPHY. Exactly.

Mr. COFFMAN [continued]. —and the issue is that you cannot do both; am I correct on that point?

Ms. MURPHY. You are correct.

Mr. COFFMAN. But, often is it—I guess you can catch it early, but if you don't catch it early, given what guard and reservists are paid in a non-deployed status, it would take a very long time to make it up and generally they don't have an obligation to—they have an obligation for the inactive status, but not an active guard or reservists, if I am correct on that?

Ms. MURPHY. So, now, what we are doing is we get, currently, an annual feed of this information. So we make one big adjustment annually and then we report that adjustment to the Debt Management Center. In the past, they would take, as I said, the whole subsequent checks. Now, they are doing an automatically doing a 12-month repayment plan to stretch that out and minimize the impact to the veteran and family.

Mr. COFFMAN. Are they—I suppose there are probably instances by virtue of getting a disability assessment, disqualifies them from being in the Guard and Reserves.

Ms. MURPHY. I think that is individualized and it depends on their, you know, their particular situation.

Mr. COFFMAN. Sure.

Ms. MURPHY. We just look at it from the standpoint of benefits they are entitled to.

Mr. COFFMAN. Okay.

Ms. MURPHY. Compensation benefits.

Mr. COFFMAN. Okay. Does VSOs have any quick comment on that particular issue?

Okay. Thank you, Mr. Chairman, I yield back.

Mr. BOST. All right. First off, thank you once again, for being here. I am going to turn it over to Ms. Esty for any closing remarks or any other things that might come up.

Ms. ESTY. Thank you very much, Mr. Chairman. I thank all of you for joining us here today. I think we flagged a number of issues for better improvement and I hope you will come back to us with both, suggestions from the VSOs, but also requests from the VA about what needs to happen to align the incentives properly. We saw that if you do not get a point system for resolving these claims, you are right, if you are under pressure, you are going to go, as a worker, you are going to go where you get incentivized. So we need to change that.

What needs to happen to move from a yearly adjustment to a monthly adjustment for this pay? We know that is a big issue, clearly. I think we would like to, within the next few weeks, get proposals back on the two big issues: on the pay for Guard and Reserves and what we are beginning to do about dependencies. And concrete, you heard from all of us, we can't concrete action.

And if you need change in regulation, if you need change in legislation, if you need change in resources, you need to let us know, and it needs to happen soon because, in fact, it is wasting time and it is wasting resources. And as Ms. Brownley pointed out, it is offensive to our veterans who, themselves, are trying to comply with the law and they think they have. And so, again, we need further assistance from you in drilling down on the specifics soon and then charge us with any action that we need to take to make this happen.

And I know you are committed to this and I think we all do want to see these letters before they get finalized. We have a lot of interest in these notice letters and, again, trying to figure out how we deal with the populations who do not—the homeless population, we did not talk about that—you are suggestions, what you do with the homeless population. None of us actually asked this—I know in my office we discussed this—how you propose to deal with homeless veterans and what is the procedure right now? And what can we do about that? Is there—are there specific issues we could address there?

Again, lots of good work that has been done to improve things, but we have got a long way to go and I appreciate your assistance in joining us in those endeavors.

And, again, thank you, Mr. Chairman, and I yield back.

Mr. BOST. And I want to thank you, but I—you know, I want to make this quick statement. We want to keep working to try to cure this problem. Now, many of us, when we were enlisted remember what it was like. I was one of the lucky ones. My first time being out of boot camp and reporting to 29 Palms was when they first started paying with paychecks and not out of the cash box; that was my very first paycheck.

With that system and being with the great bureaucracies that we deal with, as a PFC with a young wife and a baby on the way, I got that great wonderful thing whenever I went to collect my paycheck and it—nope, NPD, no pay due; okay, that is the way they used to do that.

And experiencing that on the enlisted side, very young in my time as a marine, and these veterans now, here they are at their latter part of life and all of a sudden, we are still doing that to them. We got to try to fix that as fast as possible, because there is not anything more rude than trying to make ends meet and all of a sudden realize that there is a problem and that your own government is coming back saying, we need some money back.

So, I do want to thank all of you for being here today and I asked at the beginning of the hearing that the complete written statements of today's witnesses will be entered into the record.

I ask unanimous consent that the statements of record for the National Association of County Veterans Service Officers plans to submit within 5 legislative days be included in the record.

Hearing no objection, so ordered.

[The statement of National Association of County Veterans Service Officers appears on p. ]

Mr. BOST. I also ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extensive, extraneous material.

Hearing no objection, so ordered. This hearing is adjourned.

[Whereupon, at 11:33 a.m., the Subcommittee was adjourned.]



# A P P E N D I X

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## **Prepared Statement of Willie C. Clark, Sr.**

Good afternoon, Chairman Bost, Ranking Member Esty, and Members of the Subcommittee. We appreciate the opportunity to address the process by which VA manages overpayments that are incurred by Veterans who are in receipt of disability compensation and pension benefits. Joining me today is Beth Murphy, Executive Director of Compensation Service, and Roberta Lowe, Acting Director of VA's Debt Management Center (DMC).

Today, I will discuss reasons for overpayments and how to minimize them, how VA notifies Veterans about them, and steps VA is taking to assist Veterans with repayments of subsequent debts. Finally, I will discuss VA's policy regarding debt collection and the processes by which Veterans can arrange repayment or waivers of the established debts.

### **Reasons for Overpayments**

In general, an overpayment of VA benefits is identified when VA finds a Veteran or other beneficiary has received monetary payment for benefits to which he or she was not entitled. In 2016, almost 238,000 Veterans received overpayments. Overpayments are considered improper payments under the Improper Payments Elimination and Recovery Act of 2010. VA is required by law to retroactively recover the overpayments to the extent the Veteran or beneficiary was not entitled to receive this money.

Overpayments may occur when Veterans or beneficiaries, receiving disability compensation or pension benefits, fail to notify VA in a timely manner of certain circumstances or life events such as divorce, incarceration, return to active duty, or other loss of dependent status. They may also occur when Veterans or beneficiaries advise VA of changes, but we are unable to process the claim in a timely manner. It is important to note VA does not establish overpayments when compensation or pension benefits were erroneously awarded due to claims processing errors by VA employees.

### **Process of Notifying Beneficiaries of Overpayments**

Before VA reduces benefits as a means of recouping overpayments, we are required by law to provide due process notice to the Veteran or beneficiary, advising him or her of the proposed adjustment in benefits. The beneficiary then has 60 days to submit evidence explaining why VA should not make the proposed adjustment. Veterans or beneficiaries may also request a predetermination hearing to provide information pertaining to the proposed action. After the due process period expires, VA reviews all evidence and makes a final decision, which may include reducing or terminating an award and/or creating a debt. VA notifies the Veteran or beneficiary of the decision and the date of benefit reduction or termination, if applicable, and provides applicable appeal rights. If VA determines there has been an overpayment, the beneficiary also receives a letter explaining the debt owed and repayment options.

### **Steps VA is Taking to Prevent Overpayments**

VA employs a number of measures to minimize overpayments. First, VBA includes important reminders in benefit decision notification letters about the need for Veterans and beneficiaries to inform VA immediately of issues or life events that could impact monthly payment amounts.

Second, VA has data matching agreements with the Social Security Administration, Federal Bureau of Prisons, and other Federal agencies to minimize individuals receiving benefits that are not statutorily permissible. VA also works with these agencies to ensure critical data feeds, such as dates of death, incarceration, etc., are transmitted to VA as timely and efficiently as possible.

Third, VBA is deploying technological solutions and leveraging automation to reduce overpayments. For example, drill pay from the Department of Defense (DoD) has been a major contributor to the number of VA overpayments. By law, Servicemembers are not entitled to receive both drill pay and VA disability compensation for the same periods of time. In 2016, VA automated the notification process required when Guardsmen and Reservists receiving VA compensation actively drill and receive pay. VA's new automation process, through collaboration with DoD, improves VA's management of drill pay adjustments.

These administrative adjustments are part of VBA's non-rating workload. During fiscal year 2017, VBA made several changes to allow for a more balanced approach to the overall workload. VBA appreciates Congress' support in providing resources to staff specific teams across the Nation dedicated to the non-rating workload, and we have prudently used these additional resources to lower the non-rating claims inventory. As of April, the National Work Queue is distributing non-rating claims, which allows this work to be moved efficiently based on capacity. Additionally, VBA has adapted a strategic approach to how we use our claims processing overtime resources. We now target specific claims and steps within the claims process to ensure we direct overtime where it will produce the most benefit. These enhancements have led to improvements in performance. Overall non-rating inventory dropped by approximately 23 percent with a 19 percent decrease in the average number of days pending for these claims. The inventory of Dependency claims decreased by approximately 26 percent with a 50 percent improvement in timeliness, and the inventory of drill pay claims dropped by 58 percent. We still have work to do and will remain focused on continuing to implement appropriate preventative measures.

#### **VA's Policy Regarding Debt Collection and Waivers**

VA's debt collection guidelines and practices are designed to balance strong financial management with commitment to compassion and Veteran advocacy. VA navigates the debt collection process in a manner that provides the best service to our Veterans and beneficiaries and complies with Federal debt collection statutes and policy. VBA beneficiary debts are serviced by VA's DMC. DMC provides a centralized debt collection program while also offering all Federal collection tools provided by the Department of the Treasury. Most importantly, DMC contact center counselors work with Veterans and beneficiaries to resolve their debts through extended payment plans, benefit offsets, waivers, compromises, dispute resolution, and hardship refunds.

A Veteran can request a waiver of his/her debt within 180 days of receiving a debt notice. If the waiver request is not timely, the debtor receives appeal rights. If received timely, the waiver request goes to the VBA Committee on Waivers and Compromises (COWC) at the Regional Offices in St. Paul, MN, or Milwaukee, WI. The COWC considers elements such as fault, unjust enrichment, and financial hardship when deciding to grant, partially grant, or deny a waiver request following the principles of equity and good conscience.

VA will not pursue payment when it would be unfair, unconscionable, or unjust. However, the COWC will automatically deny a waiver if there is any indication of fraud, misrepresentation, or bad faith. If the waiver is not approved, the debtor receives applicable appeal rights. Completed waiver decisions are returned to the DMC for processing. If denied, the debt collection process resumes. If the waiver is granted, collection action is terminated, and any collections received are refunded.

There is also a process by which a debtor may submit a compromise offer for acceptance of a partial payment in settlement and full satisfaction of the offeror's indebtedness.

#### **Conclusion**

In closing, VA is committed to refining existing processes and implementing new ways to minimize overpayments and the impact of the overall process on Veterans. This includes leveraging technology, working more collaboratively with other agencies and partners, and engaging with Veterans and other beneficiaries to remain apprised of significant events in their lives.

Mr. Chairman, this concludes my statement. We would be pleased to respond to questions you or other Members may have.

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#### **Prepared Statement of David G. Spivey**

Chairman Bost, Ranking Member Esty, and distinguished members of the Subcommittee on Disability and Memorial Affairs, on behalf of Denise H. Rohan, Na-

tional Commander of The American Legion, the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving every man and woman who has worn the uniform for this country; we thank you for the opportunity to testify on the topic of "examining how VBA can effectively prevent and manage overpayments".

A benefit debt through the Department of Veteran Affairs (VA) can be generated through a number of actions, such as a change in income or net worth, a change in dependency status, receipt of retired pay, a drop in course load or withdrawal from school while in receipt of benefits under the GI Bill, failure to obtain the release of home loan liability, hospitalization, treatment co-payments, and double payments of drill pay and VA benefits pay to members of the Reserves and National Guard.

Once an overpayment has been identified, the VA will initiate the debt collection process. The American Legion has worked extensively on matters concerning VA debt management and, recognizing the importance of these issues, has had a dedicated representative at the Debt Management Center (DMC) in Saint Paul, MN since 1978 for the specific purpose of assisting veterans and other VA claimants who fall into debt with VA. With nearly 40 years of collective service, the American Legion representatives working at the DMC have been instrumental in assisting thousands of veterans and surviving spouses avoid financial hardship by filing waiver requests, negotiating the terms of offsets of ongoing VA benefits, establishing reasonable monthly payment plans to mitigate financial burdens, and assisting in ending erroneous collection actions.

Benefit debt is the most common type of debt affecting veterans, which is why The American Legion's primary focus in our debt collection management office is assisting veterans affected by overpayments of benefits and addressing how to best mitigate and/or repay the debt. Of the millions of dollars in benefits awarded to veterans by the VA every year, thousands of veterans are paid incorrect amounts. When these incorrect payments are more than the amount due to a veteran, debt is incurred and collection actions will ultimately be triggered.

Many of the complications associated with a veteran incurring a VA-based debt are caused by the lack of an integrated records system within VA. The American Legion recommends that VA implement a system that all VA administrations can access for the most up-to-date information regarding contact information for a veteran or other VA claimant. Through American Legion Resolution No. 44, we support VA in creating and implementing an updated and modernized integrated system.<sup>1</sup> The following section will address different types of overpayments and how these overpayments are dealt with inside the VA.

#### **OVERPAYMENTS DUE TO DELAYED PROCESSING OF DEPENDENCY CLAIMS**

Delays in VA processing EP130 dependency claims result in overpayments where a divorced veteran submits an updated 21-686c form to remove the ex-spouse or step-children, and the Regional Office (RO) doesn't take action for months or even years. This can largely be attributed to claims being assigned by the National Work Queue (NWQ) to be worked in order based on date of claim. In order to prevent and minimize overpayments from accruing, VA should give EP130 claims that involve the removal of a dependent a higher priority in the NWQ.

Our service officers have frequently seen cases where a surviving veteran notifies the VA in a timely manner of the loss of a spouse, and it has taken the RO as long as a year or more to stop the veteran's dependent pay for the deceased spouse. The RO later comes back and generates the overpayment and the veteran starts receiving demand letters from the Debt Management Center (DMC). These types of cases are typically resolved via a waiver request due to administrative error and financial hardship, but are all preventable had the RO responded more quickly to remove these deceased dependents.

Previously, when veterans were seeking to remove a dependent as a result of a divorce or death, the EP130 had to be submitted on a paper 21-686c and processed manually at the RO, which lead to large overpayments when the manual processing was significantly delayed due the large backlog of EP130 claims. In situations where a veteran is removing a dependent (for any reason), current policy does not allow the veteran to remove a dependent in eBenefits—the veteran may initiate the request to remove the dependent via eBenefits, but the task of removing the dependent still must be done manually by a VA employee via the NWQ. We recommend processing of dependency claims in eBenefits be expanded to allow automated proc-

<sup>1</sup>The American Legion Resolution No. 44 (2016): Department of Veterans Affairs Rural Healthcare Program

essing where the veteran is seeking to remove a dependent as a result of a divorce, or death. This would significantly reduce the overpayments attributed to delays in manually processing of removal of dependency awards for divorced or deceased dependents.

The American Legion commends VA in addressing this problem by expanding the automation of dependency claims by providing veterans the ability to remove a dependent via the assistance of an accredited representative via the Stakeholders Enterprise Portal (SEP), which results in their award being processed more quickly, but this is not the same as enabling veterans to remove the dependent themselves in eBenefits. Ultimately, veterans should be able to remove a dependent in eBenefits without the assistance of a third party, whether it be a VSO or a VA employee.

The American Legion also recommends that VA audit DoD's Defense Enrollment Eligibility Reporting System (DEERS) as retirees who receive disability as well as military pension will commonly update DEERS believing that both databases are connected. Currently, veterans who update their change of dependents in DEERS, such as a divorce, but do not notify VA, and later marry a second spouse, and they notify DEERS of the second marriage, but not VA, may unknowingly create an overpayment with their VA benefits for the first spouse, and won't get paid VA benefits for the second. Once this mistake is discovered by VA, the RO will create the retroactive overpayment, deny the veteran the retroactive amount for the second spouse, and DOD will not retroactively refund the reduced retirement pay offset. A VA audit or match with DOD would prevent this problem from occurring.

#### **OVERPAYMENTS DUE TO RECEIPT OF NATIONAL GUARD AND RESERVE PAY**

Another frequent cause of the creation of overpayments are delays in adjustments in VA compensation awards due to a veteran's receipt of National Guard or Reserve pay. The American Legion believes that overpayments to veterans who receive benefit pay and drill pay during their Reserve, National Guard drill, or Active Duty period can be remedied if VA and the Department of Defense (DOD) compares drill records once a month (or at a minimum, quarterly). When a soldier is activated for Reserve or National Guard training, or even Active Duty, he or she is not eligible to receive VA disability payments. The soldier has the option of receiving either drill or VA disability and the individual typically chooses the higher of the two. If VA does not stop the payment on a timely basis, then an overpayment is created. It has been our experience that DOD and VA only compare this information on an annual basis, sending service members into debt that accumulates over several years. Errors like this are preventable and put unnecessary stress on our nation's heroes. We support any legislation that aims to address this issue using Resolution No. 228: Timely Processing of Overpayments for Reserve Components and/or Active Duty Pay, which states that The American Legion supports "plac[ing] greater emphasis on processing of these overpayments for the performance of Reserve Component and/or Active Duty pay so not to have multiple years processed at the same time."<sup>2</sup>

The American Legion commends DOD and VA for reducing the backlog by moving towards automated processing of National Guard and Reserve Pay adjustments. However, further work remains to integrate these systems seamlessly so that the responsibility does not fall to the veteran to make notifications to either VA or DoD that should be the responsibility of the departments and the administration as highlighted in GAO report 16-42.<sup>3</sup>

#### **EDUCATION OVERPAYMENTS**

The creation of overpayments of VA education benefits is another area The American Legion sees an opportunity for improvement. When a veteran is attending an institution of higher learning, VA pays the institution the amount owed for the veteran to attend the school. Sometimes, because of improper reporting, the school is overpaid, and other times the veteran may reduce his or her course load which often results in an overpayment of benefits to the school. Many veterans are unaware their course load adjustments trigger an overpayment because there is little or no guidance provided to enrolled veterans on VA's policy.

In a study conducted by the GAO report 16-42 noted that educational institutions make frequent errors when reporting enrollment information to VA and that not all schools send their certifying officials to attend the various training opportunities of-

<sup>2</sup>American Legion Resolution No. 228 (2016): Timely Processing of Overpayments for Reserve Components and/or Active Duty Pay

<sup>3</sup><https://www.gao.gov/products/GAO-16-42>

ferred by VA, contributing to additional improper education claims being filed on behalf of the veteran.<sup>4</sup>

The American Legion recommends that educational institutions authorized to accept GI Bill payments be required to review GAO's report in order to ensure that they comply with all findings in an effort to avoid future preventable overpayments. We also recommend mandatory training of certifying offices.

#### **OVERPAYMENTS FROM DELAYED INCOME MATCHING BETWEEN VA AND THE INTERNAL REVENUE SERVICE (IRS)**

VA has a Computer Matching Agreement (CMA) with IRS where IRS will disclose to the VA, certain return information. The purpose of this CMA is to make available to VA certain return information needed to determine eligibility for and amount of benefits for VA applicants and beneficiaries of needs-based benefits and to adjust income-dependent benefit payments as prescribed by law. Per the CMA Section III. (C), VA will provide IRS the lists of 800,000 names annually for matching. The CMA estimates this matching program costs \$10M, but saves VA \$58M, for a net savings of \$48M.<sup>5</sup>

When a name appears in the list provided from IRS, VA RO staff must adjudicate an EP150 action, thereby they must follow the Income Verification Match (IVM) process in M21-1MR, Section X, Chapter 9(C) to determine if the income was fully reported by the veteran or the dependent, look for under and over reporting, and make necessary benefits adjustments, including retroactive adjustments. Large overpayments can occur depending on the time between when the income is received by the veteran, and the date VA adjudicates the action. The follow-up time by VA can vary depending on the date the IRS runs the report and sends it to the VA, the volume of names sent to VA, and the available RO staffing resources to conduct these EP150 investigations on the matched names.

VA should aggressively pursue potential changes in the matching agreement with IRS which would enable VA to making more timely adjustments based on the reported tax return information provided by IRS.

#### **OVERPAYMENTS FROM MATCHING BETWEEN VA AND SOCIAL SECURITY**

VA also has a matching agreement with the Social Security Administration to help VA determine eligibility for needs-based pensions under 38 U.S.C. Chapter 15, Dependency and Indemnity Compensation to parents under 38 U.S.C. § 1315, and programs under 38 U.S.C. Chapter 11 for veterans receiving Total Disability Due to Individual Unemployability (TDIU) benefits.

Previously, overpayments were created when a veteran, surviving spouse, or surviving parent was erroneously granted VA needs-based benefits due to receipt of SSA benefits, and there was a significant delay-in many cases one to two years-in matching with SSA.

The American Legion commends VA in addressing this problem by obtaining an on-demand match with SSA, thereby, allowing the Pension Management Centers (PMCs) to be pro-active in identifying upfront SSA income that may impact the claimant's eligibility for needs-based benefits, and preventing erroneous grants from being awarded.

#### **FUGITIVE FELON PROGRAM OVERPAYMENTS**

Overpayments also occur from delays and adjudication errors for veterans on the Fugitive Felon Program list (FFP-3). Under the Fugitive Felon program, VA is required to terminate benefits for veterans identified as a "Fugitive Felon," which is defined by 38 C.F.R. § 3.665 (n)(2) as:

"A person who is a fugitive by reason of: (i) Fleeing to avoid prosecution, or custody or confinement after conviction, for an offense, or an attempt to commit an offense, which is a felony under the laws of the place from which the person flees; or (ii) Violating a condition of probation or parole imposed for commission of a felony under Federal or State law."

The FFP-3 report issued by the VA Office of Inspector General uses codes assigned by the National Crime Information Center (NCIC), and per M21-1, Part X, Chapter 16, "they are an indicator that the individual with the felony arrest warrant..."(emphasis added).

<sup>4</sup> <http://www.gao.gov/assets/680/673230.pdf>

<sup>5</sup> <https://www.oprm.va.gov/docs/dib/14-IRS-VA-DIFSLA-signed-9-17-2015.pdf>

Offense Code	What the Code Denotes.
4901	Escape.
4902	flight to avoid prosecution.
4999	flight-escape.
5011	parole violation.
5012	probation violation.
8101	juvenile offender abscond (escape/flee) while on parole.
8102	juvenile offender abscond while on probation.

Warrants can be issued for the alleged commission of a misdemeanor or a felony, and RO staff members have the responsibility to exercise due diligence in determining correct characterization of the alleged offense and proper name match that led to the issuance of the warrant. The process in M21-1MR, Part X, Chapter 16 is lengthy and very detailed. If the steps are not carefully followed or if there is inadequate development by not obtaining the full Court records that lead to the issuance of the warrant, then veterans facing misdemeanor warrants for a misdemeanor charges can find their VA benefits improperly terminated with an overpayment generated against them.

Placing a veteran's name in the FFP-3 leads to serious consequences. Regional Offices will assign an EP 290 code which leads to the generation of a retroactive termination of the veteran's compensation award, and an overpayment from the date of the issuance of the warrant. Once the warrant is cleared, the veteran may be entitled to a reinstatement of benefits, but only back to the date the warrant was cleared (if the warrant was issued for a felony charge), or back to the date the warrant was issued (if the warrant was issued for a misdemeanor charge). If the warrant was issued in error, then the veteran must submit to VA a copy of the Court order that vacated it in order to get the retroactive overpayment canceled back to the warrant issue date.

Improper development is a violation of due process which can lead to the mischaracterization or assumptions of misdemeanor warrants as felony warrants. This results in improper termination of benefits and the creation of overpayments, which often creates a financial hardship for the veteran. This situation happened to a veteran who was arrested on a misdemeanor warrant for being in contempt of court (a misdemeanor charge) for a parole violation for failure to pay child support. The veteran is unemployable and his VA compensation, which was his sole source of income, was retroactively terminated. His local RO didn't obtain the full Court record, and then stopped his monthly VA compensation check completely for 3 months and generated a large overpayment against him. This action put the veteran in severe financial hardship as he became temporarily homeless until his benefits were restored retroactively by an RO in a different state, but only to the date his misdemeanor warrant was cleared.

Unfortunately, he missed the 30-day deadline to request a waiver of the debt collection action by the DMC-which is an important deadline frequently missed by veterans-but he did submit a timely debt waiver request due to administrative error and financial hardship. His American Legion Service Representative was able to negotiate a repayment plan with the DMC for the remaining disputed overpayment amount, thereby, preventing a second total garnishment of his entire monthly VA benefits payments. The overpayment amount, which is for the time period from the date the misdemeanor warrant was issued to the date it was cleared, is currently on appeal. His case awaits further development.

In 33 of the 50 states the failure to pay child support is a misdemeanor, while in most of the remaining states it is a felony.<sup>6</sup> In some states it varies depending on if the commission of the crime is the first, or a subsequent offense. In some state leaving the state can raise the misdemeanor charge to a felony. In a minority of states it is not clear as the failure to pay child support is not categorized either as a misdemeanor or a felony. This wide inconsistency and variation in state law can lead to inaccurate RO decisions where the veteran's benefits are wrongfully termi-

<sup>6</sup><http://www.ncsl.org/research/human-services/criminal-nonsupport-and-child-support.aspx>

nated and an overpayment is generated, especially when the EP290 is routed to any of the 57 VA regional offices via the National Work Queue (NWQ).

It is highly unlikely all VA adjudicators at all 57 ROs are familiar with the child support laws in all 50 states. Therefore, depending on the state and the facts of the case, it can be fairly complicated to determine if a veteran who failed to pay child support, meets the definition of a fugitive felon under 38 C.F.R. § 3.665 (n), especially if the veterans' electronic VBMS file does not contain the pertaining court documents needed to make such a decision. ROs have an obligation to obtain such court documents, and not rely solely on the FFP-3 report. Lack of proper development in these types of cases can lead to inaccurate adjudications, and financial hardship for the wrongly affected veterans.

Going forward, whether the determination correctly or erroneously classifies a veteran as a fugitive felon, the veteran's future claims are forever tainted with the "FFP-3 Fugitive Felon" label in the electronic VBMS claims file, which can create an unjust negative impression on future VA decision makers.

The American Legion recommends that VA improve its training for FFP-3 reduction cases to avoid these types of adjudication errors and update the M21-1MR Manual by emphasizing that the appearance of a veteran's name on the FFP-3 list by itself doesn't automatically mean the warrant was issued for a felony. The RO staff still need to do their research and proper development to ensure they are not misclassifying a veteran as a fugitive felon under 38 C.F.R. § 3.665 (n) and erroneously creating an overpayment. Having one RO to adjudicate all EP290s for FFP-3 match related reductions would help improve the accuracy of these types of adjudications.

#### **REDUCING MISSED 30-DAY WAIVER REQUESTS FOR WAIVER OF DEBT COLLECTION ACTION**

In the first notice letter sent from the DMC, the veteran is notified he or she has 30 days to request a waiver of the debt collection action, along with 180 days to request a debt waiver. These two deadlines are confusing to veterans, their advocates, and even VA staff. The American Legion frequently receives calls from veterans who have missed the 30-day deadline, but still are within the 180-day deadline-at this point, all our service officers can do is assist the veteran with negotiating a payment plan with the DMC, and help the veteran file the debt waiver request. It would be less confusing for veterans if the two deadlines are standardized. Therefore, we recommend changing the deadline to request a waiver of the collection of the debt from 30 days to 180 days.

#### **VA DEBT COLLECTION PROCESS WITHIN VBA**

According to VA, in 2014, 88% of all debts owed were related to the Veteran Health Administration (VHA), whereas only 8% of all debts owed originated at the Veteran Benefits Administration (VBA).<sup>7</sup> Once a debt has been created at the regional office of jurisdiction, VA is required to send notice in writing to the subject of the alleged debt. This notice must include the exact amount of the debt, the reason for the debt, and the individual's rights and remedies in connection with the debt. Additionally, it must inform the debtor collection may be made through offset of current or future benefits and interest and administrative costs may be assessed. Once the debt is generated, it is referred to the Debt Management Center (DMC) for collection actions.

Within 30 days the DMC sends a collection due process letter advising the debtor of the debt amount and provides a notice of their rights and obligations. If the debtor is actively drawing benefits, the letter will indicate that failure to respond will result in a full benefit offset beginning with the first pay period 60 days after the date of the notification letter. If the debtor is not actively drawing benefits, a second letter is mailed 30 days later as a reminder to take action. The letter advises that if the debt is not satisfied, or an agreeable repayment plan is not established within 60 days, the account will be reported to credit collection agencies as delinquent. The letter will further state that the Treasury Department may refer the account to private collecting agencies and the account may be subject to garnishment of non-federal wages under the Treasury's Administrative Wage Garnishment Program. If no action is taken, third and fourth letters are mailed 30 days apart. If no action is taken 60 days after the third letter, the account is referred to the Treasury Department for active collection.

In our experience, the VA makes every attempt to keep these debts "in-house" and tries to notify the veteran in numerous ways. According to the Code of Federal Reg-

<sup>7</sup> <https://drive.google.com/file/d/0B70—mGYT1tJETzZGWUZKYzdGXzg/view>

ulations (C.F.R.) 1.911 (d), VA is required to send a notice of debt that must include the exact amount of the debt, the reason for the debt, the individual's rights and remedies in connection with the debt, and inform the debtor that collection may be made through offset of current or future benefits and that interest and administrative costs may be added.

Sometimes, notification letters are sent to wrong addresses due to updated information not being provided to the VA debt collection team. Failure to update the system with the correct and current contact information can lead to a veteran who owes a debt not being properly informed of their rights. The American Legion calls upon VA to continually update their contact database to ensure the most up-to-date information for a veteran is available so the VA may contact the veteran for a multitude of reasons, including debt collection.

Additionally, a veteran may request copies of the debt and coinciding information from the original office of jurisdiction where the overpayment was created. If the veterans feels it is necessary, they may file an appeal with VA. If the veteran chooses to file an appeal, then they will need to notify the VA in writing before the 30-day deadline if they are requesting a hearing to contest the debt. The debtor's right to inspect the record is also included in the original debt notification letter.

#### **VA PARTNERSHIP WITH THE TREASURY DEPARTMENT**

In most cases, delinquent accounts over 120 days are referred to the Treasury Department for collection. Once a debt is referred to the Treasury Department, the debtor is subjected to the Treasury's collection tools, interest, and any administrative fees. The American Legion strongly recommends veterans who receive debt notification letters from DMC immediately contact an advocate like The American Legion for assistance to prevent the debt from spiraling out of control. It has been the experience of The American Legion the VA DMC office is more sensitive to the veteran's particular circumstances and needs than the Treasury Department, which is why veterans need to act quickly to avoid garnishment actions and negative credit reporting.

Finally, the DMC does not charge interest or fees when collecting on compensation and pension debt, a policy that The American Legion strongly supports. While the DMC does not charge interest on compensation and pension debt, they do assess interest on Home Loan Guaranty, Chapter 34 and Chapter 35 education debts where the rate of interest is 4% for these types of debt.

#### **CONCLUSION**

Debt collection within the VA and Treasury Departments is complicated and multi-faceted. The American Legion still sees room for improvement, and we have again highlighted some of those suggestions in this testimony. Overall, The American Legion believes that DMC does a good job of protecting veterans from added exposure when they are identified as having been overpaid and want to ensure that veterans are aware of their rights, resources, and consequences should they neglect to address these issues right away. However, there would be fewer and smaller overpayments generated if the 57 ROs were adequately staffed and the VA work credit system for EP130 and 150 were adequately adjusted to allow for full and proper development of these types of claims. EP 130 claims involving removal of a dependent should be given higher priority in the NWQ. VA should continue to improve its overpayments-related training, including FFP-3 matching, centralize the adjudication of the Fugitive Felon Program, and expand dependency claim automation to allow veterans to remove dependents via eBenefits without the need for manual processing.

Finally, The American Legion again calls on DoD and VA to integrate their systems seamlessly so that the responsibility does not fall to the veteran to make notifications to either VA or DoD that should be the responsibility of the departments and the Administration as highlighted in GAO report 16-42.

The American Legion thanks this committee for the opportunity to elucidate the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Derek Fronabarger, Deputy Director of The American Legion Legislative Division at [dfronabarger@legion.org](mailto:dfronabarger@legion.org) or (202) 861-2700.

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#### **Prepared Statement of Shane L. Liermann**

Mr. Chairman and Members of the Subcommittee:



Thank you for inviting DAV (Disabled American Veterans) to testify at this hearing of the Subcommittee on Disability Assistance and Memorial Affairs concerning how the Veterans Benefits Administration (VBA) can effectively prevent and manage overpayments of benefits to veterans, their families and survivors. As you know, DAV is a non-profit veterans' service organization comprised of 1.3 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

DAV represents over one million veterans and their families before the Department of Veterans Affairs (VA) in their claims for earned benefits, primarily for disability compensation. Veterans are entitled to receive compensation based on injuries and illnesses incurred or aggravated by military service. The amount of compensation a veteran or beneficiary is entitled to may change due to many factors, to include changes in dependency, additional service-connected disabilities, Reserve or National Guard service or change in the severity of the service-connected condition. Overpayment of benefits can occur when these changes are not timely recorded and implemented by VA due to actions or inactions by VA or the veterans themselves. The most common changes that lead to overpayments are dependency issues and incarceration. In addition, inadequate information sharing between federal agencies and departments, as well as with state agencies, due to limitations of policies, processes and technology, hinders prompt and proper action on processing overpayments.

Mr. Chairman, overpayments by VA and the resultant debts owed by veterans often cause severe financial hardships for veterans and their families. In many cases, the burden of repaying these debts can negatively impact a veteran's quality of life, put them at risk of homelessness and affect their access to VA health care. 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 could have been reduced or avoided if the VA had better policies, processes and oversight of their workforce.

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. If VA staff processed compensation benefit adjustments promptly, many veterans would not have been put in the difficult position of having a debt to VA.

In June 2016, the OIG issued a report on the 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. If conditions remain the same, it estimated that VA could make additional inaccurate payments of more than \$200 million over the period of fiscal year (FY) 2016 through FY 2020.

DAV is concerned that many debt amounts could have been lessened or completely avoided through greater oversight and control by VBA. While overpayments certainly have a negative impact on the federal budget, we are more concerned that these debts can sometimes result in catastrophic outcomes for financially-stressed veterans and their families. VA must aggressively work to identify ways to correctly process all evidence, information, and reports to eliminate this effect. Improvements to processing dependency changes and incarcerated veterans can minimize the avoidable amounts of debt created by the VA. In addition, VA and other federal agencies, particularly the Department of Defense, Centers for Medicare and Medicaid, the Internal Revenue Service (IRS) and the Bureau of Prisons, must develop seamless and timely ways to exchange information relevant to determinations of veterans' benefits.

#### **Dependency Changes**

Veterans in receipt of VA compensation at 30 percent disabling or higher are entitled to additional monthly benefits based on the number of their dependents. This includes spouses, children, step-children, adopted children and dependent parents. Veterans are advised by the VA to notify them when this status changes.

VA criteria require a reduction of benefits for the loss of a dependent due to marriage, divorce, death or in the case of a child, attainment of age 18 generally, or 23 if attending school. An OIG report from September 2007 reviewed 315 cases that had a change in the dependent status, finding that 81 (26 percent) had avoidable overpayments totaling \$1.3 million. The primary cause for overpayments was processing delays which ranged between 60 days and 10 years, averaging two years; in 32 of the 81 overpayments (40 percent), the VA delayed processing adjustments for over a year.

For example, a widow receiving dependency and indemnity compensation remarried in 1986 and notified the VA of the marriage in April 1995, and again in March 2003. However, the VA did not terminate benefits until January 7, 2004, altogether resulting in an overpayment of \$179,966. Had VA acted promptly on the first notification, \$104,866 (58 percent) of the \$179,966 overpayment and debt could have been avoided.

If a dependent is removed, this will create an overpayment and subsequent debt for the veteran. If VA delays the processing of that request to remove the dependent, it creates an undue burden and hardship on the veteran, for which they are ultimately responsible. If VA had better policies, processes and oversight of their workforce, these avoidable overpayments caused by the VA could be reduced and even eliminated.

When a veteran is divorced or the spouse is deceased, it is the veteran's responsibility to advise the VA of the termination of the marriage for removal of the former spouse from the veteran's benefits. In some instances, the veteran will not advise the VA directly but will make that change in status known to another federal agency. For example, the veteran may have reported a divorce or death to the IRS, Defense Finance and Accounting Services, Social Security Administration, Centers for Medicare and Medicaid, or TRICARE. Because this information is not currently shared between VA and other federal agencies, the overpayment will be assessed based upon the date VA is notified.

There is a legal concept known as "constructive knowledge" that could be relevant to this problem. The Court of Appeals for Veterans Claims has defined the notice of "constructive knowledge" within the VA. In *Bell v. Derwinski*, 2 Vet. App. 611 (1992), the Court held that the VA is deemed to have constructive knowledge of all VA records and such records are considered evidence of record at the time a decision is made. This concept applies to dependency change of status issues.

For example, if the veteran advises a VA Medical Center, Outpatient Clinic, Vocational Rehabilitation and Employment Services, VA Insurance Center, or other VA program and not the VA Regional Office (VARO) of his change in dependency, the VA is considered to have "constructive knowledge" of the change in status. Since the veteran identified the change to the VA, it had knowledge. This can allow veterans to lessen the amount of the overpayment created by the dependency change by reverting back to the date any office in VA was notified of the change. The same logic could be applied to the entire federal government, thereby deeming notice to any federal agency as providing notice to VA.

The OIG reports also found that the main reason for the delay in processing dependency status changes is due to its classification as non-rating claims, which are considered a lower priority compared to rating claims work.

Through VBA's online program, eBenefits, a veteran can submit evidence to add a dependent. While this has increased the timeliness of adding a dependent, this program is still in its infancy. Based on specific data, the system can reject the addition, refer it for traditional processing and provide no notification to the veteran. This program also provides for notification to the VA of removal of a dependent; however, because this is not part of eBenefits' rule-based programming, it is referred for traditional processing. Again, these are not considered rating claims work and have no priority in VBA.

### Recommendations

**1. Assign dependency changes equal priority to rating claims work.** Within VBA, rating claims work has a higher priority for the assignment, control, and completion of work. However, as discussed above, this creates delays in VA adding new dependents and increases the amount of overpayments caused by delaying the removal of dependents. To facilitate this reprioritization, there will need to be enhancements to the VBA online claims system to allow for expedient processing for adding or removing dependents.

**2. Apply the principle of "constructive knowledge" to automatically waive all additional overpayment amounts created by VA.** When any part of VA has possession of the required evidence to change the dependency status and fails to act timely, VA must waive the amount of additional debt created by the VA's lack of timely action.

**3. Apply the principle of "constructive knowledge" throughout the entire federal government.** Just as VA should accept "constructive knowledge" of dependency information received within part the Department, VA should also accept that concept for information received by any other federal agency or office.

VA currently receives information and cross matches on income data with the IRS, incarcerations with the Federal Bureau of Prisons, and the Department of De-

fense, and could apply associated dependency information to more timely make status changes. Further, once a veteran reports his change in status of dependency with any federal agency, such as income tax applications, changes with the Defense Enrollment Eligibility Reporting System (DEERS) program within the Department of Defense or changes noted with TRICARE, this should be considered “constructive knowledge” for VA purposes, thereby lessening any overpayments and debt created by the veteran’s change of dependency. VA could receive annual data from the IRS specifically on dependency thus reducing any potential overpayments.

**4. Waive the debt after 90 days of no action by the VA.** DAV Resolution No. 213 states that when VA has receipt of the required information for a dependency status change or notification of the veteran receiving Reserve or National Guard Drill Pay, and does not take any action within 90 days, VA should automatically waive the debt. This change would greatly reduce, and in many situations eliminate, any improper overpayment amounts caused by VA.

#### **Incarcerated Veterans**

Federal law requires VBA to reduce Compensation and Pension (C&P) benefits for veterans incarcerated in a federal, state, or local penal institution in excess of 60 days. Effective the 61st day of incarceration, VBA must reduce compensation benefits for veterans convicted of a felony and discontinue pension benefits for veterans convicted of a felony or misdemeanor. VBA 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, VBA reduces the benefit payment by one-half. VARO and Pension Management Center (PMC) employees are responsible for making incarceration adjustments. Once the veteran is released from the penal institution, VBA will restore C&P benefits.

Based on the June 2016 OIG Report, VARO and PMC staff did not consistently take action to adjust C&P benefits for veterans incarcerated in federal penal institutions. Specifically, based on federal incarceration data ranging from May 2008 through June 2015, VBA did not adjust veterans’ C&P benefits, as required, in an estimated 1,300 of 2,500 cases (53 percent), which resulted in improper payments totaling approximately \$59.9 million. Without improvements, VBA was projected to make additional improper benefits payments totaling about \$41.8 million for federal incarceration cases from FY 2016 through FY 2020.

VARO and PMC staff also did not take consistent and timely action to adjust C&P benefits for veterans incarcerated in state and local penal institutions. Based on incarceration notifications received from March 2013 to August 2014, VBA did not effectively adjust veterans’ C&P benefits in an estimated 3,800 of 21,600 state and local incarceration cases (18 percent), which resulted in significant delays and improper benefits payments totaling about \$162 million for state and local incarceration cases from FY 2016 through FY 2020.

In general, VBA did not place priority on processing incarceration adjustments because VBA did not consider these non-rating claims to be part of the disability claims backlog. Both VBA 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.

Incarcerated veterans are not entitled to their full VA compensation benefits after the 61st day of incarceration; we do not dispute that this will create overpayments, even when reported timely. However, the millions of dollars of additional amounts created by VBA’s own delays create an unfair and undue hardship on these veterans and their families.

In many instances, VBA did not reduce the veteran’s benefits while incarcerated for shorter sentences. After release, the veteran would notify the VA, the overpayment would be recognized and the debt created and recouped. For veterans who rely on compensation, having these benefits cut off for repayment after incarceration puts them and their families at financial risk. The loss of income relied on by the veteran and their family could place many in this vulnerable population at a higher risk for homelessness.

Another negative consequence of VA failing to properly reduce these benefits affects a veteran’s family. While a veteran is incarcerated, their dependent family can request an apportionment of benefits and receive the amount of compensation that is withheld from the veteran. However, if the veteran’s benefits are not timely reduced by VBA, the family would not be aware of their potential entitlement to the apportionment.

#### **Recommendations**

**1. Place priority or timely controls on processing incarceration adjustments.** Within VBA, rating claims work has a higher priority for the assignment,

control, and completion of work. However, as discussed above, this places incarcerated veterans and their families at an unfair disadvantage.

**2. Automatically apply apportionments to veterans' families at the 61st day of incarceration for a felony.** The dependent family of incarcerated veterans can apply for an apportionment of the amount withheld from the veteran. This would lessen any hardships placed on the family and would help to prevent large overpayments being made to the veteran.

**3. Apply the principle of constructive knowledge throughout the entire federal government.** The VA currently receives information and cross matches on income data with the IRS, incarcerations with the Federal Bureau of Prisons, and the Department of Defense. Once a veteran is identified as an incarcerated veteran with any federal agency, such as income tax applications, changes with the DEERS program within the Department of Defense or changes noted with TRICARE, this would be considered constructive knowledge with the VA.

#### **H.R. 3705 - Veterans Fair Debt Notice Act of 2017**

On September 20, 2017, DAV presented testimony to the Subcommittee on the Veterans Fair Debt Notice Act of 2017, H.R. 3705. This legislation would require the Secretary of Veterans Affairs to utilize certified mail and plain language in certain debt collection activities.

As we previously testified, consistent with the intent of DAV Resolution No. 213, which calls for alleviating undue financial hardship in processing overpayments and notifying veterans of debt, we support this bill. H.R. 3705 proposes to secure notification to debtors of debt collection actions with a plain language explanation of the debt. We recommended clarifying that the debtor is not required to use certified mail to respond to the VA adding a section to indicate that the date of notification of the debt is the date of signed receipt of certified mail by the debtor.

Mr. Chairman, DAV is concerned that many debt amounts could have been lessened or completely avoided through greater oversight and control by VBA. As indicated, VBA continues to create additional improper overpayment and debt amounts that not only impact the federal budget, but can have horrific consequences for veterans and their families. These discrepancies must be corrected and eliminated to remove the burdens that VA has placed on too many veterans and their survivors.

This concludes DAV's testimony. Thank you for the opportunity to testify at today's hearing. I would be pleased to answer any questions you or members of the Subcommittee may have.

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#### **Prepared Statement of John Towles**

Chairman Bost, Ranking Member Esty and members of the Subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on how the Veterans Benefits Administration (VBA) can effectively prevent and manage overpayments.

The glacial speed at which VA moves is nothing new to the VFW, or the members of this subcommittee. Normally, bureaucratic redundancies that exist within organizations are meant to serve as a protective mechanism, as they can promote proper oversight, accountability, and thoroughness. With regards to VA however, especially as it relates to how overpayments and debt recoupment issues are addressed, these processes have only made matters worse for veterans due to the time sensitivity of certain issues and the number of other offices within VA that may be involved.

In the past year, the VFW's National Veterans Service (NVS) has directly assisted more than 200 veterans who have experienced issues stemming from overpayments. According to our estimates, about 60 percent of the cases where NVS has intervened resulted in the veteran being granted either partial or full relief from the debt form VA's Debt Management Center (DMC). However, the onus is on the veteran to prove that they were not overpaid, so getting relief is often times a long, arduous process.

In our experience, we have found that legitimate overpayments most often occur with GI Bill benefits when a veteran's enrollment status changes at his or her college. If a student decides that they are having a difficult time meeting their educational obligations and chooses to switch to part-time, it is the responsibility of the school, not the student, to notify VA. In the event that the school fails to notify VA of the change in status, the veteran will continue to receive the full living stipend and the school will continue to be paid the full-time rate for tuition.

Once the error is noticed, VA will send an ambiguously worded notification of overpayment, which also provides options for repayment. If the veteran is unable

to contact VA to establish that the debt is erroneous, make a repayment in a timely manner, or enter into a payment agreement with VA, their debt is sent to collections and VA will garnish payments from their disability compensation benefits until the debt is satisfied.

While the veteran does have the ability to seek relief by filing a relief waiver, VA's inability to provide the veteran clear and concise information regarding their debt in a timely manner significantly hinders the veterans ability to take action in order to prevent VA from taking further action, such as having their credit negatively impacted.

In a perfect world, this discrepancy would be noticed immediately; however, there have been instances where it has taken upwards of five years for VA to properly and officially notify veterans of the overpayment, despite in many circumstances, veterans themselves notifying VA that they are being overpaid.

In one recent case, an administrative error by VA triggered a \$32,000 overpayment notification for a former California National Guardsman. The veteran did everything that he could do on his own to rectify the situation, including notifying the VA that he as being overpaid. Despite this, VA continued to pay him at an incorrect rate. It was not until sometime later that VA caught the error internally that an overpayment notice was sent. The veteran filed a waiver to have the debt discharged; however, the waiver was denied and his disability compensation was garnished. It was not until he contacted the VFW's 1 Student Veteran office, which successfully intervened on his behalf, that the debt was properly discharged and the monies that were withheld from his disability benefits were returned.

Another case involved a retired military officer whose daughter was using transferred GI Bill benefits. Due to a misinterpretation of its own regulations, VA sent a notification stating that he owed \$100,000 as a result of a reduction in rank following his retirement. It was not until VFW contacted VA Education Service and the DMC directly and explained to them that despite the reduction in rank, he still completed twenty years of qualifying honorable service prior to his retirement and therefore was obligated to repay nothing. A senior manager in education services agreed and the debt was eventually waived. In this instance, the senior decision maker that initiated the debt process had a number of shortcomings that caused undue worry and hardship for the veteran. Among them were inexperience and unfamiliarity in applying VA law and regulations properly.

Had these veterans not contacted the VFW, there is a significant chance that they would still be fighting to get this debt cleared. These are just two of many situations in which the VFW utilizes our cadre of highly trained and professional service officers to better serve veterans, but it is our position that veterans should not be erroneously overpaid in the first place.

To be blunt - there is absolutely no excuse for VA not to know its own regulations or how to effectively implement them; but yet, here we are.

VA's inconsistent administration of veterans' benefits and interpretation of rules and regulations, lack of training for program administrators and lack of effectiveness when communicating with the veteran are the principal reasons VA continues to overpay veterans and spends an untold amount of resources collecting overpayments.

With more than 187,000 overpayment notices being sent to veterans in the past year alone, one would hope that VA would not only be prepared to share the most precise information that triggered the notice in the first place, but also be prepared to assist the veteran in a timely fashion. Sadly, as we have seen via numerous media reports, and through our own direct contact with countless veterans in similar situations throughout the past year, this simply is not the case.

VFW understands that overpayments must be recouped in order for benefit programs to work efficiently, but it is important to state that debt notices must be clear, and provide concise information regarding what steps veterans and schools need to take in order to resolve any outstanding debts as soon as possible.

Collections for a benefit as complicated as the Post-9/11 GI Bill can cause significant financial hardships for both veterans and their schools. Organizations representing school certifying officials, like the National Association of Veterans Program Administrators (NAVPA), have long reported that VA's assignment of debt collections to schools and students, as well as erroneous offsets, have been inconsistent across the board.

Ultimately, veterans should be responsible for repaying the overpayment, if it is indeed legitimate. Due to the aforementioned inconsistencies regarding communication from VA, as well as the general lack of information regarding the nature of the debt, many veterans are simply unable to meet the deadline imposed on them by VA. To further complicate things, the VFW's interaction with DMC personnel have

made us acutely aware to the fact that there is an overall lack of knowledge regarding VA policy and procedures and its appropriate application.

Many veterans, especially those who have a fixed income, have limited access to the immediate financial resources needed to immediately repay an overpayment. Astonishingly VA has, and often times will as a first option, offset a veteran's entire monthly benefit payment in order to pay down a debt, unless the veteran received the notification of VA's intent to do so and requested an alternative method of payment. Without guaranteeing that the veteran is actually receiving the debt notification letter however, VFW feels that this action all but denies the veteran due process which is why we have supported legislation that would require the use of certified mail when notifying a veteran of debt.

Aside from applying for a waiver to fully discharge a debt, VA currently has two alternative options - one that utilizes a personal checking account, but requires a financial status report to be mailed to DMC; and one that automatically offsets a veterans monthly benefit payment, but also requires a financial status report to be completed and mailed, in the event that the debt cannot be repaid in one year's time. Both options provide the veteran a way to pay down their debt over the course of several months, but loses its utility once a financial status report is required, and is only effective in the event that VA has the proper contact information and the veteran received the debt notice in the first place.

The VFW suggests that VA work to streamline the collections process by:

- 1.)ensuring that the contact information VA is using for a veteran is current and up to date;
- 2.)clarifying the eligibility criteria for a waiver;
- 3.)outlining in easy-to-understand terms the steps needed to request a payment plan; and
- 4.)repealing the need for a veteran to submit a financial status report in the event that the debt cannot be repaid over the course of a year.

Additionally, the VFW feels as though VA should take the additional steps regarding the notification and recoupment process:

- 1.)VA must ensure that any and all recoupment actions are suspended once the veteran files an appeal with the DMC, as per the VA regulations;
- 2.)VA must ensure that if the overpayment is found to be erroneous, that any damaging information sent to the credit reporting bureaus be corrected immediately;
- 3.)in the event that that a veteran contacts DMC of an overpayment, the veteran should not be held liable for the repayment after such notification is made. There is no excuse for VA not fixing the problem as soon as it is notified.
- 4.)VA must ensure that Regional Office and DMC staff are trained to conduct proper due diligence, and are better trained in VA's debt management and collections procedures and protocols; and finally
- 5.)if VA is going to set a timeline for the veteran to prove that his or her overpayment is erroneous, then VA should send as much pertinent information as possible regarding the nature of the debt to the veteran, along with the notification letter.

Chairman Bost, Ranking Member Esty, and members of the Subcommittee, this concludes my testimony. I look forward to answering any questions that you may have.

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### Questions For The Record

#### LETTER FROM CHAIRMAN BOST TO VA

January 3, 2018

The Honorable David J. Shulkin, M.D.

Secretary

U.S. Department of Veterans Affairs 810 Vermont Ave, NW  
Washington , D.C. 20420

Dear Secretary Shulkin:

Thank you for the testimony provided by the Department of Veterans Affairs for the October 25, 2017, Subcommittee on Disability Assistance and Memorial Affairs hearing entitled, "Examining How VBA Can Effectively Prevent and Manage Overpayments."

I would appreciate receiving your answers to the hearing questions below by 5:00 P.M. on February 1, 2018.

1. Please provide a detailed explanation of the reasons why the total amount of overpayments increased from \$348, 168,093 in FY2015 to \$698,481, 130 in FY2017.
2. Please provide a detailed explanation of the reasons why the number of drill pay adjustments rose from 3,581 in Fiscal Year 2015 to 106,811 in Fiscal Year 2017.
3. Please provide a detailed description of the steps VA is taking to expedite processing of adjustments for the reasons listed below. Please provide each response disaggregated by reason with a timeline of the anticipated implementation of such steps.
  - a. Drill pay adjustment,
  - b. Death of a beneficiary,
  - c. Benefit eligibility adjustment, and
  - d. Dependency adjustment.
4. Please provide a detailed description of the steps VA is taking to prevent overpayments for the reasons listed below. Please provide each response disaggregated by reason with a timeline of the anticipated implementation of such steps.
  - a. Drill pay adjustment,
  - b. Death of a beneficiary,
  - c. Benefit eligibility adjustment, and
  - d. Dependency adjustment.
5. Does VA plan to allow veterans to use eBenefits to remove dependents?
  - a. If yes, please provide the timeline for implementing such plan.
  - b. If no, why not?
6. What steps does VA take to avoid overpayments when a veteran's child turns 18?
7. On average, how long does it take for VA to verify that a veteran has died after VA receives the monthly death matching data set provided by the Social Security Administration?
8. On average, how long does it take for VA to terminate benefits after verifying that a veteran has died?
9. On June 28, 2016, VA OIG released a report entitled, "Audit of Compensation and Pension Benefit Payments to Incarcerated Veterans." Please describe the steps VA has taken since that report to more timely process incarceration adjustments.
10. Please describe any additional steps VA will take to more timely process incarceration adjustments.
11. Please describe VA's efforts to inform veterans of their responsibility to notify VA of life events, such as divorce or death that may impact monthly benefits.
  - a. Does VA have plans to provide additional reminders to veterans?
    - i. If yes, please describe this plan and provide the timeline for implementing such plan.
    - ii. If no, why not?
12. Please explain why the deadline to submit a waiver and suspend the offsetting of benefits is 30 days, when a veteran has 180 days to submit a request to waive the debt?
13. Does VA have any plans to work with VSOs to improve the content of its debt notice letters?
  - a. If yes, please provide the timeline for drafting the new debt notice letter.
  - b. If no, why not?
14. If a veteran does not respond to the debt notification letter, please describe the steps VA takes to confirm the veteran's correct address.

15. Does VBA have any additional plans to ensure that VBA's databases have the veteran's correct address?

- a. If yes, please describe the plan.
- b. If no, why not?

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, would appreciate your answer provided consecutively and single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Maria Tripplaar, Staff Director and Counsel of the Subcommittee on Disability Assistance and Memorial Affairs, at Maria.Tripplaar@mail.house.gov. Please also send a courtesy copy to Ms. Alissa Strawcutter at alissa.strawcutter@mail.house.gov. If you have any questions, please call Ms. Tripplaar at (202) 225-9164.

Sincerely,

Mike Bost  
Chairman

Subcommittee on Disability Assistance and Memorial Affairs

cc: The Honorable Elizabeth H. Esty, Ranking Member, Subcommittee on Disability Assistance and Memorial Affairs

MB/ks

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#### VA RESPONSE TO LETTER FROM CHAIRMAN MIKE BOST

**Question 1: Please provide a detailed explanation of the reasons why the total amount of overpayments increased from \$348,168,093 in FY2015 to \$698,481,130 in FY2017.**

VA Response: Of the \$350 million dollar increase in the overall amount of overpayments, drill pay adjustments grew by \$179 million dollars making up 50% of the increase in the total amount of overpayments in the disability compensation program. Prior to February 25, 2016, adjustments to Veterans' awards based on receipt of drill pay were applied to future disability payments. This action did not create an overpayment on the Veterans' account, but caused future payments to be reduced or terminated temporarily resulting in financial hardship for the Veteran. Additionally, the only option for a Veteran to request relief was to request a hardship waiver.

Effective February 25, 2016, the Veterans Benefits Administration (VBA) changed its policies and began processing drill payment adjustments retroactively creating a debt (overpayment) in the system. While this change in policy increased the total number of overpayments, it allowed Veterans additional options to repay these funds based on their financial situation.

The next largest increase in overpayments is attributable to Dependency adjustments which grew by \$65 million dollars and accounts for 18% of the overall increase in overpayments.

**Question 2: Please provide a detailed explanation of the reasons why the number of drill pay adjustments rose from 3,581 in FY2015 to 106,811 in FY2017.**

VA Response: As noted in our response to Question 1, drill pay adjustments make up a significant portion of VBA's overpayments. By law, Veterans are not entitled to receive both military drill pay and VA disability compensation for the same periods. VBA implemented policy changes in February 2016 to change payment adjustment to a retroactive process in order to afford Veterans additional options in repaying the overpayment. Prior to fiscal year (FY) 2016, Veterans' future benefit payments were adjusted to withhold the duplicate payment amount, which prevented these adjustments from counting as overpayments.

**Question 3: A detailed description of the steps VA is taking to expedite processing of adjustments for the reasons listed below. Please provide each response disaggregated by reason with a timeline of the anticipated implementation of such steps.**

- a. Drill pay adjustment
- b. Death of a beneficiary



**c. Benefit eligibility adjustment, and  
d. Dependency adjustment**

VA Response:

3a. Drill Pay Adjustment. Currently, VBA receives an annual notice of reservist drill days through an electronic data-sharing agreement with the Department of Defense (DoD). VBA is working collaboratively with DoD to receive this information monthly so we can process these drill pay adjustments more frequently resulting in Veterans receiving this information in a timelier manner. However, VBA's ability to process these monthly adjustments is dependent upon a regulation change that would allow an upfront issuance of due process for military payment adjustments. The regulation change is currently undergoing legal review as part of VA's internal concurrence process. We do not have an anticipated date of publication at this time.

3b. Death of a Beneficiary. Upon notification of a VA beneficiary's death, VBA immediately suspends or stops VA benefit payments. VBA may receive notification regarding a beneficiary's death through several methods including telephone calls to our National Call Center, written correspondence, claims for death benefits, requests for burial in a National Cemetery, as well as electronic data-sharing agreements with other agencies, primarily the Social Security Administration (SSA).

After the beneficiary's award is suspended, VBA sends written notice to their last known address of record to ensure the information regarding their death is accurate. Unless VBA receives notice that the beneficiary is still alive within 30 days of the date of the written notice, the award is suspended and the adjustment is referred to a claims processor to take final action to terminate the beneficiary's award. VBA is currently working with VA's Office of Information and Technology (OI&T) to develop an automated process that will take steps to terminate a Veteran's award when notification of his or her death is received through the electronic data-sharing agreement with SSA and after applicable notification to the beneficiary has been made with the opportunity to provide response. The error rate associated with this data match is extremely low (less than 1/10 of a percent) and will allow VBA to refocus valuable claims processing resources to more complex claims. VBA does not have an anticipated date of implementation at this time.

3c: Beneficiary Eligibility Adjustment. Since the National Work Queue (NWQ) began managing the workload distribution of End Product (EP) 600 (due process EPs), the average days pending for these claims improved by 332 days as of December 31, 2017. In FY 2017, VBA established Non-Rating Resource Teams (NRRT) at 12 Regional Offices. NWQ routes special project work to these teams. Currently, the NRRTs are focused on Drill Pay, Combat-Related Special Compensation (CRSC)/Concurrent Retirement and Disability Payment (CRDP), Federal Bureau of Prison (FBOP) matching, and eligibility determinations. If there is no actionable work available for the special project teams, NWQ then routes additional non-rating priorities (e.g., dependency) to these teams. VBA has seen a 197-day improvement in the average days pending of NRRT special project inventory during FY 2018.

3d. Dependency Adjustments. VBA expedites the processing of dependency adjustments two ways; the first is using our online portal, and the second is through the use of contracted services to enter data into a rules based process system (RBPS) engine. Both methods use the same rules engine for automation of the decision and notification to the beneficiary. RBPS is an online tool within the VA's eBenefits application and can add new dependents to Veterans awards provided the Veteran has a disability rating of 30 percent or greater. Dependents may include a Veteran's spouse as well as any minor or school-aged children. Spouses can also be removed from the award if there are no children listed on the award. RBPS uses a rules engine for the decision and notification to the Veteran.

VBA continues to explore additional ways to streamline processes and to add more automated processes for Veterans to provide information. We are currently utilizing the power of the NWQ to help ensure the appropriate priority for, and thereby appropriately route, dependency claims to those stations which have the capacity to work them most efficiently. In FY 2017, VBA established NRRTs at 12 regional offices. NWQ routes primarily special project work to these teams. Currently, the NRRTs are focused on Drill Pay, CRSC/CRDP, FBOP matching, and Eligibility Determinations. If there is no actionable work available for the special project teams, NWQ routes additional non-rating priorities (e.g., dependency) to those teams.

During FY 2017, the inventory of dependency claims decreased by 26 percent with a 50 percent improvement in timeliness. However, VBA still has additional work to do regarding these adjustments and remains focused on implementing measures to efficiently work these claims.

**Question 4: A detailed description of the steps VA is taking to prevent overpayments for the reasons listed below. Please provide each response disaggregated by reason with a timeline of the anticipated implementation of such steps.**

- a. Drill pay adjustment**
- b. Death of a beneficiary**
- c. Benefit eligibility adjustment, and**
- d. Dependency adjustment**

VA Response: VA has taken steps to ensure more frequent written reminders to Veterans of scenarios that may affect their payments. While these actions will not prevent the overpayment, by nature of the adjustment, it will potentially lessen the size of the overpayment that would occur sans frequent notice.

4a. Drill pay adjustment. The nature of the process of VA receiving notice of Veterans' receiving drill pay after the event will always cause an overpayment. However, VBA has drafted a regulation which will allow for more frequent benefit adjustments (Please refer to question 3a above). While this change will not eliminate benefit overpayments, Veterans will receive faster, more timely adjustments with smaller overpayment amounts. The regulation change is currently undergoing legal review as part of VA's internal concurrence process. We do not have an anticipated date of publication at this time.

4b. Death of a beneficiary. VBA immediately suspends a VA beneficiary's payment upon notification of his or her death; thereby, reducing or eliminating an overpayment of benefits. Please refer to question 3b above.

4c. Benefit Eligibility adjustment. Please refer to question 3c above. As we continue working through the inventory of these claims, we expect the amount of overpayments to decrease.

4d. Dependency adjustment. Since April 2017, the NWQ is efficiently distributing the non-rating workload including dependency adjustments to stations that have the most capacity to work these claims. Additionally, VBA has applied a strategic approach in utilizing claims processing overtime resources. We target specific claims and steps within the claims process to direct overtime where it will produce the most benefit. As a result, VBA claims processors are receiving more non-rating claims to work and adjudicating more benefits eligibility than in previous years. In processing more non-rating claims, the amount of overpayments increased because of VBA's efforts in addressing the benefits adjustments. As we continue working through the inventory of these claims and are more able to adjudicate benefits in a timely manner, we expect the amount of overpayments to decrease.

**Question 5: Does VA plan to allow Veterans to use eBenefits to remove dependents? If yes, please provide timeline for implementing such plan. If no, why not?**

VA Response: The function within eBenefits that is used for managing dependents does allow for dependents to be removed from disability compensation awards. This functionality has been available for several years.

**Question 6: What steps does VA take to avoid overpayments when a Veteran's child turns 18?**

VA Response: VBA automatically removes the dependent minor child from the Veteran's award on the child's 18th birthday.

**Question 7: On average, how long does it take for VA to verify that a Veteran has died after VA receives the monthly death matching data set provided by Social Security Administration?**

VA Response: Upon notification of a VA beneficiary's death through the weekly data-sharing agreement with SSA, VBA takes steps to suspend or stop VA benefit payments after applicable notification to the beneficiary has been made with the opportunity to provide response. Unless VBA receives notice that the beneficiary is still alive within 30 days, the adjustment is referred to a claims processor to take final action to terminate the beneficiary's award.

VBA is currently working with OI&T to develop an automated process that will automatically terminate a Veteran's award when verification of his or her death is received after notification via the SSA electronic data-sharing agreement.

**Question 8: On average, how long does it take for VA to terminate benefits after verifying that a Veteran has died?**

VA Response: Please refer to question 7, above.

**Question 9: On June 28, 2016, VA OIG released a report entitled, "Audit of Compensation and Pension Benefit Payments to Incarcerated Veterans." Please describe the steps VA has taken since that report to more timely process incarceration adjustments.**

VBA Response: VBA has taken the following steps to process incarceration adjustments in a timely manner:

- In May 2016, VBA established timeliness standards for completing incarceration/fugitive felon adjustments.
- Oral and written guidance was provided to all claim processors to ensure timely and accurate processing of incarcerated Veteran claims. Additionally, VBA provided refresher training on the VA fugitive felon program.
- VBA created the Incarcerated Veteran Tracking Share Point to assist in the tracking of the identified cases. Each regional office identified two points-of-contact to serve as subject matter experts (SMEs). These SMEs are available to address questions at their regional office related to tracking these claims.
- VBA continues to work with FBOP to make any necessary updates or changes to improve the information exchanged as part of the data-sharing agreement. This new agreement allows VA to more timely and efficiently make any necessary adjustments and supports future automation of the process. VA will continue to work with FBOP and other Federal agencies to obtain the needed data and identify additional ways to streamline the process.

**Question 10: Please describe any additional steps VA will take to more timely process incarceration adjustments.**

VA Response: Please refer to the response provided for Question 9, above.

**Question 11: Please describe VA's efforts to inform Veterans of their responsibility to notify VA of life events, such as divorce or death that may impact monthly benefits. Does VA have plans to provide additional reminders to Veterans? If yes, please describe this plan and provide the timeline for implementing such plan. If no, why not?**

VA Response: VA notifies all beneficiaries in decision letters that they have a responsibility to notify VA of all life events, such as birth, divorce or death, which can impact VA benefits. In an effort to ensure clarity of notice, VA has provided additional reminders which have revised the decision letter to specify conditions that may affect Veterans rights to continued payment. These additional letters to describe this plan were released in December 2017. Additionally, VA works with Veterans Service Officers to ensure that they are informed of reporting requirements and can better assist VA claimants and beneficiaries. Currently, there is nothing further planned or scoped to notify Veterans; however, there are ongoing discussions on how and when to notify Veterans of changes of this information moving forward.

**Question 12: Please explain why the deadline to submit a waiver and suspend the offsetting of benefits is 30 days, when a Veteran has 180 days to submit a request to waive the debt?**

VA Response: In accordance with 38 CFR 1.912a(c)(2), if the debtor, within 30 days of the date of notification, requests, in writing, a waiver of collection in accordance with § 1.963 or § 1.964, as applicable, offset shall not commence until VA has made an initial decision on waiver. If the debtor requests a waiver more than 30 days, but within 180 days of notification and the waiver is granted, VA will refund the withheld amount in accordance with 38 CFR 1.967. This process is designed to provide for "the avoidance of unnecessary delay and expense as well as the means for full protection of these debtors' statutory rights." 48 Fed. Reg. 1052 (Jan. 10, 1983).

**Question 13: Does VA have any plans to work with VSOs to improve the content of its debt notice letters?**

**a. If yes, please provide the timeline for drafting the new debt notice letter.**

**b. If no, why not?**

VA Response: Yes, VA will work with the Disabled American Veterans (DAV), the American Legion and the Veterans of Foreign Wars (VFW) in FY 2018 to improve the content of its debt notification letters. VA will attend the respective national conventions: DAV: Feb 25–28, Arlington; VFW: July 21–25 Kansas City; American

Legion: Aug 24–30, Minneapolis—through FY 2018 to gather Veteran Service Organizations' concerns and draft changes for review in early FY 2019.

**Question 14: If a Veteran does not respond to the debt notification letter, please describe the steps VA takes to confirm the Veteran's correct address?**

VA Response: In accordance with 38 CFR 1.911(e); a debt notification is sufficient when sent by ordinary mail directed to the debtor's last-known address and not returned as undeliverable. The VBA Debt Management Center utilizes inter-government mailing addresses obtained from the United States Postal Service and commercial vendors to update addresses when required.

**Question 15: Does VBA have any additional plans to ensure that VBA's databases have the Veteran's correct address?**

**a. If yes, please describe plan.**

**b. If no, why not?**

VA Response: VBA continues to verify Veteran and other beneficiary's addresses using information contained in all VA systems, to include those used by the Veterans Health Administration, in an effort to make sure we are using the most up-to-date information. We are working across the agency, to include OI&T, to develop a mechanism to allow automatic updating of Veteran information across all VA systems. Due to complexity of this project, VBA does not have an anticipated date of implementation at this time.

