

**STATEMENT OF
RICK SURRETT
DEPUTY NATIONAL LEGISLATIVE DIRECTOR
OF THE
DISABLED AMERICAN VETERANS
BEFORE THE COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
FEBRUARY 13, 2002**

Mr. Chairman and Members of the Committee:

On behalf of the Disabled American Veterans (DAV), I am pleased to appear before you to discuss the President's fiscal year (FY) 2003 budget proposal for the Department of Veterans Affairs (VA). The budget is, of course, a matter of paramount importance to the more than one million disabled veterans who are members of our organization and to the members of our Women's Auxiliary. The effectiveness of essentially all veterans' programs—and therefore the welfare of veterans and their families—is dependent upon full funding for the benefits and services and resources adequate to allow for their timely, efficient delivery.

Joining with AMVETS, the Paralyzed Veterans of America (PVA), and the Veterans of Foreign Wars of the United States (VFW), the DAV incorporates its annual recommendations for funding of veterans' programs, and many of its legislative and policy proposals, in *The Independent Budget (IB)*. With the shared goal of ensuring that the needs of America's veterans are adequately addressed, the four organizations pool their resources and work together to assess and present the budgetary requirements and related issues facing veterans' programs.

Each of the four organizations takes primary responsibility for selected portions of the *IB*. Here, I will focus on Benefit Programs, General Operating Expenses (GOE), and Judicial Review in Veterans' Benefits, the DAV's assigned areas of the *IB*. The members of the *IB* group appreciate the courtesy this Committee has extended in permitting us to present our views together in this format.

The President's total budget of \$58 billion includes nearly \$1.5 billion VA projects it will realize from medical care collections, \$892 million to pay a newly assumed obligation to fund employee health care and retirement costs, and \$197 million for a new grant program for veterans' employment services to replace those veterans' employment programs now administered by the Department of Labor. The \$58 billion in budget authority for VA includes \$29.6 billion for the benefit programs and \$1.3 billion for GOE. Within the GOE appropriation, the President's budget would provide \$1.2 billion for the delivery of benefits in the Veterans Benefits Administration (VBA) and \$278 million in budget authority for General Administration.

For the benefit programs, the President's budget includes funding for its legislative recommendation to increase compensation, which includes dependency and indemnity compensation and the clothing allowance, to meet a projected increase in the cost of living of 1.8% this year. The *IB* also recommends a cost-of-living adjustment (COLA) for these benefits

and urges Congress not to extend provisions for rounding down the compensation COLA beyond the current sunset date.

Regrettably, the President's budget does not propose any other improvements to compensation and related benefits, readjustment benefits, or insurance programs. For these benefit programs, the *IB* makes the following recommendations for legislation:

- to exclude compensation from countable income for Federal Programs
- to repeal the prohibition of service connection for disabilities related to tobacco use
- to authorize a presumption of service connection for noise-induced hearing loss and tinnitus suffered by combat veterans and veterans who had military duties with typically high levels of noise exposure
- to repeal delayed beginning dates for payment of increased compensation based on temporary total disability
- to authorize payment of fees under the Equal Access to Justice Act (EAJA) to nonattorneys who represent appellants before the United States Court of Appeals for Veterans Claims
- to authorize refund of contributions to veterans who become ineligible for the Montgomery GI Bill by reason of discharges characterized as "general" or "under honorable conditions"
- to increase the amount of the specially adapted housing grants and to provide for automatic annual adjustments for increased costs
- to provide a grant for adaptations to a home that replaces the first specially adapted home
- to increase the amount of the automobile grant and to provide for automatic annual adjustments for increased costs
- to exempt the dividends and proceeds from and cash value of VA life insurance policies from consideration in determining entitlement under other Federal programs
- to authorize VA to use modern mortality tables instead of 1941 mortality tables to determine life expectancy for purposes of computing premiums for Service-Disabled Veterans' Insurance
- to increase the face value of Veterans' Mortgage Life Insurance
- to repeal the 2-year limitation on payment of accrued benefits

- to protect veterans' benefits from unwarranted court-ordered awards to third parties in divorce actions

The *IB* also recommends legislation to remove the offset between military retired pay and disability compensation and legislation to extend the 3-year limitation on recovery of taxes withheld from disability severance pay and military retired pay later determined exempt from taxable income.

The coauthors of the *IB* carefully identify areas in the benefit programs that need adjustment or improvement to make the benefits more effectively or equitably fulfill the purposes for which Congress established them. Last year, Congress enacted legislation that addressed several *IB* recommendations. We appreciate your action on these matters. Although it is in a position to know where beneficial legislative changes could better serve our Nation's veterans, the Administration has not taken the lead in recommending legislation to improve veterans' programs. Therefore, if meritorious improvements are to be made, the members of this Committee must initiate action on them. In developing your legislative agenda this year, we ask that you again give thorough consideration to the recommendations we have included in this year's *IB*.

Unlike the lack of positive recommendations in the budget to improve the benefit programs, VA Secretary Principi has made improving VA's administration of the benefit programs, especially compensation and pension claims processing, one of his foremost priorities. We are confident of his sincerity and determination on this issue. We have not seen great progress in this area to date, however, and despite this budget's stated focus on improving claims processing, it does not request resources to match actions with words.

Although the President's budget recommends a \$94-million increase in funding for VBA under the GOE account, \$53.9 million of that would cover a new obligation to fund employees' retirement and health benefits. With the net increase of \$40.2 million above last year's funding, the increase for VBA is approximately 3.6%, which is well below the average increase of approximately 10% requested by the President over the past 5 years. The President's budget recommends only 96 additional employees for compensation and pension (C&P) service. Within this budget, VA promises to reduce the average time for rating actions on C&P claims from 208 days to 100 days in the last quarter of FY 2003, while improving training for claims processors and increasing the accuracy rate for core rating work from 78% in FY 2001 to 88% in FY 2003. Other initiatives in C&P include:

- begin to transition from a paper-based to an electronic claims record
- consolidate pension cases in three pension centers
- continue the implementation of four new training and support systems for adjudicators
- analyze the needs of the C&P claims development and adjudication process and design a new system known as C&P Evaluation Redesign (CAPER)

- deploy an individual performance assessment program to measure and enforce employee proficiency, known as the Systematic Individual Performance Assessment (SIPA)
- pursue development of a modern system to replace the existing benefit payment system
- expand the Veterans On-Line Application program, which allows veterans to apply for benefits over the Internet

While improved processes, new technology, better training, and real accountability for legally correct decisions—if properly, timely, and completely implemented—will enable VA to eventually increase efficiency and overcome its intolerable claims backlog, VA still needs additional employees for C&P in the short term. Training new employees, retraining VA’s existing workforce, and conducting quality reviews of the work of individual adjudicators will require substantial numbers of employees who will not be devoted to production and reducing the backlog. We believe the President’s request for only 96 additional employees for C&P is tied more to budget targets than to the real needs of VA. The *IB* recommends funding for 350 additional employees in C&P Service. Additionally, based on unofficial estimates, the *IB* recommends \$4.5 million, instead of the \$2 million requested in the President’s budget, to fund CAPER.

Unless VA makes other reforms in management and takes a more direct and decisive approach to tackling the claims backlog, it is likely to continue to fail in its efforts to make meaningful improvements in the accuracy and timeliness of its claims processing. Currently, the head of VA’s C&P service and VBA’s other program directors do not have management authority over their employees in VA field offices. The C&P director is powerless to enforce quality standards and C&P policy. Higher-level officials in VA’s Central Office are more removed from and do not have the daily hands-on experience that the C&P director has in the C&P programs. The *IB* recommends that the C&P director and other VBA program directors be given line authority over field offices to strengthen VBA’s management structure and allow for more effective enforcement of quality and performance standards.

Those who have witnessed C&P’s repeated failures to overcome its claims processing deficiencies know that those failures involve repetitive patterns in which VA develops plans but fails to follow through with decisive steps to solve the difficult problems. VA attempts to overcome its serious deficiencies by fine-tuning its procedures and employing new technology. While those efforts may aid in improving claims processing, alone or in combination they are not enough to enable VA to overcome its longstanding problem. The coauthors of the *IB* believe that it is obvious VA must resolve to focus primarily on eliminating the root causes of its claims backlog if it is to ever succeed in restoring the system to acceptable levels of performance and service. As noted, we believe that adequate resources are key to the effort. However, VA’s adjudicators make erroneous decisions because they have not been properly trained in the law, they have operated in a culture that tolerated indifference to the law, and they have not been held accountable for poor performance and proficiency. Accordingly, in conjunction with the deployment of better training, VA must take bold steps to change its institutional culture, and it must make its decisionmakers and managers truly accountable.

If VA's ambitious goal of improving timeliness takes precedence over its goal of improving quality, VA will merely repeat the failures of the past. Speeding up the process with the single goal of reducing claims processing times and claims backlogs is self-defeating if, because quality is compromised, a substantial portion of the cases must be reworked. In this respect, VA has shown some inability to learn from its past mistakes.

VA has made similar mistakes in its efforts to avoid meeting some of the obligations Congress has imposed upon it and in its efforts to avoid fully implementing legislation enacted by Congress. In exploiting an erroneous line of decisions by the courts to avoid its duty to assist claimants in developing and prosecuting claims, VA made additional work for itself in the end because it had to rework thousands of these claims after Congress intervened and restored the duty to assist. Several veterans' organizations have now challenged in court VA's rules to implement this legislation. While courts tend to indulge agencies in rulemaking, the veterans' organizations challenging the validity of VA's regulation in this instance have a high level of confidence about the prospects for having VA's regulations set aside because of their clearly arbitrary nature and conflict with the law. If the Court of Appeals for the Federal Circuit finds that VA's regulations do not fulfill the mandates of the law, VA may once again be saddled with the task of reviewing thousands of cases to apply the law properly. These self-inflicted setbacks complicate VA's efforts to overcome its claims backlog. In this vein and because of the adverse effects upon veterans' rights, the *IB* has urged the VA Secretary to reform his department's rulemaking. Court challenges to what is viewed as self-serving VA rules are becoming commonplace.

Under the VBA portion of the GOE appropriation, the *IB* also includes a recommendation to fund new information technology for VBA's Education Service. Administration of VA's education programs involves the routine exchange of massive amounts of data between educational institutions and VA. This routine exchange of correspondence and data is particularly well suited to automated systems, which can greatly reduce personnel costs and processing times. The *IB* therefore recommends that Congress provide \$16 million for upgrading and expanding the limited application and capabilities of the existing system. For this VA initiative, known as The Education Expert System (TEES), the President's budget requests only \$6.3 million. Again, information not revised to meet the objectives of the Administration's budget process indicates that \$16 million is the real funding level needed for this project.

The President's budget proposes legislation to establish a new program in VBA for providing grants to states for employment and training services for veterans. This new VA program would replace the veterans' employment and training services of the Department of Labor. The *IB* has taken no position on this issue, but the DAV and other veterans' organizations have mandates from their membership to oppose the transfer of veterans' employment and training services to VA from the Department of Labor. The President's proposal raises many questions about the nature and effectiveness of such a program. When the details of this proposal are made available, the *IB* will give it additional consideration.

The President's budget request would reduce the number of employees authorized for the Board of Veterans' Appeals (BVA) from 464 to 451. The caseload at the Board is temporarily down because VA regional offices have directed their resources to reducing the backlog of

claims and neglected work on their appellate workload. However, new VA regulations recently assigned BVA the added responsibility for correcting the regional offices' failure to obtain all necessary evidence. Eventually, VA regional offices must resume work on their pending appeals, and BVA will begin receiving large numbers of appeals that have been allowed to accumulate in regional offices. With this added responsibility and expected influx of cases, reduced staffing may adversely impact BVA and protract the time for resolution of appeals beyond its already unacceptable FY 2001 average of 595 days. Many of VA's problems stem from improvident reductions in staff in the face of impending increases in workload. We therefore recommend caution in considering any reduction in BVA's workforce at this time.

In enacting legislation in 1988 to authorize veterans to challenge VA decisions in court, Congress recognized the importance of the right to have VA's decisions reviewed by an independent body. Judicial review has had the beneficial effect of exposing administrative departure from the law and forcing reforms within VA. However, the judicial review process needs some adjustments itself to make it serve veterans in the manner envisioned by Congress.

The *IB* recommends legislation to change the standard under which the Court of Appeals for Veterans Claims (CAVC) reviews VA's findings of fact in claims decisions. The current "clearly erroneous" standard conflicts with and undermines the benefit-of-the-doubt rule. Under the statutory benefit-of-the-doubt rule, VA is mandated to resolve factual questions in the veteran's favor unless the evidence against the veteran is stronger than the evidence for him or her. However, CAVC will uphold a VA decision if there is any evidence to support it, and this renders the benefit-of-the-doubt rule unenforceable.

Currently, VA regulations, with the exception of provisions in the *Schedule for Rating Disabilities*, are subject to challenge in the Court of Appeals for the Federal Circuit (CAFC). The *IB* recommends expanding CAFC jurisdiction to permit it to review challenges to the validity of the rating schedule on the narrow basis of whether the rating is contrary to law or is arbitrary and capricious. The coauthors of the *IB* believe that no unlawful or arbitrary and capricious rating schedule provision should be immune to review and correction.

The jurisdiction of CAFC is restricted in another manner that does not serve the cause of justice well. While CAFC has jurisdiction to consider an appeal that involves a dispute about the proper interpretation of a law or regulation, it has no jurisdiction to consider an appeal that involves a dispute about the proper application of the law to the facts in a case. The *IB* recommends that CAFC jurisdiction be expanded to cover these so-called ordinary questions of law.

Much of what this Committee will seek to accomplish on behalf of veterans this year will be subject to what Congress appropriates for veterans' programs. We urge the Committee to press for a budget that is adequate for existing programs and allows for some improvement in benefits and services for veterans. We hope our independent analysis of the resources necessary for veterans' programs and our legislative and policy recommendations are helpful to you, and we sincerely appreciate the opportunity to present our views and recommendations to the Committee.