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Department of Veterans Affairs
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Senate Armed Services Committee
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Mr. Chairman and Members of the Senate Armed Services Committee, thank you for the opportunity to testify today concerning Section 636 of the National Defense Authorization Act for 2003. As reflected in the language of this new law, enacted as 10 U.S.C. § 1413a, VA's disability evaluation process is a major component in determining entitlement to Combat Related Special Compensation (CRSC) for certain defined combat-related disabled uniformed service retirees, and serves as a guide for DoD's own adjudication process.

VA has extensive experience in administering benefit programs and stands ready to advise DoD as it implements the CRSC program. VA can assist in identifying the approximately 75,000 to 80,000 military retirees whom DoD estimates may be eligible for CRSC. We can also execute an ongoing support role as DoD processes applications for this benefit to eligible future retirees.

A primary criterion for eligibility for this benefit is a disability rating by VA. My purpose today is to provide an overview of VA's service-connected compensation program, including its process for assigning disability ratings. I will

discuss the important distinctions between VA's Compensation Program and the CRSC benefit enacted by the National Defense Authorization Act of 2003. We believe that VA can assist DoD's effort to ensure that all eligible military retirees receive the benefits to which they are entitled.

Purpose of VA's Compensation Program

The purpose of VA's Compensation Program is to provide monthly payments, or "service-connected compensation," as well as ancillary benefits to a veteran, as specified by law, in recognition of the potential loss of earning capacity caused by disabilities incurred in or aggravated by active military service. The Compensation Program also provides monthly payments, as specified by law, to a surviving spouse, dependent children and/or dependent parents in recognition of the economic loss caused by a veteran's death during active military service, or subsequent to discharge from military service if the death is a result of a service-connected disability.

Today there are approximately 2,433,000 veterans receiving compensation benefits. The amount of the compensation varies depending on the combined degree of disability resulting from all service-connected disabilities. As of December 1, 2002, a veteran receives \$104 monthly for a service-connected condition evaluated as 10% disabling. This amount increases in increments for progressively higher disability evaluations, with a single veteran without dependents receiving over \$2000 monthly for a service-connected condition or conditions evaluated as 100% disabling.

There is no minimum time period that a veteran must serve on active duty to qualify for service-connected compensation. However, any injury or disease must have been incurred in or aggravated in line of duty. VA law interprets line of duty very expansively. VA compensation is available not only for those injuries or diseases that were incurred in combat, but it is also available for any injuries or diseases that simply occurred during the time period in which the veteran was on active duty, including periods of leave. VA compensation is available for diseases that manifest long after discharge from military duty, but which VA considers, by presumption of law, to be a result of particular circumstances of service. One example is type II diabetes mellitus for which VA has established a presumption, based on National Academy of Science research, that this condition is associated with exposure to herbicides in Vietnam. Veterans who served in country in the Vietnam War who develop diabetes now are eligible for service-connected compensation based on this presumption of law. Compensation is also available for mental conditions, including posttraumatic stress disorder, that are linked to a stressful incident in service.

Injuries or diseases incurred in line of duty do not, however, include any disabilities resulting from a veteran's own willful misconduct.

Entitlement to CRSC, on the other hand, requires a qualifying combat-related disability. This includes a disability attributable to an injury for which the service member was awarded the Purple Heart commendation and which is rated as not less than 10 percent disabling. It also includes a disability incurred as a direct result of armed conflict, while engaged in hazardous service, in the

performance of duty under conditions simulating war, or through an instrumentality of war. The Secretary of Defense is directed by statute to prescribe criteria for making such determinations. For any of these types of injuries, the service member must have a disability that is rated as not less than 60 percent disabling.

Overview of the VA Compensation Claim Process and the Schedule for Rating Disabilities

While the laws and regulations governing VA's Compensation Program are complex, the basic claims process is simple. Most claimants initiate compensation claims by filing an application with a local VA regional office, frequently with the assistance of a representative from a veterans' service organization. VA obtains the veteran's service medical records and, if relevant, the veteran's military personnel records. Based on information provided by the claimant, VA obtains information and evidence to substantiate the claim, most often in the form of medical records from VA medical facilities or private physicians or records from other federal agencies. If necessary to decide entitlement to compensation, VA provides the claimant with a medical examination or obtains a medical opinion. This examination is useful to determine the disabling nature of the service-connected condition.

Pursuant to statute, 38 U.S.C. § 1155, VA uses a rating schedule to determine the disability evaluation to assign to a particular condition. The rating schedule determines "reductions in earning capacity" caused by a particular

disease or injury, categorized into fifteen separate body systems, and assigns a disability percentage. The rating schedule, contained in 38 C.F.R. Part 4, provides for ten grades of disability, beginning with 10 percent and ending with 100 percent, representing, as far as is practicable, the average impairment of earning capacity resulting from diseases and injuries and their residual conditions in civil occupations. "[T]he degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability." 38 C.F.R. § 4.1.

Under each body system are listed specific diseases and medical conditions, each assigned a diagnostic code. Each disease or medical condition is described in terms of its symptoms that signify degrees of disability. The greater and more severe the symptoms, the higher the disability rating. The maximum disability evaluation that can be assigned for a particular medical condition varies depending on the disabling effects of its symptoms. For instance, diabetes that is managed by a restricted diet warrants a 10 percent evaluation, whereas diabetes requiring a restricted diet, regulation of activities, and insulin injection merits a 60 percent evaluation.

There are other regulations that provide for increases or decreases in the total evaluation assigned under the rating schedule criteria when there are multiple service-connected conditions. For instance, VA regulations limit the combined rating percentage that can be assigned for multiple disabilities of one arm or one leg. Other regulations increase the rating assigned when there is

partial disability of both arms or both legs, because the combined effect of these impairments exceeds the average earning impairment reflected by the single disability evaluations for each condition in the rating schedule.

There are also regulatory provisions that provide for compensation for secondary service-connected conditions, that is, those disabling conditions that are caused by a service-connected condition, but were not themselves incurred in or aggravated by service.

When a veteran has more than one compensable service-connected condition, VA does not simply add up the disability rating percentages to arrive at a total evaluation percentage. Rather, it uses a combined ratings table to determine the combined service-connected evaluation. This combined rating often includes both combat-related and non-combat-related disabilities incurred in or aggravated by service, particularly in the cases of veterans with long military careers who served both in wartime and peacetime eras.

Pursuant to its statutory authority in 38 U.S.C. § 1155, VA has revised the rating schedule many times over the years to incorporate the increasingly sophisticated diagnostic tools of modern medicine and the knowledge that they provide. Most importantly, we are nearing completion of an ambitious and comprehensive revision of the entire rating schedule, begun in 1991, to incorporate more objective criteria for determining the degrees of disability for a particular medical condition, remove ambiguous language, clarify medical terminology, and add new disabilities under the respective body systems. VA has made steady progress in publishing final revised regulations pertaining to

twelve of the fifteen body systems in the rating schedule. Public comments to the proposed changes to the rating schedule for the Musculoskeletal System, one of the most comprehensive sets of rating schedule changes we have proposed to date, are under review at the present time.

Effect of the CRSC Benefit Program on VA Disability Claim Filing

There is no limitation period for a veteran to file a claim for VA compensation. It is possible for a claimant to establish entitlement to compensation benefits regardless of how long after discharge from service the claim is filed. The date a claim is filed does affect the period of entitlement.

Just as there is no limitation period for the filing of an initial claim for VA disability compensation, there is no limitation on the number of times a veteran may claim entitlement to an increased evaluation for a service-connected condition. An increased evaluation may be warranted by a change in law, such as a revision to the rating schedule regulations, new medical knowledge, or a worsening of the service-connected condition.

VA believes that it is likely that there will be an increase in claims for increased evaluations from military retirees who are currently receiving VA compensation for combat-related conditions whose evaluations combine to less than a 60 percent evaluation. However, we are unable to provide an estimate of the number of such claims. While VA records will show the number of retirees who served during various periods of war as well as whether they have a combined evaluation of at least 60 percent for all service-connected conditions, this data is not a good indicator of the number of claims we can expect from

retirees who may seek an increase in their evaluation in order to qualify for CRSC. The fact is, the combined service connected evaluation includes both combat-related and non-combat-related conditions. In addition, the detailed information DoD will require to determine such eligibility, such as whether a particular service-connected condition was sustained while a veteran was engaged in hazardous service or sustained through an instrumentality of war, is information not historically collected by VA. This information, however, may be documented in a veteran's VA claims file.

In addition, we expect to receive new claims from military retirees who are not currently service connected for any medical conditions but who will file claims now that they may be eligible to receive additional compensation, instead of merely a percentage of military retirement pay tax free.

VBA Anticipates a Full Support Role

The VA claims folder of a military retiree receiving VA compensation will contain various types of records that would be of use to DoD in deciding whether a retiree is entitled to CRSC benefits. For instance, service medical records may show whether a veteran sustained an injury in armed conflict. Military personnel records, including the DD-214, usually show whether a veteran received the Purple Heart commendation. Rating decisions of record would indicate the evaluation VA assigned to a specific condition and the effective date of that evaluation. VA can make these types of records, or the information contained in them, available to DoD for the CRSC claims process.

Shortly after the enactment of the National Defense Authorization Act for 2003, VA began discussions with DoD in anticipation of DoD's effort to implement the CRSC benefit program. VA has shared the following with DoD representatives:

- Information concerning the details of the claims process under VA's Compensation Program
- Feedback to DoD on its CRSC policy formulation
- Discussions on possible alternative procedures for information sharing
- Initial analysis of how different procedural scenarios could be adapted to VA's own work processes

Ongoing discussions continue between VA and DoD in order that we can develop a process for information sharing that will result in the most efficient transfer of the VA claims data needed by DoD to effect the purpose of the CRSC benefit as envisioned by Congress. We understand clearly that this is a DoD program. Nonetheless, we want to assist in ensuring its successful deployment.