

**STATEMENT OF**  
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**BEFORE THE**  
**SENATE SPECIAL COMMITTEE ON AGING**  
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Chairman Kohl, Ranking Member Corker, Senator Wyden, and Members of the Committee thank you for the opportunity to discuss the Department of Veterans Affairs (VA) pension program.

**Pension Overview**

VA's pension program provides supplemental income to wartime Veterans who are either 65 years of age and older or permanently and totally disabled due to non-service connected disabilities, and meet certain income and net worth requirements.

Although VA administers three pension programs, most of the nearly 516,000 pension beneficiaries are participants in the program known as Improved Pension, which was established by Congress as of January 1979. VA's other pension programs, Old-Law and Section 306 Pension, have less than 26,000 beneficiaries combined and are closed to new applicants. From its inception, VA's Improved Pension program has been designed to provide economic security to financially disadvantaged wartime Veterans and their survivors by paying pension benefits quickly and without the extensive development often required with VA's disability compensation program. With this goal in mind, VA implemented in 1979 the current program design based upon the statutory framework established by Congress. Operating under this framework, VA paid in fiscal

year (FY) 2011 over \$4.5 billion in pension benefits to almost 314,000 Veterans and 202,000 survivors. During that year alone, VA completed nearly 50,000 original claims for Veterans' pension and over 60,000 claims for survivors' pension, while maintaining an accuracy rate of nearly 98 percent.

In addition to the basic rates, the pension program provides for “enhanced” or “special monthly pension” rates, which have become known by the type of disability required to establish an entitlement for each: aid and attendance (A&A) and housebound. These are not unique benefits, but rather increased monthly pension amounts paid to Veterans and surviving spouses based on additional disability. Generally, VA provides pension at the A&A rate to persons who require assistance with activities of daily living, are bedridden, a patient in a nursing home, or have severe vision disability. VA provides pension at the housebound rate to persons who are substantially confined to their home by reason of permanent disability. Between FY 2007 and FY 2011, VA granted over 144,000 Veterans' claims and over 137,000 survivors' claims for pension at the A&A rate.

### **Increased Oversight**

Because of their financial need and often-advanced age, pension recipients are among VA's most vulnerable population of beneficiaries. These beneficiaries comprise more than 50 percent of the individuals in VA's fiduciary program for beneficiaries who cannot manage their VA benefits as a result of injury, disease, or the infirmities of age.

Recognizing this, last year, Secretary Shinseki approved reorganization within the Veterans Benefits Administration (VBA) to establish a new office to more directly control and administer the pension program. In April 2011, VBA established the Pension and Fiduciary (P&F) Service, led by a VA Senior Executive, to focus, in part, on the unique needs of the pension program and pension beneficiaries. This reorganization has allowed VBA to establish a staff dedicated to pension policy and procedures, and to establish a separate staff responsible for all aspects of pension quality, training, and field station oversight visits.

## **Program Initiatives**

One of the first tasks undertaken by the new P&F Service in January 2012, was to identify gaps in VA's pension regulations, particularly with respect to program integrity measures. Among the gaps identified were a lack of a prescribed look-back period for asset transfers, and a lack of specific regulations addressing the use of gifts, trusts, and annuities for purposes of reducing net worth and creating pension eligibility. P&F Service noted that the forward-looking nature of the pension application process, combined with the lack of specific rules governing asset transfers, produced circumstances in which one claimant could transfer substantial assets to another person before applying for pension and still receive the benefit, while a similarly situated claimant in possession of the same assets would not be eligible for pension due to excessive net worth. Accordingly, P&F Service began drafting regulations to address these and other issues related to the integrity of the pension program. VA plans to publish proposed regulations before December 1, 2013.

## **Government Accountability Office (GAO) Report, GAO-12-540**

In its recent report, "Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits," GAO concluded that (1) the design and management of the pension program did not limit pension to only those with financial need, and (2) many organizations help pension claimants transfer assets in order to qualify for pension. As will be explained below, VA generally agrees with GAO's conclusions. I will address each of GAO's four recommendations and describe the steps VA is taking to address them.

GAO's first recommendation was that VA modify application and eligibility verification report (EVR) forms to ensure that claimants and beneficiaries have space to report transfers of assets and to specify the types of assets transferred. For those transfers that are reported, GAO recommended that the forms direct claimants to provide documentation sufficient to enable VA to determine whether a claimant has retained ownership and control of the assets. VA concurred with this recommendation and has already begun the process to revise relevant forms. Currently, VBA is revising VA Form

21-527, *Income-Net Worth and Employment Statement*, and will revise the other forms, including the various EVRs, which VA uses to gather net worth information in the pension program. VA notes that all the forms and their associated collections of information will be revised and subject to review and approval by the Office of Management and Budget.

GAO's second recommendation was that VA verify financial information during the initial application process by requesting supporting documentation such as bank statements or tax returns or using automated databases. VA's priority goal is to decide disability compensation and pension claims within 125 days while maintaining 98 percent accuracy. Accordingly, VA concurs in principle with this recommendation, but believes that further analysis is required to determine the best way to conduct up-front verification of income and assets without adding to the time required for the adjudication of claims for pension or unnecessarily burdening pension claimants and beneficiaries, many of whom are elderly. VA also notes that additional analysis is required to determine whether the benefits of up-front verification, as measured in the number and amount of unwarranted pension payments prevented, justifies the imposition of system-wide changes that will increase the time required to adjudicate pension claims, increase the reporting burden on eligible Veterans or surviving spouses, and increase the resources needed to adjudicate claims. VA expects to complete its analysis by November 1, 2012.

Before receiving the GAO report, VA had already started the process to determine what types of objective information would be readily available to pension adjudicators, claimants, and beneficiaries, which could be used to verify financial information. However, we note that annuities, trusts, and other financial products or legal instruments, in particular, are complicated documents, which may vary significantly depending upon the claimant's circumstances. Accordingly, VA must consider in its analysis the feasibility of using non-standard financial documents to adjudicate claims and the training that would be required for VA's pension personnel to timely review and adjudicate pension claims based on financial information received from claimants.

VA concurred with GAO's third recommendation, that VA improve coordination between its pension and fiduciary programs to identify unreported assets, but requested that GAO close the recommendation because current VA procedures address the issue. Current procedures require VA's fiduciary field examiners, employees who visit Veterans and survivors and their proposed fiduciaries, to report to the VBA Pension Management Center with jurisdiction any credible net worth and income information that would affect a beneficiary's pension benefit. In addition, VBA established in November 2011 a pension-fiduciary workgroup that meets monthly to discuss methods of program coordination. As part of its efforts, the workgroup is establishing procedures to further facilitate the reporting of relevant income information from fiduciary to pension personnel.

GAO's fourth recommendation was that VA should, "revise the VA procedures manual to better define the concept of ownership and control to help claims processors determine when specific types of assets such as annuities and trusts should be counted as part of net worth, and establish a more specific criteria for what is considered a reasonable period of time for pension claimants to use up their financial resources before becoming eligible for pension benefits."

VA concurs with GAO's recommendation that the rules governing the pension program's definitions of net worth, ownership of assets, and asset transfers should be clarified to provide clear guidance to pension personnel, but disagrees with the proposed method of implementation. VBA's adjudication procedures manual interprets VA regulations and establishes non-substantive policies and procedures for personnel to follow in adjudicating benefit claims. Unlike regulations, which, when properly promulgated, have the force and effect of law, manual provisions are not binding on the agency or claimants and cannot be used to impose obligations on claimants. Accordingly, VBA began drafting proposed regulations in March 2012, which would address the effect of pre-filing asset transfers on pension eligibility. The proposed regulations would also address and clarify the various factors VA uses to determine

whether excessive net worth precludes eligibility for pension (e.g., life expectancy, income, expenses, and liquidity of assets), and generally provide a more consistent set of rules for efficiently adjudicating pension claims. Upon completion of the rulemaking proceedings, VBA will amend its manual provisions consistent with the new regulations. The amended manual will interpret the regulations and provide the procedures required to properly implement them. Because the rulemaking process established by the Administrative Procedure Act provides an opportunity for public comment on the proposed rules and requires VA's final rule to address any comments received, we estimate that any rulemaking would not be complete until December 1, 2013.

### **Program Spending**

Between FY 2007 and FY 2011, obligations for VA's pension program increased from over \$3.7 billion to approximately \$4.3 billion, an increase of over 4.1 percent annually over this time period. Some portion of this increase is due to cost-of-living adjustments (COLA). By law, VA is required to increase the maximum rate of VA pension benefit amounts by the same amount Social Security benefit amounts are increased for a COLA. In FY 2012, VA increased the maximum rate of pension benefits by 3.6 percent, which is equal to the COLA provided for Social Security and Supplemental Security Income (SSI) benefits. Similarly, the COLA increased the maximum rate of VA pension benefits by 3.3 percent in FY 2007, 2.3 percent in FY 2008, and 5.8 percent in FY 2009. There was no COLA in FY 2010 or FY 2011.

### **Increased Claims and Grants of Enhanced Pension**

Between FY 2007 and FY 2011, grants for pension at the A&A rate increased from 22,513 and 19,593, for Veterans and survivors, respectively, to over 38,000 in each category. VA believes several factors contributed to this increase and that grants for pension at the A&A rate will continue to increase.

Changes in the laws governing representation of claimants before VA may have increased the number of claimants seeking pension. In December 2006, Congress enacted Public Law 109-461, which, among other things, permitted VA-accredited

attorneys and agents to charge claimants fees for representation earlier in the claim process. The law also eliminated misdemeanor criminal penalties for unlawfully charging fees for representation of claimants before the Department. Since the enactment of that law and the publication of VA's implementing regulations in May 2008, VA has accredited over 8,900 attorneys and almost 190 claims agents. We also note that the biggest increase in grants of pension at the A&A rate occurred between 2009 and 2011, a period of economic difficulty for many Americans.

In response to a December 2011 report, "VA Enhanced Monthly Benefits: Recipient Population is Changing, and Awareness Could be Improved," GAO-12-153, VA's P&F Service recently began to collaborate with professional groups that serve the elderly in an effort to improve education about VA pension, and is working with VBA's Benefits Assistance Service on other efforts to reach potential pension beneficiaries. Based on this expanded outreach, which may include targeted mailings to those beneficiaries not currently in receipt of enhanced pension benefits, we estimate that applications and grants for enhanced pension will continue to increase, regardless of our efforts to strengthen program integrity. Consequently, while some portion of the increase in claims and grants of pension at the A&A rate are attributable to promotion of enhanced pension by businesses selling financial products and services, VA cannot determine what percentage of the increase is due to this or any other reason.

### **Involvement of VA's Office of Inspector General (OIG)**

The Committee has asked why more was not done by VA's OIG in response to complaints about businesses that help claimants transfer assets prior to applying for pension. VA defers to OIG regarding the scope of its investigative activities. However, we note that VA's current pension regulations do not prohibit the pre-claim reduction of net worth through gifts and certain asset transfers. A pension claimant may transfer his or her assets before applying for pension, as long as the transfer is to someone other than a family member living in the same household and the claimant relinquishes all ownership and control over the assets. Therefore, if a business sells a Veteran a financial product that satisfies these transfer requirements, and all other pension

eligibility requirements are satisfied, the Veteran may qualify for pension, including pension at the enhanced A&A or housebound rates. Absent amendment of VA's regulations or legislation to prohibit such gifts and transfers, the sale of such a financial product might benefit the Veteran and would be legal for purposes of VA pension.

### **The Need for a Look-Back and Related Provisions**

The legislative history of the law governing pension suggests that Congress intended that eligibility for VA's pension program would be based on actual financial need of wartime Veterans and their survivors. Accordingly, it is VA's position that the pension program was not intended to help preserve the estates of pension beneficiaries for their own or the heirs' use, and that claimants should not be permitted to create need where it does not exist by transferring assets that could otherwise be used for their maintenance.

Pursuant to section 1522 of title 38, United States Code, VA is required to deny or discontinue pension payments "when the corpus of the estate of the veteran or [the combined estates of the veteran and spouse] . . . is such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance." In other words, if a Veteran's net worth is such that some of it may be used for support, then net worth is excessive and bars eligibility for pension. Absent from section 1522, however, are any of the program integrity measures prescribed by Congress for other federal needs-based programs. These measures ensure that benefits are distributed based upon actual need, including definitive limits on net worth, restrictions on whether assets may be transferred as a means to reduce net worth for purposes of establishing eligibility, or look-back periods for the transfer of assets. As noted above, VA has broad authority to administer the pension program consistent with congressional intent and is already working on proposed regulations to address these issues.



## **Deferred Rent Arrangements for Residential Care Facilities**

VA has received reports of assisted-living facilities offering to defer rent on residential contracts while a Veteran's or survivor's pension claim is pending. In a recent example we reviewed the contract provided that the facility would defer a portion of the monthly rent until the resident received a decision on their pension claim. So long as the resident kept the facility informed as to the status of the claim, the contract provided that the resident would not have to pay the deferred amount if VA denied the claim.

VA recognizes that there may be opportunities for unethical or misleading business practices. If an individual or organization lures a Veteran or survivor into signing a contract for services based on promises that VA will grant pension, or that they can expedite pension claims, such promises are patently misleading and may be subject to consumer enforcement actions outside VA's jurisdiction. If a VA-accredited attorney or agent were to make such promises, such conduct could potentially result in the suspension or cancellation of accreditation. However, if conducted in a fair and ethical manner, a facility's offer of deferred or reduced rent on a residence at which a Veteran or survivor receives needed care could be beneficial by providing a valuable resource until VA adjudicates the pension claim.

Related to the issue of deferred rent is the issue of whether some or all of the expenses associated with residence in a facility constitutes a deductible medical expense for purposes of establishing eligibility for pension. For those Veterans or survivors with a demonstrated need to be in a protected living environment in a home, assisted-living facility, or other institution, as certified by a physician or as indicated by a VA award of pension at the A&A or housebound rate, VA allows deductions for medical and nursing expenses and room and board. "Medical services" includes activities such as physical therapy, changing of sterile dressings, and the placement of catheters. "Nursing services" includes assistance provided to an individual with bathing, feeding, and dressing, or other activities of daily living.

Before the GAO issued its report, VA recognized that greater clarity in the pension regulations as to what types of living arrangements qualify as valid medical expense deductions for purposes of VA pension would assist VA adjudicators, claimants, pension beneficiaries, and facility operators. As a result, proposed regulations will include provisions that would define the unreimbursed medical expenses, which may be deducted from income for purposes of pension eligibility.

## **Challenges**

Throughout the report, GAO compares VA's pension program to other federal needs-based programs, specifically the Department of Health and Human Services' Medicaid program and the Social Security Administration's Supplemental Security Income (SSI) program. However, as GAO's report correctly notes, unlike Medicaid and SSI, the statutes governing VA's pension program lack provisions addressing the effects of transfers of assets on eligibility for program benefits, e.g., a look-back and penalty period. Although VA is working to prescribe such provisions in regulations, it will have to follow the rulemaking procedures required by Congress in the Administrative Procedure Act and the resulting regulations will be subject to challenge in the U.S. Court of Appeals for the Federal Circuit.

Despite the need to impose additional program integrity measures, which may add complexity to the pension adjudication process, VA remains committed to delivering this needs-based benefit as quickly as possible to wartime Veterans and their survivors. To offset the potential for added complexity, VA has also been working on ways to expedite the adjudication of pension claims, to include permitting a family member to submit verification of income and eligibility information to VA on behalf of an elderly claimant and developing an automated rules-based processing system for pension claims.

## **Conclusion**

In conclusion, I want to affirm VA's commitment to improving customer service for our pension beneficiaries, while also improving the integrity of the program. Before GAO issued its report, VA began work to revise the program integrity measures needed to

ensure that only those Veterans and their survivors with demonstrated financial need receive the benefits and services they have earned. The interest in our program expressed by GAO and this committee reflects the importance of this effort.

Mr. Chairman, this concludes my prepared remarks. I would be happy to address any questions or comments regarding my testimony here today.