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March 13, 2016

Chairmen, Ranking Members, Members of the US House and Senate Committees of Veterans Affairs and the Secretary, Department of Veterans Affairs

Dear Committee Members and VA Secretary:

AFGE Local 520, the exclusive representative of the bargaining unit of VARO Columbia, SC, wants to address veterans dying waiting on a decision on their benefits, continued saga of the VBA workload, the Union and its alleged democratic association, and IT, EIIR, MYVA, and contracts.

Excerpts from the article, *Number of veterans who die waiting for benefits claims skyrockets*, CIR, December 20, 2012, are as relevant today as it was when the backlog of disability claims reached 611,000.

- “After seven months of delay, the Department of Veterans Affairs finally approved World War II veteran James Alderson’s pension benefits last week.
- But it was not a cause for celebration or relief for Alderson, whose life’s work was the farm supply store he founded near Chico after returning home from the Battle of the Bulge.
- The 89-year-old veteran had died three months earlier in a Yuba City nursing home.
- In the fiscal year that ended in September, the agency paid \$437 million in retroactive benefits to the survivors of nearly 19,500 veterans who died waiting. The figures represent a dramatic increase from three years earlier, when the widows, parents and children of fewer than 6,400 veterans were paid \$7.9 million on claims filed before their loved one’s death.
- These veterans range from World War II veterans like Alderson who die of natural causes without their pensions to Iraq war veteran Scott Eiswert, who committed suicide after his disability claim for post-traumatic stress disorder was denied.
- But in a conference call with CIR, **VA officials said that while the long delays generally were unacceptable, the growth in posthumous payments was not disturbing.**
- **“It’s a good thing that the VA pays benefits to honor the service of veterans and the sacrifices of their family members despite the fact that a veteran has unfortunately**

**died,” said Dave McLenachen, director of the agency’s pension and fiduciary service. (Emphasis Added)**

- Some veteran advocates say the number of survivors being approved for retroactive payments **represents a fraction of the veterans who die waiting** because grieving families must file paperwork with the agency to keep a claim from expiring with the veteran.” (Emphasis Added)

The relevancy is that the VBA workload has been dispersed into different categories because of the strict concentration of the reduction of the backlog to zero by 2015, which did not happen. However, there are as many claims pending today as there were when the disability claims backlog was the major focus and still is, but the claims are not as visible, understood, or reported on now.

However, we have highlighted the increases in the VBA workload for nearly three years and all should be aware of them. Let’s look at the whole package as of the MMWR dated March 7, 2016. The appeals at the BVA and CAVC are not included in the MMWR which is over **110,000**.

RATING	350,698
NONRATING	295,774
AWARD ADJUSTMENTS	413,255
APPEALS	326,694
EP 930	20,372
EP 400	69,144
RIP Total	<b>1,475,937</b>

Hidden claims located at the small Washington DC office. Why?

- Nonrating - **20,959**, with an average days pending of **557.4**.
- Award Adjustments - **21,391** with **95.2%** over 125 days.

All the provisional ratings are still not completed and are included in EP 930.

The backlog is still not getting better, but has increased by **12,215** since **FY16**.

WEEK	C&P RB BACKLOG	WEEKLY DIFF
10/05/15	72,623	0
02/01/16	77,437	-1,858
02/08/16	83,157	5,720
02/16/16	82,534	-623
02/22/16	82,444	-90
02/29/16	81,451	-993
03/07/16	84,838	3,387
Total Diff		12,215

## PENSION MAINTENANCE CENTERS’ CLAIMS

Then there are claims worked at the Pension Maintenance Centers (PMCs). Original and reopened pension claims (EP 180s and 120s) are included in the rating disability claims.

DATES	2/29/2016	3/7/2016	W-DIFF
137	4,654	4,843	189
150	17,339	17,647	308
297	3,516	3,638	122
607	5,827	5,643	-184
	31,336	31,771	435

EP 137 –Dependency Claims

EP 150 – Income Adjustment

EP 297 - Misc

EP 607 – Due Process

Death claims continue their upward trend since January 12, 2015 as indicated below.

DATES	1/12/2015	3/7/2016	DIFF
*140	6,129	8,670	2,541
190	9,631	16,053	6,422
160	15,588	29,526	13,938
165	7,537	10,153	2,616
	38,885	64,402	25,517

\*EP 140 numbers included in the disability rating claims.

### **FORGOTTEN CLAIMS**

This workload affects benefits due the Veteran. How long will VBA withhold benefits that are payable to the Veteran without any advocate sounding the trumpet of “foul play”? The veteran does not receive interest on monies being withheld by the VBA.

The MMWR dated March 7, 2016 indicates that EP 690 - Cost of Living Adjustments (COLAs) and other reviews stood at “19,845, with 73.3% over 125 days old.” Again, these cost of living adjustments must be from 2014 because Veterans did not get a COLA for December 2015.

There are also those informal claims discovered in E-benefits hidden under EP 680 - Review of Hemodialysis related cases/conditions. The total number under EP 680 is **36,655**, as of the MMWR dated March 7, 2016.

**In sum, there are a lot of claims pending at the Veterans Benefits Administration. The tragedy is: Veterans are still dying in silence waiting for their earned benefits.**

Additionally, waiting for benefits is not only monetary, but Veterans are also denied priority healthcare and all that is associated with being service connected. Furthermore, there is no backlog measuring stick when it comes to decisions on claims on **appeals**, but there should be when the average days to complete is about 5 years according to the *VA convenes summit with veterans advocates to fix appeals process, Federal News Radio, March 7, 2016.*

### **APPEALS**

Despite the fact that the VAI OG report, *Veterans Benefits Administration, Audit of VA Regional Office's Appeals Management Processes, May 30, 2012, 10-03166-75* conducted almost 4 years ago, outlined the problems, they still exist. The VA initiative to address the problem has had little to no impact.

- **Why We Did This Audit:** The nationwide inventory of appeals increased over 30 percent from about 160,000 appeals in FY 2008 to about 209,000 in FY 2010. During this time, the inventory of compensation rating claims increased by 40 percent from 380,000 to 532,000 claims. We conducted this audit to determine if opportunities exist to improve VA Regional Office staff timeliness in processing appeals of rating decisions.
- **What We Recommend:** We recommended the Under Secretary for Benefits identify and request staffing resources needed to meet VBA appeals processing goals and conduct de novo reviews on all appeals. VBA should revise productivity standard and procedures to emphasize processing appeals timely and implement an oversight plan that ensures staff record appeals in VACOLS promptly.
- **Agency Comments:** The Under Secretary for Benefits generally agreed that opportunities exist to improve appeals processing at regional offices. The Under Secretary stated VBA was conducting a pilot program to assess the feasibility of implementing recommendations 1-5. We accept VBA's approach to determine the best course of action based on the results of the pilot. The Under Secretary concurred with recommendation 6. We will follow up on the implementation of the corrective actions.

As usual, the pilot program produced a new appeals form which only added more work to the process and allowed new evidence submitted by the veteran to bypass the VARO without his consent and to be certified to a backlogged BVA process.

A specific and critical point in the report was in regards to Decision Review Officers spending time on initial reviews that should be reserved for Veterans Service Representatives. This is still occurring and is called "directed development."

"We reviewed 24 non-statistically selected deferrals from three regional offices and found that for 20 of the deferrals, the DRO was the first person to review the appeal. ... The 20 deferrals were for routine appeal development such as requesting service verification or private treatment records and compensation exams, or sending DRO

election letters. VBA should ensure that the DRO has all the information needed to make the decision the first time they review the appeal. It took an average of 178 additional days from the date of the deferral before the DRO received the requested information and was able to make a decision on the appeal. This additional 178 days could be avoided if appeals staff, such as the veterans service representative, conduct an initial review of the appeal to determine if required actions had been completed or not or whether additional information was needed.”

Excerpts from the article, *VA convenes summit with veterans advocates to fix appeals process*, *Federal News Radio*, March 7, 2016, show that more talking points will not fix this National Crisis.

- “Top officials from the Department of Veterans Affairs will meet this week with leaders from several leading veterans’ service organizations, seeking common ground on a legislative proposal that would overhaul the appeals process for veterans’ compensation claims.
- “We’re gonna lock everybody in a room, we’re gonna slip food under the door and no one’s coming out until we have something written down that everybody agrees with and that you can pass immediately,” Secretary Bob McDonald told the House Appropriations Committee last week.
- ... The average delay is currently five years, and for many veterans, it’s much, much longer.
- “Even though VA did not keep its vow to completely eliminate the claims backlog by the end of 2015 (and officials have recently said the backlog will never drop to zero), ... (Emphasis Added)
- **Veterans groups have a slightly different interpretation of that problem**, saying pressure on VBA staff to process initial claims decisions as quickly as possible caused a spike in verdicts that were legally or factually wrong, forcing veterans to file appeals in order to gain the benefits they were entitled to — **in some ways, simply transferring a chunk of the backlog from VBA to the appeals board.** (Emphasis Added)
- “**An initiative to expedite processing of undecided claims 2 years old and older resulted in rushed decisions, often made without medical examinations of the filing veterans,**” Dale Barnett, the American Legion’s national commander, said. “This has contributed to a growing stack of appeals and remanded cases. Quantity cannot overshadow quality. By improving processes to get claims right the first time, VA can keep the appeals backlog from growing.” (Emphasis Added)
- In advance of its summit with VSOs this week, VA submitted what McDonald **called a “straw man” proposal** for adjusting the appeals process as part of its 2017 budget. That placeholder proposal did not delve into many specifics, but officials said the objective is to cut appeals wait time to **less than one year by 2021.**” (Emphasis Added)

The appeals problem will not be resolved by legislative action alone, but properly staffing the appeals team, managing the workload, training employees, and a leadership team that understands and addresses the problems that have already been identified. This is a sucking chest wound and Band-Aids and talking points will not work.

Again, the appeals problem at the VARO Columbia, only validates the problems. As of the MMWR March 7, 2016, there were 13,085 appeals pending, with only 10 decision makers, with 4 who have less than a year experience, to work them. What significant actions have been taken to address the problem?

Excerpts from the article, *Union Officials Admit They Let Veterans Die Rather Than Talk To Republicans*, *The Daily Caller*, March 10, 2016, are repudiated because of the actions of AGFE Local 520 and to lump all Union Officials into one basket doesn't work when there is irrefutable proof to the contrary.

- “A federal employee union president is wracked with regret because veterans likely died at a time when she knew about gross misconduct within her Department of Veterans Affairs facility but didn't tell congressional leaders because they were Republicans.
- Clarno's tale of haunting regret is at least the second case of people connected with VA unions admitting they did not speak up about life-and-death issues because the idea of talking to a Republican was too distasteful.
- But in the previous years, Clarno went instead to Democrats who were ill-positioned to do anything, and who indeed, did nothing. Clarno and Lisa Nee, a VA doctor she worked with, described their actions during the interview Monday with Illinois' WLS-AM radio host John Howell.
- “It was really upsetting. This isn't about, you know, whether you have a D or an R at the end of your name. This is about the VA, this is about protecting the men and women who fought for our country,” Clarno said.
- The failure of the unions to alert relevant authorities about patient abuse, coupled with political attacks against the few congressmen who actually tried to put a stop to it, astounded Honl to such an extent that he renounced his political party.”

AFGE Local 520 has been on the front line for nearly four years informing Democrats and Republicans about the VBA workload and its effects on Veterans and their survivors. More importantly, as we have outlined Veterans are dying in silence waiting for their earned benefits and to disregard this fact is an indictment on the system created to “To Care For Him Who Shall Have Borne The Battle For His Widow and His Orphan”, the Congressional oversight responsibility, the media, and the American public.

For example, in our state of SC, the US Delegation consists of 8 Republicans and 1 Democrat. AFGE Local 520 has informed them all of the Appeals problem at the VARO Columbia. We also sent them an executive summary of the problems and requested that they contact us for further details. We have not received any calls.

Excerpts from the article, *Congressman Joe Wilson holds job fair for veterans*, *WAGT 26*, March 11, 2016, show the cooperation between VA and Congress when optics matters.

- “AIKEN, S.C. – US Congressman Joe Wilson was in Aiken Thursday, hosting a job fair for veterans. A cause he says is close to his heart.

- “There’s certainly are a lot of programs that are available, but if we don’t let the veterans know what’s available then they’ll never be able to come in and get the help,” says Wendy Perry with Charlie Norwood.
- Perry says the hospital provides several different types of counseling for vets who suffer with PTSD.
- “We do group counseling, individual counseling, we also have some family counseling. PTSD affects the entire family,” says Perry.
- **Organizers and vendors say if this fair helps just one veteran, it makes it all worth it. For Santiago, he says Thursday’s job fair was a blessing.** (Emphasis Added)
- “Congressman Wilson holds these veteran fairs yearly in the Midlands and the Aiken-Barnwell area. This is the 4<sup>th</sup> year he has done it. He currently plans to have the veteran fairs again next year.”

However, when it comes to claims pending at the VA and Veterans dying while awaiting, there is the “Silence of the Lamb.” If one veteran of the 13,000 appeals pending at the VARO Columbia can receive his/her benefits prior to death, “it makes it all worth it.”

Furthermore, we have furnished copies of our letters over the years to The Daily Caller and have consulted with them on articles as well as other conservative media outlets. However, it appears the media wants the sensational story that fits their narrative. It is serving Veterans and ensuring the employees at the VBA have the tools necessary to accurately and timey serve them that matters.

Excerpts from the following articles and our letter of January 14, 2014, should provide insight on the IT and EHR problems and the contractual objective of MYVA. Contractors are sucking the VA dry without any tangible evidence of success.

*Future of VistA Evolution uncertain, FierceGovernmentIT, March 4, 2016,*

- “The Veterans Affairs Department has taken a “step back” from its work evolving its open source electronic health records to review whether the program is on the right track and to instead focus on interoperability with the Defense Department’s forthcoming commercial electronic health records.
- During a March 2 hearing before the House Appropriations subcommittee on military construction, Veterans Affairs and related agencies, VA Chief Information Officer LaVerne Council said the department had not yet decided if it might replace VistA with a commercial off the shelf solution.
- “It could be an upgrade to VistA. It could be an alignment to use it as the EHR and figure out the best of breed processes to reach those other venues,” she said.
- Shulkin said the VistA Evolution pause showed the department undertaking a careful review, to ensure VA is being a good steward of taxpayer dollars.
- **“We came into these roles to make sure this is the right plan for veterans and the right plan for the American public,” he said.** (Emphasis Added)
- In recent years, VA has worked to modernize, and then “evolve” its Veterans Health Information Systems and Technology Architecture, known as VistA, to improve its capabilities and better enable it to share information with the Defense Department.

- **Council said the millions of dollars put toward VistA Evolution thus far have not been a waste.** (Emphasis Added)
- Council said the VA is on schedule to define clear interoperability with DoD in March and have key capability between VA's Electronic Health Management Platform and DoD's Defense Healthcare Management System Modernization platform by August."

*VA, DoD refuse to find common ground on IT infrastructure at joint hospital, FierceGovernmentIT, March 4, 2016*

- "The Captain James A. Lovell Federal Health Care Center in North Chicago is the first attempt to fully integrate the Veterans Affairs and Defense departments' healthcare facilities, but officials told the Government Accountability Office they have no plans to find common ground on a single-network IT infrastructure at the facility.
- Difficulties managing network connections and providing seamless access to software applications stemmed from the facility's complex IT infrastructure, according to a GAO report published Feb. 29.
- IT infrastructure at the facility is actually comprised of three networks to accommodate differences in VA and DOD network security standards, and GAO found the departments spent approximately \$17 million from 2011 to 2015 to troubleshoot the hospital's network infrastructure, local IT capabilities and other IT issues.
- Defense officials interviewed for the report said they are working with VA to upgrade the infrastructure, but both departments said there are no plans to resolve differences in network security standards or stand up a single-network IT infrastructure.
- "In December 2015, FHCC officials told GAO they had developed an initiative in the interim for reviewing staffing until VA and DOD conduct a more formal, comprehensive, data-driven review of the FHCC's workforce," said the report."

Our letter to the VA Committees dated, January 14, 2014, reads as follows:

Excerpts from the article *Veterans Affairs, Defense Depts. spend billions in effort to coordinate records After two years and more than \$1 billion spent, integrated health records system canceled, The Center for Public Integrity, August 27, 2013*, show the cost of the debacle single health-records system between VA and DOD. (emphasis added).

- "The Department of Veterans Affairs and the Department of Defense spent **at least \$1.3 billion during the last four years trying unsuccessfully to develop a single electronic health-records system between the two departments** — leaving veterans' disability claims to continue piling up in paper files across the country, a News21 investigation shows.
- The Janus Joint Legacy Viewer, a cloud-based medical records system that allows DOD and VA medical records to be displayed on one screen, launched at nine sites in July... **He said it will ultimately be tested at regional offices this year, but only two employees at each office will have training and access.**
- The National Defense Authorization Act for 2008 **mandated** that the DOD and VA secretaries "develop and implement electronic health-record systems or capabilities

that allow for full interoperability of personal health information between the Department of Defense and the Department of Veterans Affairs."

A comparison, of Public Law 110-118, Section 1635 Fully Interoperable Electronic Personal Health Information For The Department Of Defense And Department Of Veterans Affairs (**National Defense Authorization Act for FY08**) and Public Law 113-66, Section 713, Electronic Health Records Of The Department Of Defense And The Department Of Veterans Affairs (**National Defense Authorization Act for FY14**), shows that the cycle is starting all over again.

However, this time more players are in the game - (the establishment of not more than six members Executive Committee and the Defense Science Board) in addition to the previous composition of the Interagency Program Office of Departments, the Office of the National Coordinator for Health Information Technology of the Department of Health and Human Services and the Comptroller General.

"The evolution and/or procurement of new health record systems is an important project for the departments to undertake but it will end up being a futile exercise if the result is not the development of systems that will be interoperable, defined as the ability to exchange computable information electronically," the report states. **It adds that there is "rising concern" that the VA and the DoD will lose sight of the need for interoperability as they spend funds on improving their own EHRs.** *VA information technology appropriations go up under omnibus, Fierce Government, January 16, 2014* (emphasis added)

There were benchmarks in the old law as well as the new one. However, no one was held accountable for the first debacle and without proper oversight and accountability by the Committees, there will not be any this time.

Our Nation's Veterans and their survivors have earned and the taxpayers paid for results and not action on paper.

*VA awards \$22B IT contracts for MyVA transformation, fedscoop, March 12, 2016*

- The Department of Veterans Affairs awarded numerous contracts amounting to \$22.3 billion Tuesday for the technical support services, program management and infrastructure development **behind its MyVA transformation.** (Emphasis Added)
- Using the Transformation Twenty-One Total Technology Next Generation acquisition program, or T4NG, the department Tuesday awarded 21 companies of various sizes contracts to support MyVA, a department wide initiative launched last year to improve customer service to veterans.
- VA developed the awards as a multi-agency indefinite delivery/indefinite quantity task order contract. VA awarded places on the contracts issued Tuesday to 10 service-disabled veteran owned small businesses, two other small businesses and **nine large businesses, including Accenture Federal Services; SRA International Inc.; Booz Allen Hamilton Inc.; and IBM.** (Emphasis Added)

*Favor TechConsulting, LLC Awarded Ten Year, \$22.3 Billion IDIQ Prime Contract for the Department of Veterans Affairs (VA) Transformation Twenty-One Total Technology Next Generation (T4NG), EconoTimes/Business, March 8, 2016*

- “ARLINGTON, Va., March 08, 2016 -- Favor TechConsulting, LLC (FTC) — a leading provider of IT solutions to the federal government — today announced that it has been awarded the Department of Veterans Affairs’ (VA) multiple award Transformation Twenty-One Total Technology Next Generation (T4NG) contract. FTC was one of twenty-one companies awarded a Prime contract, selected out of a pool of hundreds of bidders. **FTC also represents one of three Woman Owned Small Businesses (WOSBs), one of ten Service Disabled Veteran Owned Small Businesses (SDVOSBs), and one of three certified 8(a) companies.** (Emphasis Added)
- “As FTC’s single biggest achievement to date, we could not be more proud of the fact that our total team effort has culminated in this significant award, **which will most certainly allow us to continue providing landmark services to the VA,**” said **Vaseal V. Montgomery, FTC President and CEO.** “Needless to say we are thrilled about the great things to come and our sustained expansion of federal services as a trusted VA partner.” (Emphasis Added)

The contracts continue with no tangible evidence of their success and the EHR limbo continues. Our FOIA request of March 2, 2015, to obtain the VBA contracts implemented during the transformation, lay dormant at the VBA. The disclosure of the information is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the VA. Is there any cost analysis going on? However, we see the same large companies receiving these contracts and their small minority and service disabled veterans affiliates.

We will continue to be the eyes, ears, and voice for the Veterans and the employees who are called to serve them because the price is “life and death.”



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