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VA Regional Office  
AFGE LOCAL 520  
PO BOX 1778  
COLUMBIA, SC 29202  
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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 VA problems not being fixed and the colossal VBA workload and the continued effect on Veterans and employees.

The article, *Veterans' disability checks stolen by hackers, WSMV Channel 4, March 9, 2016*, shows that the eBenefits problems identified in July 2014 is still not fixed and as usual there is no comment from the VA.

- "NASHVILLE, TN - Their sacrifices have kept Americans safe. Now an Iraq War veteran is asking what is being done to keep his personal information safe.
- "I did two tours in Iraq," said Jimmy Sanford, who served in Operations Desert Storm and Iraqi Freedom. He injured his knee during airborne training.
- "The disability check comes every first of the month," Sanford said.
- But when the first of February rolled around, that check never came. After several phone calls, Sanford learned he had been robbed.
- "My frustration became anger because I started thinking, 'Well it happened to me. I'm sure it happened to someone else,'" he said.
- Sure enough, Sanford is not alone. Thieves have found a way to hack Veterans Affairs and the Defense Department's eBenefits system.
- "eBenefits has your banking information, your medical information, your military information," Sanford said.
- While many don't know about the thefts, it's been happening since at least 2014, often to Vietnam and World War II veterans. **The office of inspector general could only tell Channel 4 "they are investigating."** (Emphasis Added)
- "It was just amazing to me that no one really had much concern about it," Sanford said.
- Sanford is still trying to get his money back.
- "I want to put that out to a lot of veterans that this is happening," Sanford said.
- He said he also wonders why the country he fought to protect won't do the same for him.

- "It's been happening, and if you've got thousands and thousands of people that they're doing this to, imagine the money that they're getting from these people, and "everybody is just sitting back and letting it happen," Sanford said. (Emphasis Added)
- eBenefits did not return our calls for comment.

Let's rewind to our letter, dated January 4, 2015, to confirm what Sanford said, "everybody is just sitting back and letting it happen" when we reported that known problems are not being fixed at the VBA.

Excerpts from the article, *One year later, House lawmakers dissatisfied with VA's handling of eBenefits cyber breach, Federal News Radio 1500, December 22, 2014*, again shows the effects of not fixing a known problem and an electronic system which continues to expose Veteran's personal identifiable information (PII) leading to identity theft and fraudulent activity.

- "House lawmakers, once again, are pressing the Veterans Affairs Department for more answers about how they are addressing their cybersecurity troubles.
- Rep. Jackie Walorski (R-Ind.) sent a letter to Secretary Bob McDonald Dec. 15 asking for more details about the eBenefits website cyber breach that happened in January. VA reported the breach exposed the data of more than 5,000 veterans.
- VA Chief Information Officer Stephen Warren said at the hearing they hired Mandiant to look at the agency's domain controllers. He said their cyber experts initially reported the systems are clean from malicious software.
- A committee staff member said members still are waiting for VA to deliver the final Mandiant report, which Warren said would be finalized in December.
- "VA takes the protection of Veteran information seriously," a VA spokeswoman said. "VA is working to provide thorough responses to the Committee's questions."
- Walorski's renewed interest in the nearly year-old data breach stems from a story about a veteran in Southwest Florida who twice had his account hacked in two months.
- Walorski said VA has offered the committee assurances several times that the eBenefits system and its data are secure, yet "security incidents continue to occur on a regular basis."
- "It is clear that the agency's information systems, including the eBenefits portal, continue to be afflicted by persistent information security weaknesses," Walorski said. "Recognizing the importance of securing veterans' personal information, and minimizing further instances of identity theft or other fraudulent activity, my colleagues on the House Veterans Affairs Committee and I expect VA to take all the steps necessary to strengthen the security and privacy of the eBenefits portal."
- Walorski and committee members' patience with VA has been wearing thin for the better part of a year. She introduced the Veterans Information Security Improvement Act in April, which many experts said was as prescriptive of a bill for cybersecurity as they had ever seen.
- The bill never advanced out of the subcommittee."

An excerpt from the opening statement from Vice Chairman Gus M. Bilirakis reads as follows:  
"On May 29th, 2014 the VA Office of the Inspector General noted that VA's information technology is still plagued by material weaknesses for the 16th straight year, unacceptable as far as I am concerned. Looking back nearly 18 months Mr. Warren testified to the committee that he had an 18-month plan to resolve the problems in VA's network. However, as GAO's report released yesterday tells us there are continued problems. *Hearing Transcript on VA's Longstanding Information Security Weaknesses Continue to Allow Extensive Data Manipulation, Committee On Veterans' Affairs U.S. House Of Representatives One Hundred Thirteenth Congress Second Session Tuesday, November 18, 2014, Serial No. 113-90*

In our letter dated November 22, 2015, we reported on the problem below.

Again, AFGE Local 520 shares this excerpt from the article, Exclusive: Hundreds of Thousands of VA Electronic Disability Claims Not Processed, nextgov, July 3, 2014.

"VA spokeswoman Meagan Lutz said since February 2013, just over 445,000 online applications have been initiated. Of those, approximately 70,000 compensation claims have been submitted and another 70,000 nonrating (add a dependent, etc.) have been submitted, leaving a total of 300,000 incomplete claims. Because a number of claims started are more than 365 days old, they have now expired, totaling an estimated 230,000 unprocessed claims."

How have informal FDC claims filed electronically been handled?

"In August 2013, the VBA implemented Section 506 of Public Law (PL) 112-154 amended 38 U.S.C. 5110 to allow up to a one-year retroactive effective date for awards of disability compensation based on fully developed, original claims for compensation that VA receives from August 6, 2013, through August 5, 2015." M21-1MR, Part III, Subpart i.3.B.7.a

An excerpt from an email with attachments received by Veterans Service Center employees on November 19, 2015, Subject: VDC Application Initiation Review Phase Two reads as follows:

"As part of Phase Two, approximately 25,000+ end product (EP) 680s have been established via automation. **Members of Columbia QRT** will conduct reviews (for Columbia assigned cases) for an earlier effective date based on the change in VA policy. VA memorandums for record have already been uploaded into the corresponding VBMS eFolder. An example of the VA Memo is found attached." (Emphasis Added)

The purpose of Phase two was defined as follows: "To provide procedural guidance for the implementation of a process regarding effective dates for applications initiated in VDC from November 1, 2012 through March 24, 2015."

The new process is defined as follows: "Effective August 6, 2015, VA will now consider the application initiation date as a placeholder for effective date purposes, comparable to

an incomplete Fully Developed Claim. The decision is retroactive from the date claims were first initiated in VDC."

Here is the reality of the fix - according to the MMWR dated November 9, 2015, there were **43** EP 680 under this category. After the approximately 25,000+ end product (EP) 680s that were established via automation the number rose to **25,149** according to the MMWR as November 16, 2015. There are now **36,600** EP 680 - Review of Hemodialysis related cases/conditions with **26,294, 71.8% over 125 days** as of the MMWR dated March 21, 2016.

More troubling is the report from a QRT member in Columbia that these cases are not being reviewed. Either Columbia does not have any of these cases or they are not being reviewed. The increase in the number shows that the +25,000 was wordsmithing. Hiding these claims are denying Veterans of the retroactive benefits they have earned.

Furthermore, it was reported to AFGE Local 520 that the QRT members in Columbia have been given a new mission of reviewing VA examinations and opinions. Some of the QRT VSRs whose background is in the adjudication of claims were given 5 hours of training and now they are supposed to be proficient enough to review VA examinations and opinions. This is insanity and speaks to the desperation of the VBA leadership.

Then, there is the dependency claims contract which was so unsuccessful, the VBA diverted National Call Center employees from answering calls to process dependency claims.

" The contract calls for 40,000 dependency claims to be processed per month when operating at full capacity. The contractor is currently ramping up to that capacity." (Emphasis Added) *Witness Testimony of The Honorable Allison A. Hickey, Under Secretary for Benefits, Veterans Benefits Administration, U.S. Department of Veterans Affairs, Evaluation of the Process to Achieve VBA Goals, July 14, 2014*

On the VHA side of the house, excerpts from articles below only confirm the flop-flopping on IT solutions and the implementation of a scheduling pilot. As to the scheduling pilot, what recommendations were reported in the assessment of the scheduling of appointments as mandated by the *Public Law 113-146—Aug. 7, 2014, Veterans Access, Choice, And Accountability Act Of 2014*, over a year and half ago?

"Section 201, (2) Particular Elements of Certain Assessments. (A) Scheduling Assessment,

- (vii) Assess any interim technology changes or attempts by Department to internally develop a long- term scheduling solutions with respect to the feasibility and cost effectiveness of such internally developed solutions compared to commercially available solutions.
- (viii) Recommend actions, if any, to be taken by the Department to improve the process for scheduling such appointments, including the following:
  - (I) Changes in training materials provided to employees of the Department with respect to conducting tasks related to scheduling such appointments.

- (II) Changes in monitoring and assessment conducted by the Department of wait times of veterans for such appointments.
- (III) Changes in the system used to schedule such appointments, including changes to improve how the Department—
  - (aa) measures wait times of veterans for such appointments;
  - (bb) monitors the availability of health care providers of the Department; and
  - (cc) provides veterans the ability to schedule such appointments.”

*Future of VistA Evolution uncertain, Fierce Government, March 4, 2016,*

- “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.
- VA is reviewing the program to consider what sort of capabilities will be needed for a healthcare tool "we can grow upon," she said.
- "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.
- Council said the millions of dollars put toward VistA Evolution thus far have not been a waste.
- "The dollars that were in the VistA Evolution were primarily focused not only on interoperability but also the sustainability of VistA in allowing it to grow," she told lawmakers.
- While the business case review for VistA has halted further development of the platform for now, Council used the hearing to tout recent wins – such as surpassing 35,000 clinicians using the system's Joint Legacy Viewer.
- 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.

As a footnote, Joint Legacy Viewer (JLV) users received an email on March 16, 2016, 3:43 PM stating “All users are currently experiencing a variety of errors when attempting to login to JLV. Errors you might see include: Access Denied, Login Error, Error 404-Not Found.

*VA patient scheduling pilot rolling out in April, Federal News Radio, March 17, 2016*

- LaVerne Council, VA assistant secretary in the Office of Information and Technology and chief information officer, briefed members of Congress on the pilot program March 16, during an update on the overall cybersecurity and IT environment at VA.
- During a hearing in early March, Council and Dr. David Shulkin, VA's new undersecretary for health, called VistA's future into question, as well as mentioned the possibility of postponing the MASS update.

- “Shulkin said. “We don’t want to hold that up. If it turns out that VSE meets the majority of needs of our schedulers, probably the right decision is to not spend another \$663 million on MASS. The pilot we’re doing right now is going to be very, very important for us to understand that.”
- Brent Arronte, deputy assistant inspector general for audits and evaluations, said it was still too early to review the pilot system, though the OIG planned to do so in the future.
- “What’s kind of longstanding that we have seen with VA is with IT they’re trying to centralize at the headquarters level. I think the field is not always acceptable of that centralization,” Arronte said. “So sometimes we see in our previous work, there’s a good plan, it looks good on paper, but getting out of the gate, getting it implemented, seem to be some of the issues historically.” (Emphasis Added)
- Michael Bowman, director of the OIG’s Information Technology and Security Audits Division, said that VA’s involvement in software development usually ends up as a “high-risk venture.” (Emphasis Added)
- “Some of the projects that we’ve looked at VA tends to go over budget on cost. They seem to not deliver the intended functionality so I think oversight of this project is essential, especially as it impacts veteran scheduling,” Bowman said. “VA just does not have a good history of delivering systems on time and within budget.” (Emphasis Added)
- Aside from the scheduling pilot, Council shared with congressional members that VA had hired five senior leaders to the Office of Information and Technology and it would be adding another 11 in the next 3 months. (Emphasis Added)
- She said that for the first time, security efforts are fully funded — \$370 million for fiscal 2016 and 2017 — and that VA was on track to close 30 percent of the 30 material weaknesses highlighted annually by auditors, by the end of calendar year 2016. She anticipated 100 percent closure by 2017.
- “OI&T can no longer be considered a material weakness for the VA,” Council said. (Emphasis Added)
- But Arronte pointed out that in the past 3 years the OIG has made 69 recommendations to VA to improve its IT systems management and security, but as of this February, 57 of them remained open. Of those 57, about half of them are repeated or modified-repeated recommendations.
- “The IG released its annual Federal Information Security Management Act (FISMA) report for fiscal 2015 and for a 17th straight year failed. The IG found “VA had not fixed approximately 9,500 outstanding system security risks in its corresponding Plans of Action and Milestones to improve its information security posture.”
- The IG made 35 recommendations, including six new ones since the 2014 report.

*House appropriators look for clarity on VistA modernization, FCW, March 22, 2016*

- “The fiscal 2017 Military Construction and Veterans Affairs and Related Agencies Appropriations Act would provide \$260 million for modernizing the EHR system at the VA, but a House Appropriations Committee staffer told FCW that the committee was fencing off funding for VistA until it receives clarity on whether the agency wants to update its homegrown system or choose an off-the-shelf solution, as the Defense

Department has done. The committee is also looking for deliverables that are interoperable with DOD's current and future EHR systems.

- The move comes after a recent committee appearance by VA CIO LaVerne Council, during which she told lawmakers that it was time to take a step back from the planned modernization of VistA. "We have not made up our minds" about what to do about VistA, Council said at the time. She has continued to stress that the interoperability deadlines have not been affected by officials' review of the VistA Evolution program.

Now, another problem has been identified at the VBA. This press release was posted on the VA website <http://www.va.gov/opa/pressrel/> on or about March 25, 2016.

"WASHINGTON – The Department of Veterans Affairs (VA) announced today that an information technology system that it deployed in 2014 and enhanced in 2015, the Beneficiary Fiduciary Field System, allowed it to identify claim processing errors affecting approximately 14,000 Veterans and survivors. These Veterans' and survivors' claims were initially filed over many years, with some going back as far as 2000. ... These cases represent approximately four percent of such proposals since 2000.

"We sincerely apologize to these Veterans and their survivors for this regrettable delay," said VA Deputy Secretary Sloan D. Gibson. ...

VBA has set up a **dedicated team to immediately review the cases, notify beneficiaries, complete the claim processing steps, and appoint a fiduciary as quickly as possible**. Because the law requires VA to check the qualifications of the fiduciaries it appoints, including conducting a face-to-face interview, **VA anticipates that it may take as much as six months or more to complete the fiduciary appointment process for these beneficiaries.** (Emphasis Added)

An excerpt from the opening statement of *Witness Testimony of Mr. David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, Director, Pension and Fiduciary Service, Veterans Benefits Administration, U.S. Department of Veterans Affairs, Exploring VBA's Fiduciary Program, Subcommittee on Disability Assistance and Memorial Affairs (DAMA), Jun 11, 2015*, reads as follows:

- "In March 2012, VA consolidated the management of its fiduciary activities at six fiduciary hubs nationwide. VA moved all fiduciary workload from individual VA Regional Offices (ROs) to the hubs to improve controls and consistency in processing the work. These hubs are located at the Salt Lake City, Lincoln, Milwaukee, Indianapolis, Louisville, and Columbia VA ROs. ....
- In August 2014, VA established claims processing teams in each of the fiduciary hubs to improve the internal procedures for delivering benefits to individuals who require the assistance of a fiduciary. These teams produce beneficiaries' final ratings of incompetency, initiate monthly benefit payments to fiduciaries on behalf of beneficiaries, and release beneficiaries' retroactive benefits to their fiduciaries. The new process eliminates the hand offs between VA's Pension Management Centers and Veterans Service Centers and the fiduciary hubs and ensures more timely release of benefits to fiduciaries."

The VBA consolidated and established a promulgation team to improve the internal procedures for delivering benefits to individual who required the assistance of fiduciary. Columbia VARO is a hub and has one of these teams. Currently, there are 10 Fiduciary Service Representatives (FSRs) assigned to accomplish this mission and service four states – FL, GA, NC, & FL. This is another consolidated blunder because of understaffing.

There are two End Products (EPs) associated with processing these claims – 290 and 600. These two EPs are also used for other purposes. Therefore, it is unknown how many claims are pending regarding incompetency due process (EP 600) and appointment of a fiduciary (EP 290). Furthermore, the EP 600s that need rating decisions were put on the back burner due to the focus on the reduction of the backlog. At a town hall meeting with the SE District Director during a site visit in January 2016, an FSR employee voiced concerns that additional evidence received on proposals to rate Veterans incompetent were sitting for quite some time without action in the fiduciary unit. AFGE Local 520 believes this and the number of claims to employee's ratio are also contributing factors in the problem identified by the VA.

The National workload for EP 290s and 600s is below.

DATES	3/21/2016	3/21/2016
Other Claims		>125 Days
290	101,446	79.4%
600	115,704	59.6%

The VARO Columbia had a site visit in April 2015 from the VBA Pension and Fiduciary Service. An excerpt of the director's dashboard performance measures for Initial Appointments and Follow-up Appointments conducted by Field Examiners are follows:

DIRECTOR'S DASHBOARD PERFORMANCE MEASURES	Columbia Fiduciary Hub		Nation	
VETERANS BENEFITS ADMINISTRATION FIDUCIARY PROGRAM	FY 2014	15-Mar	FY 2014	15-Mar
National Target	45.0	45.0	45.0	45.0
Initial Appts Average Day Completed (3 month rolling)	49.2	62.4	60.0	54.9
Follow-up Appts Average Day Completed (3 month rolling)	160.2	217.3	191.0	235.4

The information above is important in the light that there will be 14,000 initial appointments scheduled and to be completed in 6 months or more. However, there will be the same amount of Field Examiners conducting these interviews. The "rob Peter to pay Paul" adage applies here. Veterans will still suffer because of another problem that was created and left undone by poor management. Furthermore, how will VBA isolate and control the 14,000 appointments in the midst of all the other appointments that are pending?

Now, let's look at the colossal workload as of the MMWR dated March 21, 2016. The appeals at the BVA and CAVC are not included in the MMWR which is over **110,000**.

<b>RATING</b>	<b>345,655</b>
<b>Nonrating</b>	<b>287,240</b>
<b>Award Adjustments</b>	<b>402,715</b>
<b>APPEALS</b>	<b>326,290</b>

<b>EP 930</b>	<b>19,829</b>
<b>EP 400</b>	<b>66,986</b>
<b>RIP Total</b>	<b>1,448,715</b>

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

- Nonrating - **17,121**, with an average days pending of **622.9 March 21, 2016**
- Award Adjustments - **17,537** with **95.2%** over 125 days. **March 21, 2016**

The backlog is still on the VBA's roller coaster since FY 16.

<b>WEEK</b>	<b>C&amp;P RB BACKLOG</b>	<b>WEEKLY DIFF</b>
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
03/14/16	83,178	-1,660
03/21/16	80,978	-2,200
<b>Total Diff</b>		<b>8,355</b>

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

### **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.

<b>DATES</b>	<b>3/14/2016</b>	<b>3/21/2016</b>	<b>W-DIFF</b>
<b>Other Claims</b>			
<b>137</b>	4,903	4,879	-24
<b>150</b>	17,893	17,915	22
<b>297</b>	3,582	3,479	-103
<b>607</b>	5,516	5,363	-153
	31,894	31,636	-258

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	3/21/2016	DIFF
140	6,129	9,087	2,958
190	9,631	16,130	6,499
160	15,588	<b>29,485</b>	13,897
165	7,537	<b>10,278</b>	2,741
	38,885	64,980	26,095

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

### **2014 COST OF LIVING ADJUSTMENTS**

The MMWR dated March 21, 2016 indicates that EP 690 - Cost of Living Adjustments (COLAs) and other reviews stood at “**20,162**, with **72.8%**, % over 125 days old.” Again, these cost of living adjustments must be from 2014 because Veterans did not get a COLA for December 2015.

Finally, whether it's VBA or VHA, the same sad story is told. Problems are not being fixed despite legislative mandates, Congressional hearings, GAO and VAOIG reports, and VA leadership changes.

As pertaining to VBA, problems are also being created because of the astronomical amount of M21-1 changes that have occurred because of the failed transformation initiatives and technology and the VBA's attempt to adapt policies and procedures to compensate for it as we addressed in our last letter dated March 20, 2016.

AFGE Local 520 will continue to be the VA historian. Veterans and employees are the ones being affected by these avoidable blunders. Moreover, shifting and hiding the VBA workload because of understaffing, poor leadership, and flawed technology will not fix the problems.



Ronald Robinson  
Legislative Coordinator  
(803) 239-7682(c)  
(803) 647-2385 (w)

[www.seniorvsvr.com](http://www.seniorvsvr.com)

LEAVE NO VETERAN BEHIND

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