

Rick Surratt, Deputy National Legislative Director, Disabled American Veterans

STATEMENT OF
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OF THE
DISABLED AMERICAN VETERANS
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COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
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Mr. Chairman and Members of the Committee:

I am pleased to appear before you on behalf of the Disabled American Veterans (DAV) to address the necessity and means to improve timeliness and accuracy in the disability claims adjudication and appellate processes of the Department of Veterans Affairs (VA).

Achieving timeliness with accuracy has long been a major challenge for VA, and an ongoing concern of veterans and this Committee. While increased resources will not alone cure what ails the system, all of the best efforts to overcome the deficiencies are doomed to fail without an admission that inadequate resources are at the root of the problem and without decisive action to correct that cause for difficulties in timeliness and quality.

Past reductions in staffing levels degraded VA's ability to process and decide disability claims in a correct and timely manner. After falling behind, it never fully recovered. With continued growth in the volume and complexity of claims for disability benefits, VA has not requested the resources necessary to overcome the existing backlog and stay abreast of that growth, with a consequent adverse effect upon both quality and timeliness of claims adjudication. In each of its budget submissions for recent years, VA has projected improvements but has fallen short of attaining and maintaining reductions in the backlog and improvements in quality. The fiscal year (FY) 2008 VA budget submission affords no reason for optimism. VA's actions have not lived up to its promises.

According to its mission statement for its Compensation and Pension Service (C&P), the Veterans Benefits Administration (VBA) 'seeks to provide all possible benefits under the law to eligible claimants in a timely, accurate, and compassionate manner, and to the extent possible, apprise potential claimants of possible entitlement to benefits.' VA maintains that its 2008 budget provides the resources necessary to timely and accurately process a claims workload that continues to increase in quantity and complexity. According to VA, the requested increase in staffing, new information technology initiatives, quality assurance programs and controls, and employee training will allow it to reduce its pending workload, despite factors that add complexity to the process. However, contrary to its observation that the workload 'continues' to increase, contrary to the several-year trend of consistently increasing claims volumes, and contrary to its discussion elsewhere of factors that would likely continue this trend, VA projects, without explanation, that it anticipates 'a slight decrease' in receipts in 2007 and 2008. Apparently this prediction was necessary for VA to project that it could reduce the backlog with

the resources it requests in the budget. VA provides this overview at page 6A-2 of Volume II of its budget submission:

The 2008 budget provides resources to timely and accurately process a claims workload that continues to increase in quantity and complexity. Disability compensation and other claims requiring a rating decision are projected to be 800,000 in 2008. If we receive 2007 funding near the levels passed by the House and the Senate, it is projected that our pending workload will decrease throughout 2007, ending the year with 369,980 claims pending in our inventory. In order to achieve our timeliness and accuracy performance goals and to reduce the backlog, hiring of additional FTE [full-time employee(s) or equivalent(s)] is necessary.

The disability claims workload from returning war veterans as well as from veterans of earlier periods has continuously increased since 2000. VBA annual claims receipts grew 39 percent from 2000 to 2006 ? from 578,773 to 806,382, an increase of 227,609. In 2007 and 2008, we anticipate a slight decrease in receipts to 800,000. The complexity of the workload will continue to grow, however, because veterans are claiming greater numbers of disabilities and the nature of disabilities such as post-traumatic stress disorder (PTSD), complex combat injuries, diabetes and related conditions, and environmental diseases are becoming increasingly more complex. For example, the number of cases with eight or more disabilities claimed increased 135 percent from 21,814 in 2000 to 51,260 in 2006.

(Emphasis added.)

The rise in claims receipts over the past 7 fiscal years and anticipated receipts for 2007 and 2008 are represented in VA's graph at page 6B-7:

Given that discussion elsewhere in this same area of the budget submission contradicts VA's statement that claims receipts will decrease in 2007 and 2008, the continuing trends of an increase in claims receipts year after year, the absence of any change in circumstances that could be expected to reduce the number of claims filed, and the absence of stated rationale for VA's expectation of fewer claims in the current fiscal year and next year, this appears to be an expedient projection.

The budget submission summarizes the consistent historical trend of increasing numbers of claims received each year for the past several years:

The number of veterans filing initial disability compensation claims and claims for increased benefits has increased every year since 2000. Disability claims from returning war veterans as well as from veterans of earlier periods increased from 578,773 in 2000 to 806,382 in 2006, an increase of 227,609 claims, or 39 percent. In addition to the increased claim rate, there are two other factors that drive future claims activity. First, over this same period of time the number of veterans receiving benefits has significantly increased, both in terms of whole numbers and as a percent of the veteran population. These veterans, like their predecessors, demonstrate similar disability profiles. Orthopedic, mental health, cardiovascular, endocrine, and hearing problems predominate. Most of these conditions can be characterized as chronic progressive disabilities resulting in repeat claims. Second, the average level of disability for veterans on the rolls has

increased steadily in the last five years reflecting the aging population. Similar to the chronic condition issue, the aging process is likely to result in additional claims for increased benefits.

(p. 6B-6) During FY 2006 alone, 'VA added almost 250,000 new beneficiaries to the compensation and pension rolls.' (p. 6B-1) From 2002 to the end of last year, VA lost ground in reducing the backlog, with a substantial increase in the number of rating claims pending: 'In 2003, VBA was successful in reducing the inventory of pending disability claims to 253,000. . . . The pending inventory of disability claims rose to 378,296 by the end of FY 2006.' (pp. 6B-3, 6B-4)

The added work from the increase in the sheer volume of claims has been compounded by other factors: 'Since 2000, VBA has experienced a steady increase in workload: in claims receipts, claims complexity, and workload generated by improved direct contact with increasing numbers of servicemembers and veterans.' (p. 6B-3)

In discussing the '2007 Workload Challenges,' VA directly contracts its prediction for fewer claims in 2007 and 2008: 'Ongoing hostilities in Afghanistan and Iraq, and the Global War on Terrorism in general, are expected to continue to increase the compensation workload. (p. 6B-8) (emphasis added). VA explains:

More than 1.3 million active duty servicemembers, members of the National Guard, and reservists have thus far been deployed to Afghanistan and Iraq. Whether deployed to foreign duty stations or maintaining security in the United States, the authorized size of the active force, as well as the mobilization of thousands of citizen soldiers, means that the size of the force on active duty has significantly increased. Studies by VA indicate that the most significant predictor of new claims activity is the size of the active force. Department of Defense data show there were more than 213,000 military separations in 2005. These figures do not include the demobilization of Guard and reserve members and units that remain part of the military. Historical trends suggest that approximately 35 percent (over 74,000) of these separating servicemembers will file a VA disability claim sometime in their life. The claims rate for Gulf War Era veterans is significant. In 2006, nearly 700,000 veterans and 15,000 survivors of this era received benefits, comprising the second largest population of veterans receiving benefits after Vietnam era veterans.

(p. 6B-8) Of course, we now have additional troops being deployed to Iraq.

In addition to more claims proportionate to the increase in the size of the active force, VA observes that greater numbers of veterans on the compensation rolls means greater numbers of reopened claims:

The number of veterans receiving compensation has increased by more than 400,000 since 2000, from just over 2.3 million veterans to over 2.7 million at the end of 2006. The compensation recipients, many of whom suffer from chronic progressive disabilities such as diabetes, mental illness, and cardiovascular disabilities, will continue to reopen more claims for increased benefits in the coming years as they age and their conditions worsen. During 2006, reopened disability compensation claims comprised almost 55 percent of disability claims receipts.

(p. 6B-8) (emphasis added).

In the three years from the end of 2003 to the end of 2006, attendees at benefits briefings for separating servicemembers increased by more than 87 percent, from 210,025 to 393,345. VA expects to further expand its outreach efforts to servicemembers and veterans, which it naturally expects to result in an increase in the volume of claims:

VA has increased outreach to active duty personnel and we must continue to expand our efforts. These outreach efforts result in significantly higher claims rates. In 2004, the greatest increase in rating receipts was in original claims ? an increase of 17 percent (from 167,105 in 2003 to 194,706 in 2004). Original claims increased by an additional eight percent (to 210,504) in 2005 and by an additional three percent (to 217,343) in 2006, which is a 30 percent increase over the last four years. We believe these increases are directly related to our aggressive outreach programs and that the increases will continue.

....

We anticipate the same high level of commitment in future years. Therefore, we expect the outreach hours and claims rate for separating servicemembers to continue to increase.

....

Outreach efforts have been expanded to reach veterans, particularly older veterans, who may not be aware of the benefits to which they are entitled.

(pp. 6B-9, 6B-10) (emphasis added)

VA suggests that legislation authorizing Combat Related Special Compensation (CRSC) and concurrent receipt of retired and disability pay (CRDP) creates a potential for added workload:

Today, more than 54,000 military retirees receive [CRSC]. The military is adding between 1,500 and 2,000 retirees to the CRSC rolls monthly. This benefit and Concurrent Retired and Disability Pay (CRDP), another DOD program that permits partial to total restoration of retired pay previously waived to receive VA compensation, further contribute to increased claims activity. These claims are exceptionally complex, involving significant coordination with service retired pay centers to determine if retroactive benefits are payable. . . .

. . . . Nearly 194,000 retirees receive CRDP. The number of military retirees receiving VA compensation has increased to more than 819,000 since the advent of these programs. There is now significant incentive for retirees receiving compensation to file claims for increased benefits, as the increased amounts may no longer be subject to offset. Additionally, the total number of retirees as of July 2006 was 1,812,108, meaning that only 45 percent of military retirees now receive benefits. There are over 990,000 who could potentially still file claims due to CRSC and CRDP.

In 2007, VA anticipates significant workload to result from the ongoing CRSC and CRDP programs.

(p. 6B-10) (emphasis added)

The budget submission notes that two court decisions may substantially increase VA's workload. In *Haas v. Nicholson*, the court held that Vietnam veterans who served in the waters offshore are entitled to the presumption of exposure to herbicides. VA has appealed the *Haas* decision, but estimates a total of 187,208 claims will be received; 25,000 in 2007 and the remaining 162,208 in 2008 if the decision is not overturned. In addition, a recent ruling by the Federal District Court for the Northern District of California in *Nehmer v. U.S. Department of Veterans Affairs* has extended the reach of the Agent Orange Settlement Agreement to Chronic Lymphocytic Leukemia based upon the extension of the lapsed Agent Orange Act. VA states it has identified almost 1,500 cases that must be reviewed and readjudicated. Under the court's order, VA must mail an outreach notice to approximately 26,000 additional claimants. VA is required to review and readjudicate cases for those claimants who respond to the mailing. VA notes that, due to the unique rules in the *Nehmer* settlement and the stringent time requirements imposed, these cases require significantly more development and management oversight than normal claims. They also require priority processing. (p. 6B-11)

The budget submission also explains how the workload continues to increase due to increases in the number of disabilities claimed, increasing complexity of the claims, and added judicially-imposed procedural steps, primarily to fulfill VA's duty-to-assist obligation. Some of these observations from the budget submission are as follows:

? 'The number of disabilities claimed by veterans has increased significantly. The number of directly claimed conditions increases the number of variables that must be considered and addressed, making the claim more complex. Multiple regulations, multiple sources of evidence, multiple potential effective dates and presumptive periods, preparation of adequate and comprehensive Veterans Claims Assistance Act notice, as well as adequate and comprehensive rating decisions increase proportionately, and sometimes exponentially, as the number of claimed conditions increases.'

? 'Combat and deployment of U.S. forces to underdeveloped regions of the world have resulted in new and complex disability claims based on environmental and infectious risks, traumatic brain injuries, complex combat injuries involving multiple body systems, concerns about vaccinations, and other conditions.'

? 'VA has started to see increasingly complex medical cases resulting in neuropathies, vision problems, cardiovascular problems, and other issues directly related to diabetes. As previously discussed, much like original claims with more than eight claimed disabilities, diabetes claims routinely present multiple variables with which the rating specialist must deal. If secondary conditions are not claimed, the rating specialist must be alert to identify them. This increasing complexity of disabilities adds to the increased complexity of our workload and the resources needed to process it.'

? 'The number of veterans submitting claims for post-traumatic stress disorder (PTSD) has also grown dramatically and contributed to increased complexity in claims processing. From 1999 through 2006, the number of veterans receiving compensation benefits for PTSD has increased

from 120,000 to nearly 270,000. These cases present unique processing complexities because of the evidentiary requirements to substantiate the event causing the stress disorder.'

'The Veterans Claims Assistance Act (VCAA) of 2000 has significantly increased both the length and complexity of claims development.'

(pp. 6B-11, 6B-13) All of this signals a continuing trend of more work.

VA points out that this increasing complexity in the workload alone?i.e., with a projected decline in the number of claims receipts for 2007 and 2008?require the additional employees it requests: 'More FTE are needed to complete claims in an accurate and timely manner due to the greater number of disabilities veterans now claim, the increasing complexity of the disabilities being claimed, and changes in law and process.' (p. 6B-1) This is the basis for the increase in employees VA requests for 2008:

In summary, the number of conditions claimed, the nature of severe traumatic multiple body system combat injuries, highly complex medical conditions, and enhanced legal requirements substantially increase the complexity of the claims process and claims decisions. The resources required to enable us to keep up with the increasingly complex workload are, therefore, significantly greater.

(p. 6B-14)

VA also admitted that staffing levels in the current year are insufficient to gain ground on the backlog: 'The current staffing levels do not enable VA to reduce the pending claims inventory and provide timely service to veterans.' (p. 6B-4) VA hopes to reduce the backlog some during this fiscal year through 'near-term workload reduction initiatives' funded with carryover funds from 2006: 'Special near-term workload reduction initiatives are being undertaken in 2007 to increase decision output and stem the upward climb of the pending inventory. These initiatives are being funded through the use of carryover funds from 2006. . . .' (p. 6B-4) VA will bank on these same initiatives to reduce the backlog in 2008: 'Special near-term workload reduction initiatives undertaken in 2007 that include employment of rehired annuitants and expanded use of overtime will continue into 2008, enabling us to increase decision output. With these initiatives, we project that more than 840,000 veterans will receive decisions on their disability claims in 2008. . . .' (p. 6B-1). Again, all of this is premised on a decrease in the number of claims received during 2007 and 2008.

VA notes that increased claims receipts result in increased appellate workloads downstream: 'As claims receipts and the number of beneficiaries on our rolls increase, the appeals and other workloads also increase. This significantly increases our resource requirements.' VA received 18,000 more claims in 2006 than in 2005, with an increase of only 5 direct program FTE for 2007. With its near-term workload reduction initiatives, VA projects it will increase the number of rating decisions made from 774,378 in 2006 to 808,316 in 2007. (pp. 6B-4, 6B-7) In turn, that will increase its appellate workload:

As VBA renders more disability decisions, a natural outcome of that process is more appellate work from veterans and survivors who disagree with various parts of the decision made in their

case. Veterans can appeal decisions to deny service connection for any conditions claimed and disposed of by a denial. They may also appeal the effective date of an award and the evaluation assigned to a disability. In recent years, the appeal rate on disability determinations has climbed from an historical rate of approximately 7 percent of all disability decisions being appealed to a current rate that ranges from 11 to 14 percent. Thus, the 808,316 projected disability decisions in 2007 are expected to generate between 88,000 and 113,000 appeals. The projected 840,320 completed disability decisions in 2008 will likely generate between 92,000 and 117,000 appeals. At the end of 2006 there were more than 133,000 appeals pending in field stations and the Appeals Management Center (AMC). In addition, there were slightly less than 31,000 appeals pending at the Board of Veterans' Appeals.

This increase in appellate workload seriously impacts our ability to devote resources to initial and reopened claims processing. Appeals are one of the most challenging types of cases to process because of their complexity and the growing body of evidence that must be reviewed in order to process these claims. In 2001, we received 39,000 notices of disagreement, the initial step in the appeals process. From 2003 to 2006, notices of disagreement exceeded 100,000 each year. The number of appeals received is proportionate to the number of decisions made. As workload and the number of decisions made increase, so too will the number of appeals. Likewise, the number of actions taken in response to our appellate workload has increased. In 2001, we processed more than 47,600 statements of the case and supplemental statements of the case. In 2006, this number increased to more than 134,000 statements of the case and supplemental statements of the case.

(pp. 6B-14, 6B-15)

The budget submission projects rating decision output per FTE at 102.8 decisions in 2007 and 101 decisions per FTE in 2008. (p. 6B-4) The budget submission for FY 2007 had projected 108 decisions per FTE. (Vol. 2, p. 5B-5) With the projected decrease in claims receipts and its estimated increase in the number of rating decisions in both 2007 and 2008, VA projects that it will reduce the backlog:

In 2007, we anticipate a slight decrease in disability claims receipts over the 806,382 claims received in 2006, to 800,000 claims. The one-time workload increase in 2006 that resulted from the six-state outreach initiative (approximately 8,000 claims) is not projected to continue into 2007 and 2008. With an FTE level of 7,863 and our near-term workload reduction initiatives, we estimate 808,316 completed claims and an end-of-year pending [rating] inventory of 369,980.

In 2008, we anticipate disability claims receipts will remain level with 2007. Based on a direct FTE level of 8,320 and our near-term initiatives, we estimate completed claims will increase to 840,320 and the pending inventory will decrease to 329,660 by the end of 2008.

(p. 6B-7) If the 8,000 claims from the six-state outreach initiative are subtracted from the 2006 total of 806,000, there was still an increase of 10,000 claims receipts in 2006 over the 788,000 in 2005. Again, VA does not explain its prediction of a decrease in the number of claims receipts in 2007 and 2008, which contradicts its projection in its budget submission for FY 2007 that, for 2007, 'we anticipate receipts will increase 2 percent over the 2006 projected receipts.' (Vol. 2, p. 5A-2)

VA projects that it will reduce the average days to process rating-related compensation and pension actions from 177 days in 2006 to 160 days in 2007 and 145 days in 2008, with a target of 125 days. VA projects that its national accuracy rate for core rating work will improve from 88 percent in 2006 to 89 percent in 2007 and 90 percent in 2008, with a strategic target of 98 percent. (p. 6B-24, 6B-25)

As with this year's budget submission, VA has maintained in its budget submissions for previous years that it will improve claims processing and reduce the backlog with the resources it requests. For example, in its budget submission for FY 2006, VA projected its rating decision output for FY 2006 would be 109 cases per direct labor FTE and 825,000 total. VA projected that it would reduce the pending inventory of rating claims from 321,458 to 290,000 by the end of 2005, and that it could further reduce the pending inventory to 282,876 by the end of 2006. (Vol. 1, pp. 2A-10, 2A-11). VA estimated the average time to complete rating-related actions would be 145 days in 2006, with a strategic target of 125 days. It predicted a national accuracy rate for core rating work of 90 percent, with a strategic target of 98 percent. (p. 2A-14) However, as noted, its rating decision output per FTE was 98.5, its total rating production was 774,378 decisions, and it ended FY 2006 with an inventory of 378,296 claims with an average processing time of 177 days and a national accuracy rate of 88 percent. Actually, the gap between VA's predicted output for 2006 and its performance is wider than indicated by these numbers because it projected reducing the backlog to 282,876 claims despite the expectation that it would receive 818,076 claims (p. 2A-10) rather than the 806,382 that it actually received. With the resources VA has requested, it has been unable to reduce the backlog. Instead it continues to grow.

A repetition of VA's summary of the trend of annual increases in the volume of claims along with its acknowledgment that it has been unable to make progress in reducing the backlog since 2003 provides a more accurate picture upon which to base expectations for 2007 and 2008, in our view:

Since 2000, VBA has experienced a steady increase in workload: in claims receipts, claims and complexity, and workload generated by improved direct contact with increasing numbers of servicemenbers and veterans. If resources are insufficient to handle this increased workload, our pending claims inventory rises and presents difficult management challenges. For example, disability claims from returning war veterans, as well as from veterans of earlier periods, increased by 39 percent from 2000 to 2006. In 2003, VBA was successful in reducing the inventory of pending disability claims to 253,000. Since 2004, increased claims and court decisions requiring new procedures and readjudication of claims have precluded VBA from sustaining previous gains.

(p. 6B-3) As of February 17, 2007, the number of rating cases pending was 401,701 of which 111,575 had been pending over 180 days. We are now approaching half way through FY 2007 and not moving toward VA's projection of reducing the backlog to 369,980 rating claims.

Discussing external factors that affect the workload, VA observed: 'Negative impact could be realized if workload receipts are significantly higher than anticipated. . . .' (p. 6B-30) It appears that VA's projection on claims receipts was wrong or its plan for reducing the backlog is not working.

As we have consistently said, quality is the key to timeliness. Timeliness follows from quality because omissions in record development, failure to afford due process, and erroneous decisions require duplicative work, which adds to the load on an already overburdened system. Quality is achieved with adequate resources to perform necessary comprehensive and ongoing training, to devote sufficient time to each case, and to impose and enforce quality standards through effective quality assurance methods and accountability mechanisms. VA has simply not had the resources necessary to achieve the level of quality required to avoid unacceptable error rates, increased numbers of appeals, and the consequent overload that causes backlogs and delays in claims dispositions.

In connection with its review of variances in average annual compensation payments among the states, VA's Inspector General surveyed rating veterans service representatives (RVSRs) and decision review officers (DROs) to obtain their input on issues that affect the rating of disability compensation claims. RVSRs and DROs expressed generally positive opinions of the quality of their training, but their responses indicated training has not received high priority. Department of Veterans Affairs Office of Inspector General, Rep. No. 05-00765-137, Review of State Variances in VA Disability Compensation Payments 58 (May 19, 2005). In a recent survey of VA raters conducted by the Center for Naval Analysis (CNA) for the Veterans' Disability Benefits Commission, 32 percent of those responding said that getting needed training was among the top three greatest challenges they face. However, VA appears to be doing the best that it can to provide better training to improve quality with the resources it has been given. VA outlines its enhanced training programs in its FY 2008 budget submission at page 6B-17. Unquestionably, training is essential, but effective training programs require resources:

While additional claims processors are critical to deal with this workload, the quality of claims decisions and the services provided is also critical. VBA's robust training program is the key to improving the quality and consistency of our decisions and will enable us to be flexible and responsive to changing workload volumes. VBA is engaged in an ongoing effort to improve its training systems for new employees and to raise the skill levels of its existing staff. Improved quality and consistency require resources dedicated to providing employees with more and better training, up-to-date tools, and IT systems to support their decisions.

(p. 6B-6) The most essential resource is experienced and knowledgeable personnel devoted to training: 'Our need to continually enhance our national quality assurance and training programs necessitates additional staffing that will improve consistency, quality, certification, and timeliness.' (p. 6B-17) If experienced adjudicators must spend part of their time training other employees, there must be more employees overall to avoid falling further behind in battling the backlog.

Regarding sufficient time to properly develop and decide a claim, RVSRs and DROs surveyed by the Inspector General's Office thought VA management's emphasis on quantity rather than quality had an adverse effect upon their ability to properly dispose of claims:

RVSRs and DROs believe their objectives are different from those of their managers. We asked them to rank the importance of 16 potential objectives. Their responses indicated that when rating claims their most important objectives are complying with applicable criteria, granting the highest ratings allowed, and ensuring they have sufficient information before making decisions.

We also asked them to rank the importance to their managers of 15 comparable objectives. Their responses indicated that they believe the most important objectives for their managers are maximizing the number of ratings done each day, reducing the backlog of pending work, and improving the timeliness of ratings.

....

Survey responses showed that RVSRs and DROs are concerned about their production standards, and many respondents indicated that the need to meet production standards adversely affects the quality of their work.

? Forty-seven percent said it is generally difficult or very difficult to meet their daily production standards; 22.5 percent said it is generally easy or very easy.

? Forty-nine percent strongly disagreed or disagreed somewhat with the statement that they have no difficulty meeting their production standards without sacrificing quality; 30.5 percent strongly agreed or agreed somewhat with that statement.

? Fifty-seven percent strongly agreed or agreed somewhat with the statement that they have difficulty meeting their production standards if they make sure they have sufficient evidence for rating each case and thoroughly review the evidence; 24.1 percent strongly disagreed or disagreed somewhat with that statement.

VA OIG Report at 60–61. Among the raters responding to the CNA survey, 85 percent said that having time to process a claim was one of the top three greatest challenges.

The survey of RVSRs and DROs by VA's OIG cited insufficient staffing as the cause for too little time: 'Most RVSRs and DROs do not believe [VA Regional Offices] have sufficient rating staff. Sixty-five percent indicated that the rating activities in their offices have somewhat smaller or much smaller staffs than needed to provide timely and high quality service.' VA OIG Report at 61. The OIG report quoted the following narrative remark from the survey: 'Although management wants to meet quality goals, they are much more concerned with quantity. An RVSR is much more likely to be disciplined for failure to meet production standards than for failing to meet quality standards.' VA OIG Report at 61

Sufficient staffing permits sufficient time to properly develop and decide claims and sufficient time to devote to training without allowing the backlog to grow. Discussing survey responses from RVSRs and DROs, the OIG report at page 61 noted: 'The most frequently discussed issue, mentioned by 193 respondents, was management's perceived emphasis on production at the expense of quality. The second most frequently discussed issue, mentioned by 44 respondents, was the need for more and better training.'

VA's quality assurance tool for compensation and pension claims is the Systematic Technical Accuracy Review (STAR) program. Under the STAR program, VA reviews a sampling of decisions from the regional offices and bases its national accuracy measures on the percentage with errors that affect entitlement, benefit amount, and effective date. If STAR were being used effectively, we question why VA did not detect the substantial variations in average annual compensation payments from state to state brought to light by the news media and thereafter investigated by the VA Office of Inspector General in 2005.

Inconsistency signals outright arbitrariness in decision making, uneven or overall insufficient understanding of the governing criteria or rules for decisions, or rules which are vague or overly broad so as to allow them to be applied according to the prevailing mindset of a particular group of decision makers. Obviously inconsistencies must be detected before the cause or causes can be determined and remedied.

To address concerns about substantial variations in average annual compensation payments among the states, VA's OIG reviewed compensation awards from the six states with the highest average annual payments ('high cluster') and the six states with the lowest average annual payments ('low cluster') finding that veteran demographics and inconsistent rating decisions may account in part for the variations. OIG also found that claims processing practices, the quality of disability examinations, staffing levels, production pressures, and adjudicator experience and training may influence payment levels. On average, veterans in the high cluster states had more service-connected disabilities and higher disability ratings than veterans in the low cluster. In general, training was a higher priority, adjudicators were more experienced and had less difficulty applying the disability rating schedule, disability examinations were judged better, and error rates were lower in the high cluster states. Adjudicators in the high cluster states took longer to adjudicate claims, although the pressing backlogs were smaller there and they shipped fewer cases to other offices for adjudication. High cluster states had higher percentages of (1) represented veterans, who were shown to be higher compensated than unrepresented veterans; (2) Vietnam veterans, who were shown to be higher compensated than veterans of other periods; and (3) veterans of the enlisted ranks, who were shown to be higher compensated than veterans of the officer ranks. In the high cluster, a higher percentage of veterans exercised their right to appeal than in the low cluster. These findings suggest that the trend of lower payments in some states may be due in part to lower proficiency in adjudication. Adequate resources are essential to proficient claims adjudication.

The variations between veterans represented by service organizations and unrepresented veterans were particularly marked. The national averages showed that veterans represented by accredited service organizations had substantially higher levels of compensation than veterans without representation. The national average annual payment for veterans with representation was \$10,631, compared with a national average of \$4,406 for unrepresented veterans. All the states in the high cluster had higher percentages of represented veterans. Nationwide, 63.8 percent of the veterans receiving compensation were represented. In the high cluster states, 69.5 percent of the veterans were represented. In the low cluster states, 54.7 percent of the veterans were represented. In the high cluster states, veterans with representation had an average annual payment of \$13,488. Represented veterans in the low cluster states had an average annual payment of \$9,891, above the national average of \$8,378 for all veterans. Though well below the national average for represented veterans and below the national average for all veterans, unrepresented veterans in the high cluster states had an average annual payment of \$5,637, compared with only \$3,862 for unrepresented veterans in the low cluster states. Thus, represented veterans in the high cluster states received an average annual payment that was \$7,644 higher than the average annual payment of unrepresented veterans in low cluster states. The most telling fact here is that the average annual payment of \$9,891 for veterans in the six states with the lowest average annual compensation payments who had service organization representation was higher than the national average of \$8,378 for all veterans. This would

suggest that veterans service organization representatives are serving in a role of quality assurance, in addition to assistance in thorough record development.

As a result of these revelations about variances, VA has undertaken an effort to identify unusual patterns of variances and assess the degree of consistency among its regional offices to enable it strengthen guidance and target training to problem areas: 'C&P Service has begun a process of identifying unusual patterns of variance by diagnostic code, and then reviewing selected disabilities to assess the level of decision consistency among regional offices. The outcome of these studies and STAR accuracy reviews will be used to identify the need for additional guidance and training to improve consistency and accuracy, as well as to drive procedural or regulatory changes.' In addition, VA will conduct site surveys for compliance with directives. (p. 6B-17)

The Board of Veterans' Appeals (BVA) now identifies, by the specific reason, the number of cases it remands each year to correct deficiencies in the record or for due process. In FY 2006, BVA remanded claims for a medical opinion in conjunction with an examination in more claims than for any other reason. This data should aid VA in identifying and remedying deficiencies that add to the cycle of rework, and we hope this information is being utilized for that purpose, along with STAR results and other efforts for improvement.

While VA's increased efforts are a move in the right direction, we believe they still leave a gap in quality assurance for purposes of individual accountability for quality decision making. To complement its STAR program for measuring quality at the national level, VA announced in the year 2000 a new initiative for quality review at the individual level. Acknowledging that management needed a tool to consistently monitor individual performance, VA created the 'Systematic Individual Performance Assessment' (SIPA) program. Under this program, VA would review an annual sample of 100 decisions for each adjudicator to identify individual deficiencies, ensure maintenance of skills, promote accuracy and consistency of claims adjudication, and restore credibility to the system. The reviewers would perform related administrative functions, such as providing feedback on reviews, maintaining reports, and playing a role in employee development and ongoing training. Unfortunately, VA abandoned this initiative during 2002, and proficiency is now apparently subjectively assessed by supervisors based on their day-to-day perceptions of employee performance. Without any actual systematic review of samples of an individual adjudicator's decisions, deficiencies are more likely to go undetected and unremedied. We understand that the culprit behind abandonment of SIPA was inadequate resources. Without any quality assurance review on the individual level, VA is unlikely to impose effective accountability down to the individual adjudicator level, where it must go if optimum quality is to be attained. We believe today's VA workforce is conscientious and desires to make the best claims decisions possible, but it needs the time, training, and tools to do so, and the tools include a source of direct feedback from individualized quality reviews. Congress must provide VA management with the necessary resources, and VA management must create a culture of quality and make a genuine commitment to the mission of providing 'all possible benefits under the law to eligible claimants in a timely, accurate, and compassionate manner.'

As noted, a natural consequence of increased numbers of claims is that the volume of pending appeals and time for resolution of appeals has also increased in recent years. The natural increase in the volume of appellate workload is compounded by the effects of not sufficiently increasing staffing at regional offices to meet increased claims volumes and complexity, which adds to the overload and prolongs the processing times for appeals at the regional office level. As indicated, at the end of 2006, there were more than 133,000 appeals pending in VBA field stations and VBA's Appeals Management Center (AMC). This was up from the nearly 130,000 pending at the end of 2005. Another consequence is increased numbers of remands, which primarily impacts on workload, timeliness, and resource needs at the AMC. However, with a joint effort by VBA and BVA to reduce the number of remands, the number of cases on remand declined from 31,645 at the end of 2004 to 21,229 at the end of 2006, according to VA's budget submission for FY 2008. (Vol. II, p. 7C-4) Most remands are processed by the AMC, which had 15,875 cases on hand on February 22, 2007. Our employees who deal with the AMC and our employees at BVA generally give AMC high marks for quality.

VBA field offices resolved 74,440, or 72 percent, of the 103,212 appeals resolved in 2006 without necessity for action by BVA. VBA resolved another 3,749, or 10 percent of the total, on remand. Although we do not have current VA data on the percentage of appeals favorably resolved by DROs, we suspect it is substantial. The DRO program has been a success story since it was instituted as a part of VBA's Business Process Reengineering program several years ago.

In 2006, BVA decided 25,023 cases on the merits according to the budget submission and remanded 12,487 according to the Report of the Chairman of BVA for FY 2006. (p. 20) The Report of the Chairman summarized the Board's production for FY 2006 as follows:

The Board issued 39,076 decisions in Fiscal Year 2006, an increase of 4,901 over Fiscal Year 2005, when we issued 34,175 decisions. [Board members] conducted 9,158 hearings, which is an increase of 582 hearings held over Fiscal year 2005. The majority of the line [Board members] exceeded their productivity goals and traveled to at least three [regional offices] to conduct one week of Travel Board hearings at each site. However, the number of cases pending before the Board at the end of Fiscal Year 2006 was 40,265, which is almost a 3,000 case increase over the 37,539 appeals that were pending at the end of Fiscal Year 2005. This increase occurred despite the fact that the Board issued almost 5,000 more decisions in Fiscal Year 2006 than the previous year. If we continue to receive the same high number of appeals and hearing requests each year, the ability to conduct hearings and decide appeals on a timely basis with the current business plan strength of 56 [Board members] will present a challenge.

(p. 3)

The budget submission for FY 2008 describes BVA's quality assurance program as one that looks at all aspects of decision quality but focuses on substantive qualities for reporting purposes:

BVA has a formal quality review program to review the quality of decisional products and to identify areas in which professional training is needed. In this quality review process, an on-going, statistically valid sample of BVA decisions is reviewed and components deemed essential

to a quality appellate decision are assessed on a pass/fail basis according to established standards. The five areas examined and scored are: (a) identification of issues; (b) findings of fact; (c) conclusions of law; (d) reasons and bases/rationale for preliminary orders such as remands; and (e) due process. A quantified baseline for decision quality was established for the first time at the outset of 1999. This provided the Board a foundation for establishing quantified decision quality goals and pursuing continuous improvement in the quality of decisions through repeated measurements. In accordance with a GAO recommendation, we consider only substantive deficiencies in our quality assessment. However, while the primary focus is on identifying, quantifying, and correcting substantive errors, we still address minor deficiencies and seek to improve all aspects of our decisions. Areas of deficiency highlighted through this process are used to determine BVA training needs.

(p. 7C-5) BVA reported a 'Deficiency-free Decision Rate' of 89.0 percent for 2005 and 93.0 percent for 2006. Its target for 2007 and 2008 is 92.0 percent. (p. 7C-5)

VA uses two measures for timeliness in appeals processing. 'Appeals Resolution Time' is the average time from the initiation of the appeal by receipt of a notice of disagreement and the final decision, either by VBA or BVA. 'BVA Cycle Time' is the time from receipt of the appeal by BVA until dispatch of a BVA decision, excluding the time the case was with the appellant's service organization representative. Where the first measure is the average total time for an appellant to receive a decision, the second reflects more directly on BVA's timeliness.

Timeliness in appeals processing declined in 2005 and 2006. Appeals resolution time increased from 529 days in 2004 to 622 days in 2005 and 657 days in 2006. VA projects that it will further grow to 685 days in 2007 and 700 days in 2008. BVA cycle time increased from 98 days in 2004 to 104 days in 2005 and 148 days in 2006. VA projects that it will improve to 105 days in 2007 and 104 days in 2008. (p. 7C-2)

Given that VBA resolved nearly three-quarters of appeals decided in 2006 without the added time the case would have otherwise been before BVA, the appeals resolution time was much shorter than for those cases that were decided by BVA. According to the timeline in the Report of the Chairman, in a case decided by BVA, the time between the receipt of the notice of disagreement and issuance of a BVA decision was 971 days. (p. 16). The Chairman's report indicates the average elapsed time between receipt of a notice of disagreement and issuance of a statement of the case was 188 days; between issuance of a statement of the case and receipt of the appellant's perfection of the appeal was 42 days; between perfection of the appeal and field office certification of the appeal to BVA was 489 days; and between receipt of the certified appeal and issuance of a BVA decision was 252 days, for the total of 971.

The budget submission requests that the staffing level for C&P Service be increased from the 7,858 FTE authorized in 2006 to 8,320 in 2008. (p. 6A-10) Considering that VA is falling further behind in 2007 despite special efforts to reduce the backlog and given the probability that claims receipts will increase, this staffing level is likely to be inadequate, just as the current staffing level is inadequate, a fact VA admits. The budget submission requests that the BVA staffing level be increased from the 2006 level of 452 FTE to 468, an increase of 16. (p. 7C-10) As noted, with its current staffing and that requested for 2008, BVA expects its quality to suffer a slight decline from 2006 levels.

To correct the problems throughout, we believe Congress must invest additional resources primarily at the front end of the process to reduce the additional work required downstream and to break the vicious cycle in which the push for quantity and the expense of quality results in more errors and more rework adding ever more to the backlog.

We appreciate the opportunity to present our views on this most important matter, and we hope this information will be helpful to the Committee as it seeks to improve services to disabled veterans.