

**SUPPORTING DISABLED VETERANS:
THE STATE OF CLAIMS PROCESSING
DURING AND AFTER COVID-19**

HEARING
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

MAY 12, 2021

Printed for the use of the Committee on Veterans' Affairs



Available via the World Wide Web: <http://www.govinfo.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON VETERANS' AFFAIRS

JON TESTER, Montana, *Chairman*

PATTY MURRAY, Washington	JERRY MORAN, Kansas, <i>Ranking Member</i>
BERNARD SANDERS, Vermont	JOHN BOOZMAN, Arkansas
SHERROD BROWN, Ohio	BILL CASSIDY, Louisiana
RICHARD BLUMENTHAL, Connecticut	MIKE ROUNDS, South Dakota
MAZIE K. HIRONO, Hawaii	THOM TILLIS, North Carolina
JOE MANCHIN III, West Virginia	DAN SULLIVAN, Alaska
KYRSTEN SINEMA, Arizona	MARSHA BLACKBURN, Tennessee
MARGARET WOOD HASSAN, New Hampshire	KEVIN CRAMER, North Dakota
	TOMMY TUBERVILLE, Alabama

Tony McClain, *Staff Director*

Jon Towers, *Republican Staff Director*

C O N T E N T S

WEDNESDAY, MAY 12, 2021

SENATORS

	Page
Tester, Hon. Jon, Chairman, U.S. Senator from Montana	1
Moran, Hon. Jerry, Ranking Member, U.S. Senator from Kansas	2
Boozman, Hon. John, U.S. Senator from Arkansas	10
Sinema, Hon. Kyrsten, U.S. Senator from Arizona	21

WITNESSES

PANEL ONE

Thomas J. Murphy, Acting Under Secretary for Benefits, Veterans Benefits Administration, Department of Veterans Affairs; Accompanied By Willie C. Clark, Sr., Deputy Under Secretary for Field Operations, Veterans Benefits Administration and Toby T. Mathew, Chief Officer, Office of Disability and Medical Assessment, Veterans Health Administration	3
--	---

PANEL TWO

Elizabeth Curda, Director, Education, Workforce and Income Security, Government Accountability Office	13
Ryan Gallucci, Director, National Veterans Service, Veterans of Foreign Wars of The United States	14
Shane Liermann, Deputy National Legislative Director, Disabled American Veterans	16
Carmen McGinnis, National Service Officer, Disabled American Veterans	18

WITNESSES PREPARED STATEMENTS

Thomas J. Murphy, Acting Under Secretary for Benefits Veterans Benefits Administration, Department of Veterans Affairs	26
Elizabeth Curda, Director, Education, Workforce and Income Security, Government Accountability Office	33
Ryan Gallucci, Director, National Veterans Service, Veterans of Foreign Wars of the United States	46
Shane L. Liermann, Deputy National Legislative Director of the Disabled American Veterans	53
Carmen McGinnis, National Service Officer, Disabled American Veterans	64

QUESTIONS FOR THE RECORD

Questions for the Record submitted by	
Hon. Sanders	70
Hon. Brown	78
Hon. Hirono	80
Hon. Sinema	83
Hon. Blackburn	86

STATEMENTS FOR THE RECORD

American Federation of Government Employees, AFL-CIO	90
--	----

IV

	Page
National Association of County Veteran Service Officers	98
Paralyzed Veterans of America	102
Marty Callaghan, Deputy Director, Veterans Affairs & Rehabilitation Division, The American Legion	106
Military Sexual Trauma Resources	111

**SUPPORTING DISABLED VETERANS:
THE STATE OF CLAIMS PROCESSING
DURING AND AFTER COVID-19**

WEDNESDAY, MAY 12, 2021

U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 3 p.m., in room 253, Dirksen Senate Office Building, Hon. Jon Tester, chairman of the Committee, presiding.

Present: Tester, Brown, Sinema, Hassan, Moran, Boozman, Cassidy, Rounds, and Sullivan.

OPENING STATEMENT OF CHAIRMAN TESTER

Chairman TESTER. I want to call this meeting to order, now that the Ranking Member is in the room. I would just say today has been a pretty screwed-up day, so I am going to apologize to the folks who are testifying right now, because we have got votes at 3:30, and Senator Moran and I will probably be handing the gavel off to one another to get through these votes together. But I want to tell you that this is, as with all of our hearings at the VA Committee, it is very important, so I want to say good afternoon. Thank you for being here today.

Last year the VBA provided compensation to over 5 million disabled veterans and survivors. Unfortunately, COVID-19 has hampered VBA, leading to hundreds of thousands of backlogged claims.

With the funds Congress provided in the American Rescue Plan, VA anticipates getting back to pre-COVID numbers by late next year. I am concerned, however, that next year is not soon enough for disabled veterans weathering the storm of this pandemic.

I am also concerned that as VBA concentrates on speed, it risks sacrificing quality. Disabled veterans must have confidence that their claims will be fairly and accurately decided. Last year's removal of the 48-hour review period is an example of when VBA, when obsessed with speed, removed a veteran's ability to correct the error before a final decision was made. Now, look. Everybody appreciates quickness, but forcing vets to appeal errors makes them wait longer, and, quite frankly, it is a nonstarter.

So when it comes to renewing VBA's focus on disabled veterans, we have got some work to do. GAO, for example, has consistently highlighted gaps in VBA's oversight of contract examiners. The quality of an exam can make or break a victim's claim. If VBA can-

not guarantee the accuracy of contract examiners, well, quite frankly, then we probably should not be using them.

The IG also found significant issues with how VBA processes specialty claims. If VBA cannot guarantee it fairly accounts for all the complexity of a disabled veteran's claim, then we need to take a look at the process and change it.

Toxic exposure veterans exhibiting symptoms years after deployment are second-guessed. Veterans bearing invisible wounds from military sexual trauma are held to an impossibly high evidence standard. And VA must take the time to carefully account for all the circumstances surround a claim, instead of treating our warriors like widgets.

In short, VBA must make the process more veteran-focused and less adversarial. I look forward to this hearing on how VBA can improve its practices so that our disabled veterans are better served, long after this pandemic.

With that I will turn it over to you, Senator Moran.

OPENING STATEMENT OF SENATOR MORAN

Senator MORAN. Chairman Tester, thank you. I am eager to hear from our witnesses today. Thank you for being here.

VBA is often the first connection that veterans have with the Department of Veterans Affairs, as they transition out of the military, but it seems to me they are often overlooked, can be overlooked, when we take into account the mammoth health administration that has been providing health care to our disabled and ill veterans.

Over the last 14-plus months, our country has faced unprecedented challenges due to the pandemic. The adversity provides an opportunity for us to evaluate vulnerabilities in our system, reflect on what has worked, and make improvements for the future.

As we discuss VBA's pandemic response today, I want to hear what VA, and VBA specifically, learned throughout these unprecedented times and how we can continue some of the best practices to bring modern-day solutions and services to our veterans on an everyday basis.

Mr. Murphy, today's hearing is an opportunity for you and your colleagues to discuss the work VBA is now conducting to address C&P backlog that has accrued due to COVID-19 limitations, both through internal VHA exams and through contract medical disability exams. I know many of my colleagues are concerned with the quality of contract exams. Still, I want to discuss how they have assisted in the backlog over the years and how they will continue to assist in the backlog created by the pandemic.

I want to thank the VBA and its employees for their ongoing work, whether it is the office or via teleworking, to get claims developed and adjudicated, such as ACE exams and telehealth exams, in innovative ways to do what is best for our veterans in an already stressful climate.

I would also like to discuss GAO's findings that illuminate how claims associated with military sexual trauma, traumatic brain injury, and Gulf War illness are twice as likely to be returned to both VHA and the contractors for additional information before making a decision.

Last, I look forward to hearing from the VFW and DAV who are here with us today and are the boots on the ground when it comes to assisting veterans in filing their claims. You all have seen firsthand some of the difficulties in claim filing during COVID, and the changes VBA has made to adapt to the pandemic.

Chairman Tester, thank you. Thank you for holding the hearing. I look forward to working with you today and in the future, and I yield back.

Chairman TESTER. Senator Moran, thank you for your comments. Today's hearing is going to consist of two panels. In the first panel we are going to hear FBA on how it navigated COVID-19 challenges to process claims from disabled veterans, so I will get to that panel in a second.

In the second panel, we will hear from Government Accountability Office and veteran service organizations about certain issues with the disability compensation process.

But now back to the first panel. I want to introduce Thomas J. Murphy, Acting Under Secretary for Benefits, and with Under Secretary Murphy is Willie C. Clark, Sr., VBA Deputy Under Secretary for Field Operations, and Toby T. Mathew, the Veteran Health Administration's Chief Officer for the Office of Disability and Medical Assessment. Secretary Murphy, the floor is yours.

PANEL I

STATEMENT OF THOMAS J. MURPHY; ACCOMPANIED BY WILLIE C. CLARK, SR., AND TOBY T. MATHEW

Mr. MURPHY. Chairman Tester, Ranking Member Moran, and members of the Committee, thank you for the opportunity to testify today about the current State of the Veterans Benefits Administration, and in particular, our efforts to continue providing the benefits and services our veterans deserve—

Chairman TESTER. I need to get you to turn on the mic. I am sorry. And then I need to get you to start over.

Mr. MURPHY. Right from the top? Yes, sir.

Chairman TESTER. Yes. Thanks.

Mr. MURPHY. It was sounding so good there too. Chairman Tester, Ranking Member Moran, and members of the Committee, thank you for the opportunity to testify today about the current State of the Veterans Benefits Administration, and in particular, our efforts to continue providing the benefits and services our veterans deserve during the unprecedented COVID-19 pandemic.

Despite the challenges presented by the global pandemic, VBA has maintained its focus on serving veterans and their families. We continue to deliver benefits and services while working to establish our post-pandemic normal operations and to address the long-term challenges presented by COVID.

I am pleased to report that during the pandemic, VBA has served and continues to serve more veterans and their families while improving the accuracy of completed disability claims. At the onset of the pandemic, VBA leveraged mass telework in order to minimize the exposure to both veterans and employees. Our longstanding commitment to IT modernization and our digitization efforts made the transition from office to home seamless.

As you are aware, VBA suspended all in-person medical examinations to protect the safety and health of both VA employees and veterans. We revised claim processing procedures to allow veterans to wait for in-person examinations with the assurance that no final action, including a denial, will be taken on their claim until an in-person examination can be completed.

These procedures are still in place today. Additionally, we completed as many virtual examinations as possible, utilizing telehealth technology and VA's acceptable clinical evidence process. VBA expanded the use of ACE and increased the number of eligible telehealth examination types from 19 to 34 examinations.

At the end of Fiscal Year 2020, VBA resumed in-person examinations nationwide, and earlier this Fiscal Year expanded the use of VHA in-person examinations. VBA and our partners continue to work closely to expand examination capacity and plan to return to normal working inventory levels of about 140,000 examinations by the end of this fiscal year.

We are working other actions to reduce the claims inventory. As you are aware, the pandemic also limited our ability to obtain Federal records, which are critical in deciding disability claims. VA proactively engaged in NARA for solutions to add additional shifts, including nights and weekends, to reduce the number of requests by 90 percent, and as a result, as of April 11, 2021, VBA is now under our pre-pandemic working inventory level, 8,700 issue requests—it is about 2 days' working time for us.

VBA will use part of the funding authorized by the American Rescue Plan to support improvements in claims processing and appeals, including expanding Federal record scanning to reduce claims processing delays resulting from paper requests maintained by NARA and other Federal records custodians.

Not all the challenges we face are related to the pandemic. Under a recent court order, VBA must readjudicate over 62,000 Blue Water Navy claims. These claims were added to the inventory in April. In addition, we are about to begin processing claims for the three new Agent Orange presumptive conditions mandated by Congress, of bladder cancer, Parkinsonism, and hypothyroidism. We have seen a slow decrease in the backlog over the last couple of months, but these new issues, and a continued rollover of claims currently in the inventory, will see a short-term spike in backlog this summer.

Despite the additional employees and overtime funds we have provided, the backlog will hit a peak this August, when the remaining Blue Water Navy claims I talked about a moment ago roll over into the backlog. Then we will see a slow but steady decline, week over week, through the end of Fiscal Year 2022, where we will be at about 100,000 claims.

VBA is keenly aware that not all claims are alike, and some claims, notably MST, require additional focus and handling in an accurate and compassionate manner. We have made sustainable improvements in MST claims processing, including eliminating the requirement for unnecessary phone calls that would retraumatize veterans, increased quality checks and improved training for MST claims processors.

But there is more to do here. We are in the process of centralizing all MST claims into five regional offices, and will be done later this fiscal year. This centralization will deliver the higher-quality, more consistent decisions that are so important in these types of claims.

Chairman Tester, Ranking Member Moran, this concludes my testimony, and I am happy to respond to any questions the Committee may have.

Chairman TESTER. I appreciate that. I am going to start out by asking you a question I just asked my staff member. What is the backlog today?

Mr. MURPHY. 191,700, as of this morning.

Chairman TESTER. And you expect it to peak in August, at what number?

Mr. MURPHY. We are not certain on that, sir. It should be somewhere in the 225,000 to 240,000 range, depending on how things go between now and the end of summer.

Chairman TESTER. Okay. And then you said it will decrease at the end of 2022, it will be at 100,000?

Mr. MURPHY. Yes, sir, that is correct.

Chairman TESTER. And so the question becomes, in your position, have you looked at any ways to get it reduced quicker?

Mr. MURPHY. Yes, sir. We are looking at ways. We are looking to leverage some technology, scanning of records, presenting evidence in different ways. We have digitized our entire world, and we are doing well with that but there are ways we can do better with it. So leveraging through some contracting, scanning, and indexing files.

Then we have the biggest lift that we can get today is tied back to getting veterans to show up and get examinations. We are today sitting on 58,000 claims where veterans have opted not to show up, for safety reasons, and that is fine with us. But we are contacting those veterans, reaching out continually, saying, "You have been immunized. Please come in and have your examinations."

Chairman TESTER. And those numbers are going up with people seeking care right now, pretty dramatically.

Mr. MURPHY. Exactly.

Chairman TESTER. So I just want to give you an opportunity to highlight the work that you have done, because you have done some good work over the last year. And I do not want to be—you know, the pandemic has forced people to work in different ways, and VBA is no exception. The National Archives struggled to keep up with the demand for service records. Your team stepped in to help them. Under Secretary, could you tell us how VBA supported the National Archives to be able to deliver benefits to veterans more quickly?

Mr. MURPHY. Yes, sir. I would be happy to. The inventory we have at the National Archives was in that 9,000 to 10,000 range of awaiting records requests, and then the National Archives closed back last March and the inventory quickly grew. We got to the point where we were right around 100,000 claims. I sent Mr. Clark, sitting right here to my left, over to the National Archives to have some conversations with them, and they were running a straight

Monday-through-Friday operation with just 10 percent people at that time.

We had conversations with them, and instead of running straight shifts they switched to shorter shifts, 6 hours apiece, and ran two shifts a day. And then they added Saturdays and Sundays on top of that. We made an offer to them to transfer overtime funds through the appropriate channels to make it all legal, to do whatever we could to help them have access to. And as a result, over a couple of months process, we went from that close to 100,000 down to the working inventory that we had in the middle of April.

So the fastest way for a veteran today to get your records is come to us, go through your service officer or come to us directly, and file a claim or get a records request. We are getting that turned around in just a couple of days. At the same time, we know that NARA is sitting on several hundred thousand records requests that come through other sources, but we have been prioritized because we are taking care of veterans.

Chairman TESTER. So as I pointed out in my opening Statement, VHA, when in-house examiners cannot meet the demand, they use contractors—VBA uses contractors, when VHA in-house examiners cannot meet demand. The GAO found that “VBA has not fully applied sound planning practices to its increased use of contract disability medical examiners,” and that is a quote. Coordinating between VHA and VBA sounds like something that requires sound planning practices. So, Under Secretary, who in VA works with VBA and VHA to assure that the right mix of contract and in-house examiners exists, over a fiscal year?

Mr. MURPHY. Mr. Dave McLenachen, who runs our medical exam contract on the VBA side, works with Toby, sitting to my left here, on the VHA side. They are run through a central distribution system and they are assigned where we have capacity. VHA tells us we have this capacity in these locations, our contractors tell us where their capacity is in those locations, and that work is distributed, regardless of VHA or VBA—excuse me, our contractors or VHA, where the capacity is to get the veteran in to get that examination as quick as possible.

Chairman TESTER. Okay. So, Secretary Murphy, for certain exams, like PTSD connected to military sexual trauma, be conducted by VHA professionals at VHA facilities where veterans can be immediately connected with the resources that they need?

Mr. MURPHY. I would not object to that being the case, but I do not see that it is a necessary step. I think the training program, the requirements, the credentialing that we have, the quality of the examination you can get from one of our contract providers is equivalent to what you can get in VHA. There may be other things that are more beneficial, that are more advantageous to the veteran if they were to have it in a VHA facility, such as other support requirements, but in terms of is it medically necessary for us to get a valid evaluation, the answer would be no.

Chairman TESTER. Okay. Senator Moran?

Senator MORAN. Chairman Tester, thank you. First of all, you raised the topic of the National Archives. I thought Secretary McDonough had a good idea to allow vaccines to be utilized at the National Archives to get their staff vaccinated, to get back to work

to advance the cause of getting the records to VBA. The National Archives declined to do so.

Senator Tester and I sent a letter. I am not suggesting that as a result of that letter they changed their mind, but they changed their mind. And I want to publicly indicate that it was a smart decision, a wise decision, and I appreciate the Archives doing what it can do to get its employees vaccinated so that veterans can benefit from the records that are now hopefully more available to them.

Let me ask just a few questions, and maybe Senator Tester covered a bit of this, how VHA and VBA work together to develop short-and long-term strategy to identify exam workload needs and how to meet those needs through VHA and contract examiners. I am trying to figure out what is the plan into the future. What analysis have you done that puts you on a path to more speed and greater accuracy?

Mr. MURPHY. We do a forecast. For example, we are working on the 2023 budget now, 2024 budget. In order to come up with that budget number we have to start with what are the number of claims we have today, what are we going to have in 2022, what are we going to have in 2023, and that model tells us, this is the type of claim—and it is very complex modeling—what types of condition, what era of veteran are we talking about. And you break it down, World War II, Korea, Vietnam, all the way to the present date. All of that model is shared with VHA to say this is what we see coming in the door, demand from veterans, and VHA incorporates that into their planning, and it also drives their health care. You said a moment ago, Mr. Chairman, that we are the entry point. This is how you get in the VA.

So we know they are coming. We share that with VHA. And with that comes a demand on what types of examinations we are going to need, because it all starts with a disability claim.

Now back that up to how does that tie to medical examinations. The answer comes back to it is tied to capacity, where does VHA have capacity and where does the VBA have capacity with our contractors. And by the way, they are very curious about those same numbers, because it tells us what kind of work they are going to be seeing from us. And we are very specific on their performance indicators in terms of timeliness and quality. So they are very interested in those numbers as well.

But I do want to point out one very important thing. We are in the middle of a pandemic, the back end of a pandemic hopefully, that is a 100-year event. And while it is a bad thing to have our backlog double, it has only doubled, based on what we had. And that includes us shutting down for 5 months. We have got to the point here, we have got a fairly quick recovery here. Our contractors are providing in excess of 45 percent more exams per day than we were, and VHA has more than doubled the capacity of examinations they are doing.

The point is this. Through leveraging what we have in VHA, and tie that with our contractors, we are able to quickly recover from this and get all of our veterans through in a fairly expeditious manner. It can never be fast enough—I get that—but it is going

fairly well, and I am seeing very large increases week over week in the number of examinations we are doing.

Senator MORAN. Thank you. What do those numbers, that analysis, show? What are the predictions for volume?

Mr. MURPHY. You mean the volume for the number of examinations? I can tell you the number that I am working off of, which is a weekly average, rolling 7-day. I am looking for a number north of 45,000 examinations per week, just from the contractors and then VHA on top of that.

Senator MORAN. And demographics and other factors indicate in the future the demand for those exams is going to what?

Mr. MURPHY. It is going to increase as the claims continue to grow, year over year.

Senator MORAN. And the claims grow year over year, aside from the backlog they grow year over year because of what factors?

Mr. MURPHY. We are putting more veterans on our rolls, and then current conflict, where it is at today. As veterans age we know that they come back for increases, and new conditions get added to that. So we are seeing a growth, and it is actually playing out very accurately to what we were thinking.

And if we had this hearing just a couple of years ago I would be talking about the 1.1 millions claims we just did, but today we are talking about the 1.5 million claims we are going to do this year, or the 1.6 million next year. And just to be sure those are very rough numbers, so please don't hold me to it—you said 1.6, please—but I am trying to illustrate a point to you that there is a continued growth. We know what it is. We know what area it is. We share that with our contractors and with VHA.

Senator MORAN. Part of that answer, that paragraph answer, was, I think, that the modeling is working. Your estimates turn out to be accurate?

Mr. MURPHY. Yes, sir. That is correct.

Senator MORAN. Okay. Last—well, I guess it is 2 weeks ago, not last week—two weeks ago we held a hearing, a legislative hearing here, to discuss bills pending before this Committee. One of those bills was the Ensuring Survivor Benefits During COVID-19 Act of 2021. VA testified in opposition to that bill. That bill would require the VA to seek a medical opinion in case of any veteran whose death certificate lists coronavirus as the cause of death but who had an underlying service-connected disability, which was complicated, further complicated because of COVID-19.

Here is my question. Would you agree that with an unprecedented pandemic like we have seen that there is a possibility that without legislative change, veteran surviving families would not receive the same benefit they would have received if they had died as a result of their underlying service-connected disability had COVID-19 not been a factor?

Mr. MURPHY. Senator, looking at this with a 30,000-foot view, meaning I do not know the details of the bill you are talking about—

Senator MORAN. Understood.

Mr. MURPHY [continuing]. and your Statement there today, I would say yes, I would agree with that, that the potential exists for that to happen. But again, the devil is in the details, and—

Senator MORAN. I am not asking you to endorse a bill.

Mr. MURPHY. Thank you. That is what I was trying to say.

Senator MORAN. Particularly one that the VA did not endorse. But, I mean, common sense or something tells us that there is a consequence. Are you doing anything to ameliorate the differences that could occur on what is a death by an underlying cause versus COVID-19?

Mr. MURPHY. Yes, we are, and I am having some brain fog here, because I just had a conversation on this very topic, and the death was COVID as a result of an underlying condition. So the COVID accelerated that person's passing, and you pass of whatever condition it is that you had, accelerated by COVID. That makes it service connected.

So there is certainly, as things develop, as we get smarter about COVID and what it does to veterans, and the impact that it has, we are still in the very early stages of when do those COVID as a result of whatever condition. And just like we do with presumptives and others, I see a future where the two are connected, and it makes my process easier and better for veterans. So there is some opportunity for let's make this process better down the road.

Senator MORAN. Thank you, sir. Thank you, Mr. Secretary.

Chairman TESTER. So here is what we are going to do. Senator Boozman is on his way.

Senator MORAN. Okay.

Chairman TESTER. I do not want to shut Senator Boozman off of any of these panels, because he is a very active member of this Committee. So what I am going to do, unless you have more questions, and if you do you can continue to ask them, I am going to go into recess, because I have got to go vote in Commerce.

Senator MORAN. You are going to go vote in person?

Chairman TESTER. I have to, because of quorum needs. Otherwise I would not. So if you want I can put this into recess. If you are going to stay here you can take the gavel, call it back in for Boozman, and then—

Senator MORAN. Do we have any Senators waiting?

Chairman TESTER. I have none online. And it is kind of good of Boozman to come. Otherwise, you would have the easiest time of any panel ever in front of this Committee.

Look. No, John Boozman is a thoughtful guy, and if he has questions we want to try to accommodate him. And then we have got votes at 3:30. I am going to try to get back here.

Senator MORAN. So my suggestion is that Senator Boozman, he arrives, gavels the meeting back in—

Chairman TESTER. Sure.

Senator MORAN [continuing]. I will go vote on the floor, get that first vote done—

Chairman TESTER. Perfect.

Senator MORAN [continuing]. and then come back while you are voting.

Chairman TESTER. You know, that is why you are the Ranking Member of this Committee.

Senator MORAN. It is why I should be the Chairman of this Committee.

[Laughter.]

Chairman TESTER. Now come on. I did not go that far. By the way, just so you guys know, he was plotting against me out in the hall before I got here.

Senator MORAN. I really wasn't plotting against you.

Chairman TESTER. So we will go into recess. Smoke them if you have got them, guys.

[Recess.]

SENATOR JOHN BOOZMAN

Senator BOOZMAN. [Presiding.] Well, thank you all for being with us, and I apologize for being late. We have had long votes, and there is just lots going on today that really is important. So thank you for bearing with us, and we really do, like I say, appreciate you being here. We appreciate Chairman Tester and Ranking Member Moran having the hearing on this so, so very important subject.

When the pandemic first hit over a year ago, many services at the VA had to be suspended for safety of our veterans and the VA staff. This created barriers for veterans who wished to receive a C&P examination and apply for disability compensation. To help address this issue, we worked closely with the members on this Committee to provide the authority for the VA to enhance their capacity to conduct C&P exams and to return the backlog number back to pre-COVID numbers as soon as possible.

I am happy to hear that the VA is using its new authority to address the backlog and schedule veterans for exams. Thank you all for your incredible work in that regard. We work so hard, as a Congress, and then you all implementing it such that we got things kind of under control, and then about the time we get under control to help veterans we give you additional work with things like the Blue Water Navy and the this and the that. So all of that is great, but it does create extra work. And then on top of that we had the pandemic, where, you know, people could not come in, or you all could not staff up like we did.

So it is great that we are returning to some normalcy and we do appreciate not only your efforts but your staff that have done a tremendous job through all of this. So be sure and give them a big pat on the back.

Mr. Murphy, your testimony includes several important steps to reduce the disability claims backlog. It includes a temporary increase in VHA C&P exam capacity and working closely with the contract examination providers to increase examination capability. In my State of Arkansas, more than 1,500 veterans were waiting for a C&P exam. While veterans in my State appreciate the effort, what are we going to ensure the accuracy and quality of the contracted providers conducting the C&P exams is more than adequate?

Mr. MURPHY. There are three layers of quality checks that go into the examination, so we will start with that one, and the first one is the contractor themselves, because of the nature of the contract, if their quality goes down there is a financial penalty that comes with that. So each one of them has a built-in, in-house quality review that checks it before they give it to us.

Second, they give it to us, and then we do, just like we do with the star process in our decisions, we do random sampling across all different lines, all types of exams, statistically valid sampling, and then that is the measure that we use to hold their accountability.

And then the third part of it is, it sits in front of a rater, and then that is more of a practical application is, is the evaluation complete? Does it have everything I need in here to make a rating decision? And, by the way, the answer to, when it gets to the rater, it is 98 to 99 percent of the time they can make a rating decision off of that.

So there are multiple layers inside the process that checks the quality piece. And when you are dealing with contractors, they are accountable to dollars. They understand our mission, they are driving, they are doing good things for veterans, but they understand I have to have quality because it will hit me financially if I do not, and that is written right into the contract.

Senator BOOZMAN. Very good. Effective April 3d, as we talked about earlier, in 2020, the VBA suspended all in-person C&P exams due to the pandemic. The VA rightfully offered veterans the opportunity to wait for an in-person examination due to risk of infection and held their claims as non-actionable.

Now that in-person examination capacity is gradually returning back to pre-COVID levels, is the VA or its contracted vendors doing anything to contact those veterans about appearing for their C&P exams, and does the VA have enough trained staff to handle the backlog of exams?

Mr. MURPHY. We absolutely have enough trained staff to handle the backlog. Our chokepoint is the exam itself. We had a record chokepoint and we fixed it. Now it is the veterans showing up for the examination themselves. And just to put a number on it, that number nationwide is 58,000 veterans who have elected not to come in and get their examination done. We do not know if it is for COVID reasons or for other reasons. It does not really matter. We are in the middle of this pandemic and we will deal with it accordingly, and we will give veterans a great deal of latitude.

So now that we know a great deal of them have been vaccinated—there are phone calls, there are letters, there is social media accounts saying, “Please come in now. We are open. We would like to do your examination today. Please contact your provider or the VA and we will get you scheduled at the soonest possible time.”

Senator BOOZMAN. Very good. As of last week, the VA—and this is a good report—reported over 191,000 veterans’ C&P claims were backlogged. While the number is certainly trending in the right direction, it is still double the size of the pre-COVID backlogs, for the reasons that we talked about. Is there anything more—and I will really open this up to you and anybody else that wants to comment—is there anything more that Congress can do to authorize the VA to expedite the claims process to ensure veterans are receiving benefits in a timely manner?

Mr. MURPHY. Senator, Congress has been very generous with us, in terms of people, resources, dollars, overtime. The AARP gives us \$150 million to do scanning, so that we can have the records in our hands and digital before it is needed. It gives us the \$100 million

we needed in additional overtime money, so when veterans show up to do their examinations I have the capacity to flex up to handle that, which is why I can say, with a very high degree of confidence, that the 100,000 at the end of Fiscal Year 2022. I do need to put a caveat on that. That is in today's environment. So I know we are talking about toxic exposures and other presumptives. Any of those presumptives comes in then we need to go back and recalculate, and then all bets are off.

Senator BOOZMAN. Right. Very good. Very good. Well, we appreciate you guys so much, and so we should recess again. Again, I apologize for the inconvenience and the running back and forth. The only thing we have got to do while we are here is vote. So you all are important, but that is even more important. So I am going to run and do that. And so while we do that, then we will be in recess for a little bit longer.

Mr. MURPHY. Thank you, sir.

Senator BOOZMAN. Thank you.

[Recess.]

Chairman TESTER. [Presiding.] So—no, I am going to leave us out of order for a second, because I met Moran in the hallway and he said he about 35 minutes' worth of questions for you guys, and I talked him down. I talked him down. But we will call the hearing to order. I just want to thank you guys. We are done. You got the easiest damn hearing in VA history. Okay? Don't ever count on this happening again.

Senator MORAN. Secretary Murphy, you were so impressive.

Chairman TESTER. Yes, we could not stump you, and even if—

Mr. MURPHY. You are going to make me legendary in VA with this one, you know.

Chairman TESTER. Exactly right. And you go back and tell McDonough, "Hey, baby, this is the way you run a hearing."

[Laughter.]

Chairman TESTER. So thank you guys. I will let you guys go and we will bring up the next panel. And while they are hitting the tables and we are changing nametags, I will explain who we are going to be talking to. But thank you, gentleman. I appreciate it very, very much. And as usual, if other Committee members—and there were not many here today—if they have questions we will be forwarding them on and hopefully you guys can get back in a timely manner. OK?

Mr. MURPHY. Absolutely, sir. Thank you.

Chairman TESTER. Okay. That does conclude our first panel. It is clear that VBA still faces challenges, but we will hear now from GAO and veteran service organizations about particular issues with the disability compensation process.

I want to first introduce Elizabeth Curda—a little drumroll, Elizabeth—and Elizabeth is the Director of Education, Workforce, and Income Security at the GAO, Government Accountability Office. She is remote, exactly.

Then we have Ryan Gallucci, who is Director of National Veterans Service at the Veterans of Foreign Wars; and somebody who is a regular guest at our Committee, Shane Liermann, who is the National Deputy Legislative Director at DAV. Finally, also from DAV, we have Carmen McGinnis, the National Service Officer.

Ms. Curda, you are here virtually, I believe, and so you have the floor.

PANEL II

STATEMENT OF ELIZABETH CURDA

Ms. CURDA. Thank you, Chairman Tester, Ranking Member Moran, and members of the Committee. Thank you for inviting me to discuss our work on VBA's use of contract medical examiners and processing of complex disability claims.

The Department of Veterans Affairs often uses medical exams to determine if disability benefits are warranted. This work has increasingly shifted from VA medical centers to contractors, who performed about 77 percent of the 1.4 million exams completed last year.

Today I will discuss VBA's progress in implementing our 2018 recommendations on contract medical examiner oversight and training and the impact of COVID-19 on VA disability workloads. I will also discuss our recent findings and recommendations on VBA's planning for the shift of its medical exam workloads to contractors and how VBA reviews the quality of contractor work on exams for complex claims.

In 2018, we identified issues with VBA's oversight of contract examiners, including a lack of reliable and up-to-date performance data. VBA reported to us last month that it has implemented a new data team and tools to enhance its performance monitoring and ensure proper exam invoicing. We have requested documentation from VBA to assess whether its newly established tools are sufficient to implement our recommendations on VBA's use of performance data.

Further, VBA has yet to implement a system to verify that all contractors have taken required training and to collect feedback on training quality, as we recommended. VBA says it has plans to implement an online training system this year and will continue to perform periodic audits of training in the meantime.

While VBA has been transitioning to contract examiners for several years to help with workloads, the COVID-19 pandemic created new challenges and contributed to an increase in VBA's claims backlog. We reported in January on how VBA made adjustments to allow contractors to perform more exams virtually, and later ramped up in-person exams.

In our March 2021 report, we found that VBA has not fully applied sound planning practices in transferring most disability exams from VHA medical centers to contractors. Specifically, VBA has not fully identified goals and established a strategy, coordinated and communicated with stakeholders, and conducted a risk assessment.

In terms of goals and strategy, VBA has Stated that it has been VA's policy to transfer most exams to contractors while maintaining some VHA capacity. However, VBA has no documented plan with activities and timelines to achieve this balance. It is unclear to us whether the shift in exams has been in response to a VA-wide strategy or the decisions of individual medical centers that have been seeking to reduce or eliminate their exam workloads.

Regarding coordination, VBA meets frequently with VHA officials and contractors to discuss short-term exam workload needs, but has not consistently communicated its long-term plans with exam providers and stakeholders. Additionally, VBA has not conducted a risk assessment.

As was previously noted, VBA has yet to fully implement recommendations related to the oversight of contract examiners. Further, more than half of medical centers have sought approval to transfer some of their exam workloads to contractors, and the pandemic has placed new demands on all examiners. A risk assessment would help VBA proactively identify and manage risks and lessen their impact.

We recommended that VA use sound practices to develop a VA-wide plan for the future distribution of exam workloads. Such a plan would clearly identify actions and timeframes, could inform all exam providers of VA's common expectations for exam services, reduce uncertainty, and unify VA toward a common goal.

Finally, regarding processing complex claims, such as those for traumatic brain injury, military sexual trauma, and Gulf War illness, both GAO and VA's Office of Inspector General have reported in the past on challenges VBA has had processing such claims, including issues related to the exams for these claims. In our most recent work, we found that VBA claims processors returned exam reports for these types of complex claims to contractors for correction or clarification at about twice the rate as exam reports overall. Time spent revising exam reports can result in longer wait times for veterans. We recommended that VBA conduct targeted reviews of exam reports for these types of claims to identify areas where contractors may need more training or guidance.

In summary, in these challenging and uncertain times, our recommendations can help VBA improve contractor oversight and develop robust plans for how it will allocate future exam workloads.

This concludes my prepared Statement, and I will be happy to address your questions.

Chairman TESTER. Thank you, Director Curda. Next up we have Ryan Gallucci from VFW. Ryan, you have the floor.

STATEMENT OF RYAN GALLUCCI

Mr. GALLUCCI. Thank you, Chairman Tester. Chairman Tester, Ranking Member, Moran and members of the Committee, thank you for the opportunity to provide the VFW's insight on the State of VA disability claims processing.

COVID-19 had a devastating effect on many aspects of American life. VA had to make difficult decisions in how to handle claims, and advocates like the VFW had to overcome unprecedented challenges to serve our clients.

The VFW leveraged VA resources and other technology to continue providing quality representation throughout the pandemic. When we could no longer meet with veterans face to face, collaborative VA innovations like virtual hearings, remote access to information systems, electronic submission modalities, consideration of private telehealth records, and others allowed our work to continue uninterrupted. So let's keep the momentum going and work together to overcome persistent hurdles like antiquated IT

credentialing processes and PDF-based systems to build a seamless digital process.

In the record, I wrote in detail about technology appeals modernization and how VA measures success. My goal today is to reinforce these themes but to also invite a constructive dialog on solutions.

First, the time has come to rethink how will VA measure success. VSOs want VA to provide veterans with timely access to benefits, but VA consistently measures itself on the speed with which it processes decisions. Timely access to benefits and speedy decisions are very different things. For something to be considered timely it must be useful. If a speedy decision fails to confer accurate benefits, it is not timely.

Since Community Shinseki set the 125-day goal, VA has seemed obsessed with the benchmark, to the detriment of the veteran experience. In my written testimony, I described in detail one veteran whose experience did not match VA's picture of success. Due to hasty work, the veteran waited more than 8 months for the benefits he deserved. VFW had to help this veteran file for the benefit three separate times, due to processing mistakes. The veteran received two erroneous decisions and grew understandably frustrated. Plus, the veteran did not receive his accurate benefits until the new year, potentially forfeiting significant State-level benefits for 2020.

But VA's metrics will not reflect this experience. By VA's standard, three decisions were processed in an average of 90 days, exceeded the 125-day standard. We are measuring the wrong things and calling it success, which is why we need to come together to better define what success looks like. The VFW speculates that veteran satisfaction is critical to demonstrating success. Unfortunately, there is little publicly available data from VA on what veterans actually think. VFW collects some of this information from claims we serve on military installations, and it is generally favorable to VA. But during COVID it has gotten worse, with 22 percent of our clients reporting that they intend to appeal their decisions, since March 2020. VA needs benchmarks, and speed is a component of timeliness.

VA also needs to evaluate accuracy to identify deficiencies. However, these do not necessarily reflect satisfaction or timely delivery of benefits. Whether it is long drives on short notices for exams, elimination of rating review, unreasonable employee production burdens, or restrictive AMA regulations, the VFW worries that many decisions are intended to improve speed but not veteran experience.

We view the claims process as a social determinant of health. As the gateway to many VA programs, the claims experience sets the tone for how veterans will engage with VA in the future. We need to look at all VBA programs in this context, study them, report on them, and pivot where we need to.

Next, VA needs to come back to the table on AMA. When we negotiated this landmark reform, VA pledged to work with VSOs on process improvements. However, when we pointed to critical flaws over the last couple of years, our concerns were dismissed. In one meeting, VA told VSOs that our recommendation to ease form re-

quirements would make it harder for VA to build its report to Congress.

I said it then and I will say it now: I don't care about VA's reports to Congress. I care about VA's timely delivery of benefits to veterans. I imagine the Committee shares this sentiment, which is why you asked for the reports in the first place. Those reports need to mean something. If a process is built to serve VA at the expense of the veteran, we are failing.

VA should propose new regulations on intent to file and ease form restrictions that allow VA to reject certain substantially complete applications on a self-imposed technicality. VA told us, in 2019, they would draft new ITF regulations, but abandoned that last summer. If VA will not address these issues, we ask the Committee to act and clarify the intent of AMA.

Finally, toxic exposure reform remains the VFW's top legislative priority. While VA may ask for more time, the time is now. Vietnam veterans are still waiting for benefits. Meanwhile, we are approaching 20 years since the first American staged at Karshi-Khanabad. The problem is not how Secretary McDonough may choose to leverage his authority on presumptives, but the inconsistency with which it can be leveraged by past and future Secretaries. This needs to change, and we look forward to working with this Committee and our partners at VA for this overdue reform.

COVID has forced us all to rethink priorities and how we serve veterans. As we rebuild from the pandemic, we have an opportunity to meet the moment through collaborative reforms. We look forward to constructive conversations with our partners at VA and this Committee to know what has happened.

This concludes my remarks, and I am eager to answer any of the Committee's questions.

Chairman TESTER. Ryan, I apologize. Thank you very much for those remarks. We appreciate them. Next Shane Liermann from DAV.

STATEMENT OF SHANE LIERMANN

Mr. LIERMANN. Chairman Tester, Ranking Member Moran, and members of the Committee, on behalf of DAV's more than one million veterans who have wartime service-related wounds, injuries, diseases, and illnesses, we thank you for the opportunity to offer our view on the State of the claims processing during and after the COVID-19 pandemic. As you know, DAV represents over one million veterans in the claims and appeals process.

Mr. Chairman, the pandemic has negatively impacted VA's ability to process veterans' claims and appeals, contain questionable policy changes, and has dramatically increased the backlog of pending claims. While VA is actively addressing the issues created by the pandemic, we are concerned that VA policy decisions are too often not focused on the non-adversarial veteran-centric nature of the claims and benefits process.

In March 2015, VA standardized all claims and appeals forms to allow them to streamline, scan, and automate parts of the claims process. However, this policy change can take months of entitlement from veterans, and does not provide them with timely access to their earned benefits.

For example, if a veteran submits a claim or appeal on the wrong form it may take VA months to review and advise the veteran the claim will not be accepted because it was submitted on the wrong form. Additionally, VA does not consistently notify the veteran which form should have been used and does not provide the correct form to the claimant to file. Thus, when a veteran does file the correct form, they can lose months of entitlement, as VA does not accept the claim submitted on the wrong form as a claim submission or as an intent to file, even though the exact same information may have been provided by the veteran on both forms.

DAV and our VSO partners have addressed this issue directly with VBA several times, and unfortunately they are not willing to make changes, nor are they able to tell us how many veterans have been impacted by this process.

While serving as the VA Administrator, General Omar Bradley Stated, "We are dealing with veterans, not procedures, with their problems, not ours." Veterans need VA to focus on this problem, not VA's procedures that have cost veterans months of earned entitlement.

During the pandemic, VBA made policy changes like this one that do not seem to be in the best interest of veterans, such as the elimination of the VSO 48-hour pre-decisional review and the removal of publicly available disability benefits questionnaires, or DBQs. We would like to point out that VBA has been openly collaborating with VSOs in reference to providing a mechanism to address errors found in decision. The claim's accuracy review or CAR pilot program is in the early stages, and while we remain very optimistic, VBA has made it clear that the 48-hour review will not return.

We also would like to thank this Committee for their actions on Public Law 116-315, which required VA to again make all DBQs publicly available.

Mr. Chairman, we raise all of these issues as the pandemic has contributed to VA facing over 350,000 pending exams, 500,000 backlogged record requests with the National Personnel Records Center, and nearly 200,000 claims pending over 125 days. If you throw in the 35,000 pending Blue Water Navy claims and the addition of the new Agent Orange presumptive diseases, it is apparent that VA has a difficult path ahead.

In 2010, VA established a goal of adjudicating claims within 125 days, and anything pending over that is considered backlogged. While we applaud VA's commitment and their ability to reduce the claims backlog in 2016, we are more concerned with veterans receiving timely, accurate decisions than VA meeting their own arbitrary goal of 125 days.

In a 2018 OIG report, it was found that VBA's prioritization of its own backlog resulted in delays in processing other claims, even if they were older and required rating decisions.

Mr. Chairman, with the increased number of pending claims and VA's difficult task ahead, we want to ensure that VA policy decisions are focused on timely and accurate adjudications of veterans' claims, not just meeting VA's performance metric of 125 days.

This concludes my testimony, and I look forward to any questions you and the Committee may have.

Chairman TESTER. Thank you, Mr. Liermann. Next up, also from DAV, is Carmen McGinnis, virtually. Carmen?

STATEMENT OF CARMEN MCGINNIS

Ms. MCGINNIS. Chairman Tester, Ranking Member Moran, and members of the Committee, thank you for holding this important hearing to discuss the claims process and experience of survivors of military sexual trauma. I am proud to have served in the Marine Corps, enlisting on September 11, 2001. I served honorably in Afghanistan and other locations abroad, but my service was marred by the actions of another. I am before you today because I am an MST survivor. Though I will carry that scar for life, I have also found great purpose and fulfillment in my life.

Today I work for DAV, helping ensure my fellow veterans are able to access the care and benefits they have earned. I have filed countless claims for MST survivors and fought alongside them on their journey through the daunting claims and appeals process. VA must work to make the claims process for MST survivors more compassionate, respectful, and focused on the best interest of the veteran.

The VA's Benefits and Health Administrations have a clear disconnect when it comes to MST. VA's website states, "You don't need documentation of MST experiences or a VA disability compensation rating to get care." While we applaud this veteran-first approach to care, the message from VBA seems to be "we don't believe you," a message confirmed by the frequent denial of claims related to MST, despite the recent acknowledgment of DoD Secretary Austin that "Sexual assault and harassment remain persistent and corrosive problems across the total force," and nearly 7,000 reports of sexual assault reported by servicemembers in 2019 alone.

VBA continues to focus efforts on identifying markers in a servicemember's record to prove an assault, despite the fact that many assaults still go unreported and have for decades. In contrast, if a veteran served in a combat zone but did not receive a combat award, it is an enough for them to claim that they feared for their life. I expect, if asked, many MST survivors would report they feared for their lives. I certainly did.

While DAV believes it is important to protect the integrity of the claims process, the current evidentiary requirements are incongruent to the reality of the climate of assault we know exists in the military. As such, DAV supports lessening evidentiary burden for MST cases to more closely align with what is currently required for combat veterans.

Mr. Chairman, the VA claims process for MST-related conditions can be cold, impersonal, and is often carried out with very little compassion for the dignity and humanity of a survivor. VA has attempted to standardize this process, but let me be clear—no sexual assault is standard. VA needs to recognize that MST survivors often feel shame, and that the event was somehow their fault, and they are not believed. When VA sends a development letter to the veteran who has already presented all the information necessary to concede a stressor, these feelings are reinforced.

The language used by VBA in communications to survivors of MST is important and should be viewed from the perspective of the

veteran, not just the VA. We recommend consulting with health care experts specializing in sexual assault to ensure language used in letters to veterans is not inflammatory or impersonal.

Likewise, we believe changes should be made to improve coordination between VBA and VHA to ensure veterans filing an MST-related claim are aware that mental health services are available, despite the status of their claim. These cases should automatically initiate a communication to the veteran providing direct contact information for VBA and VHA MST coordinators and information on what services are available to them.

As a service officer, I appreciate that VBA has made changes to how MST cases are processed. In fact, as of May 3, 2021, VBA has directed all MST claims be consolidated and processed through five designated regional offices. Due to the complexity of these cases, this change makes sense. Denial of these claims often occurs because claims processors have not been properly trained to recognize possible markers linked to MST in the treatment records. For accurate and timely adjudication of these claims, there must be sufficient staffing levels, consistent and continuous training, along with continued oversight.

In closing, VA recently published a blog entitled "VA Believes in Survivors of Military Sexual Trauma." It is not enough for VA to say they believe in survivors but then deny their claims. VA simply must be do better. It is time to unify VA's believe in survivors across the entire Department and put the best interest of veterans at the heart of its approach to improving this often devastating and painful process.

Mr. Chairman, this concludes my testimony, and I am happy to answer any questions you or the members of the Committee may have.

Chairman TESTER. Well, I want to thank you for your testimony. I want to thank all the folks who testified for their testimony. I am going to start. If Senator Moran comes back I will kick it over to him.

What I wanted to start with is you, Director Curda, and I want to thank you for joining us. We rely heavily on you for your non-partisan expertise, and I am glad you are with us today.

Your team recently published a report that found that VA still has a lot of work to do when it comes to oversight and planning of contract examiners. Director Curda, we are told VBA and VHA coordinate contract examination strategies. Did your study find that that coordination is sufficient?

Ms. CURDA. Sure. We found that VBA and VHA were coordinating on short-term workload management, and I think that was what Acting Under Secretary Murphy was referring to in terms of holding weekly meetings to communicate between VBA and VHA on disability exam needs. And additionally, they have developed a process for VHA medical centers to request the transfer of exam workloads to VBA contractors, which is giving contractors some lead time to increase capacity, if needed.

However, regarding the bigger picture and the longer term, it remains unclear to us to what extent VA's shifting exams from VA medical centers to VBA contractors is based on an agency-wide

strategy versus changes in individual medical center capacity and decisionmaking.

For example, officials we interviewed from the medical centers said that they were receiving fewer exam requests than they had indicated that they had the capacity to do in VBA's exam routing tool. In addition, VHA Stated that all medical centers are required to maintain some exam capacity. However, many VA medical centers have already transferred some or all of their disability exam workloads to contractors, and VA has not determined or communicated what the exam capacity is needed systemwide and for individual medical centers.

To address uncertainty among disability exam providers and other stakeholders about future workloads, VBA should coordinate with VHA to develop an agency-wide, long-term strategy that includes input from all relevant stakeholders. Without such coordination on long-term planning, each VA entity may make decisions in their own silos without identifying capacity levels that make sense for the system as a whole.

Chairman TESTER. Okay. And I don't want to say something different than what you just said, but from a long-term workload planning standpoint, you think that the coordination is not sufficient.

Ms. CURDA. Correct.

Chairman TESTER. Okay. And that—and I am just kind of repeating back what you said—and that is because they are focused on the short-term workload, or is it because of another reason?

Ms. CURDA. They do appear to coordinate on a day-to-day basis on, you know, what exams need to be done right now. But what concerns us is, as of this year to date, the contractors are now performing 90 percent of exams, and a lot of medical examiners we spoke to were not aware that the capacity was shifting to mostly contractors.

And so we just think that the coordination and communication across the two areas could be greatly improved.

Chairman TESTER. All right. Thank you.

You brought up complex claims, like traumatic brain injury, military sexual trauma, Gulf War illness. Are there others?

Ms. CURDA. There certainly could be others. These are the ones that we focused on in our report, specifically, because they had previously been identified as challenging, either by us or by VA's Office of Inspector General.

Chairman TESTER. I have got you. So the question I have is what makes a claim complex?

Ms. CURDA. Sure. So these are claims that auditors such as ourselves, or the OIG has found there were problems in performing these exams, and VA itself requires specialized training, so that is another way of looking at it.

So, specifically, we focused on those three areas. Other areas that could be considered complex, that we did not look at, would be something like PTSD. The VA OIG recently identified issues with VBA's processing of those claims more broadly.

But regarding the complexity, it really varies for each claim type. So, for example, with the Gulf War illness claims, they often involve what are called undiagnosed illnesses and unexplained,

chronic, multi-symptom illnesses of unknown cause. These are very specific terms with legal requirements. And if a provider provided a medical opinion in cases when a service connection should have been presumed, that could lead to an inaccurate denial of benefits, and that is something that a doctor, you know, typically is trained to provide a medical opinion, and so in some cases they are not supposed to, so that can be confusing.

In contrast, evaluating military sexual trauma is complex based on the sensitive nature of the exams and challenges identifying potential supporting evidence in the veteran's records.

Taking a closer look at exam reports for these complex claims is important, because VBA data suggests that contract examiners may find completing these exam reports more challenging than for other more routine exams, and we found that claims processors returned exam reports related to these types of claims at twice the rate as for exam reports overall.

Chairman TESTER. Okay.

Ms. CURDA. So having to return those exam reports to examiners for rework slows down processing the veteran's claims, which mean the veteran is waiting longer and there is a potential for an inaccurate exam report that could affect the veteran's rating.

Chairman TESTER. Thank you much. I have more questions and I am going to come back to them, but I understand Kyrsten Sinema is on virtually. Senator Sinema, you can go.

SENATOR KYRSTEN SINEMA

Senator SINEMA. Thank you, Chairman Tester, and thank you to Ranking Member Moran for organizing this hearing, and thank you to our witnesses for your continued efforts to support veterans and their families and for your participation today.

My first question is for Mr. Liermann. My office has received a number of inquiries from Arizona veterans regarding the use of disability benefits questionnaires. In some cases, veterans who submit DBQs are required to schedule compensation and pension exams by the VA. In other similar cases, the VA accepts the DBQs and does not require C&P exams. So we have got veterans who have contacted us and they are frustrated. They see this as the VA applying the DBQ policy inconsistently.

So in your testimony you identified some of the challenges of the removals of DBQs. With their reinstatement, are you seeing inconsistencies in how the VA considers DBQs when adjudicating a claim?

Mr. LIERMANN. Thank you, Senator. Great question. We kind of look at that, or refer to that as overdevelopment. If there is a DBQ submitted by the veteran that fulfills the requirements for that evaluation or for VA to provide a decision, there is no need for VA examination if that information was provided. If that DBQ did not provide the right information, then yes, they could request an additional VA examination.

But to your point, we have been seeing this for years in the veterans community. I know VFW, as well as us and other organizations representing veterans, have seen this as a consistent problem, that even if the veteran is providing that information, they are still requesting the exams, overdeveloping it, and causing delays in

other cases. And then in some instances, they will take VA's requested exam information over what the veteran provided because that examiner had access to the entire file, so they will give more weight to the VA exam than to the private medical evidence, or DBQ, that the veteran submitted. And you are absolutely correct—it is frustrating and a problem.

Senator SINEMA. So are there steps that should be taken to ensure the use and consideration of DBQs are more standardized? What can be done?

Mr. LIERMANN. Thank you, Senator. What we recommended in our written testimony was VA should have a tracking mechanism for that. Every time the veteran submits a DBQ along with a claim, VA should be tracking those and then be able to determine at what rate are they asking for additional examinations and for what reasons. That might help identify, potentially, a training problem within VSRs, or are VSRs requesting additional or more information. Because when you look at it, by them continuing to do that, if it is not needed, they are wasting time, money, and delaying veterans access to their benefits.

Senator SINEMA. Thank you.

Mr. Gallucci, could you answer the same question that I posed to Mr. Liermann?

Mr. GALLUCCI. Thank you, Senator. Yes, to provide a little bit more to what Shane was talking about, I think what may have been happening could also be the product of some of the circumstances of COVID-19. So what we recognized under COVID-19 is that in VA's benefits processing manual there was a bar to considering private medical evidence acquired via telehealth. VA could not consider that for rating purposes if it came from a private doctor.

Thankfully, VA did pivot, but they made the change to the manual only in March. It was something that VSOs like VFW and DAV were advocating for. It is a positive, veteran-centric change, but I am concerned that potentially veterans in Arizona, whose private medical evidence may have been acquired via telehealth prior to that processing change, did not have their evidence considered, regardless of what form it may have been on.

Senator SINEMA. Thank you. Now this question is for both Mr. Liermann and Mr. Gallucci. The VA discontinued use of DBQs last year because of a growing concern of fraudulent practices. So in your opinion, was this warranted, and if so, with the reinstatement of Dabs what steps should the VA or Congress take to mitigate potential fraudulent practices?

Mr. LIERMANN. Thank you, Senator. There was an OIG report that came out that made reference to potential fraud on DBQs. However, they never proved fraud. There was no actual proof in any of the information that fraud was actually committed.

And then the other side of that, the OIG report also made several recommendations that VBA could implement before just discontinuing the DBQ forms. However, they chose not to take any of those recommendations and pivoted right to discontinuing DBQs, and then it really created this inequity, because veterans represented by VSOs, such as VFW and DAV, we would still have access to the DBQs behind VA's firewall and could provide that to the

veterans we represented. Unrepresented veterans had no access until Congress brought those back and they are now available, and that was also a huge part of the problem.

Mr. GALLUCCI. Senator if I may respond. I know we are a little bit over time. But with regard to that question, there are really two parts to that. First, the VFW read that IG report very differently than VA did, and similar to what Shane said, we saw it as a problem with veterans acquiring questionable medical opinions. We think this is a growing problem during the pandemic.

Unfortunately, there are organizations that will charge fees that are out of line with what VA allows under the law and help veterans acquire medical opinions of questionable value. We know that this is a problem that VBA is looking at. It is something that is very serious. Fortunately, VA has the options to weight medical evidence, evaluate whether it was a treating physician.

It is a conversation that the VSOs do need to have again with VBA and consistently followup, to make sure that they are weighing it properly. We have seen some examples where VA determines that the private medical evidence was not from a treating physician, but the record demonstrated otherwise, as in the veteran was treated by that doctor for a long period of time.

It is a complex issue. We are very eager to have more conversations about this, though, because I think it is something we can solve and something that we need to solve.

Senator SINEMA. Thank you. Mr. Chairman, thanks for your indulgence. I know my time has expired. I appreciate you. Thank you.

Chairman TESTER. Absolutely. Thank you. I have question for Carmen McGinnis, who is virtually here as a testifier.

Ms. McGinnis, I want to thank you for your service to our Nation and I am thankful that you are here today. Your experience with the process of filing your specialty or complex claim for surviving military sexual trauma is going to help Congress and it is going to help this Committee and the VBA improve the support for other veterans.

So, Ms. McGinnis, please tell us about your experience with the disability compensation process, and what we can do to improve it for other survivors.

Ms. MCGINNIS. Thank you. There are a few things the VA can do to better support MST survivors. One is lowering the evidentiary standard. Second would be to revise the development letters and ensure veterans have the direct contact information for their local MST coordinator in VBA and VHA, and that they are made aware of the medical benefits that might be available to them through these MST coordinators.

Also implementing a mechanism where a claimant can elect to have a male or female provider for their MST-related claim and examination. This was in line with Public Law 116-315 and it has not been implemented to date. Also ensuring claims processors are well trained and properly overseen, keeping in mind the perspective and feelings of the survivor, and not rushing a claim through a standardized process.

All of those would be top priorities for DAV concerning MST claims and what I think the VA could do to better support MST survivors.

Chairman TESTER. Well, I appreciate that input. Thank you.

Mr. Liermann, thanks again for being here. There were issues with the disability claims process prior to the pandemic, and your written testimony provides several examples of how the process is not veteran focused. So, Mr. Liermann, you wrote that disabled veterans could lose months of entitlement if they fill out the wrong form. Would you flesh that out a little bit?

Mr. LIERMANN. Absolutely. Thank you, Senator. If a veteran submits a claim, let's say, for example, what is called the VA Form 526, which is like a formal claim, they submit that today. Four months from now, the VA will notify them, "You already claimed that issue 10 years ago. That is the wrong form." So they will send that notification to them in the mail. Not in every instance will they tell them the correct form they need to use, or even provide it to them.

So by the time the veteran then figures out what is the correct form, they have already lost 4 months or more of an effective date, because VA will not accept an incorrect form as an informal claim submission or an intent to file and protect that effective date. So by the time the veteran then figures it out, they have potentially lost four to 6 months, if not more, of months of entitlement.

Chairman TESTER. Okay. Well, I just want to thank all of you for being here today, GAO, the VSOs, VA officials, all of you for being here today. Millions of disabled vets rely on the VBA. We must remember that veteran-focused claim process emphasizes quality and fairness and not speed at all cost. And I would just add to that, I talked to the Secretary today, and I think he firmly believes that, and I believe you do too. And so I appreciate that.

Furthermore, disabled veterans with specialty claims need particular oversight from VBA. The Committee will certainly provide oversight for that, to make sure that will happen, to the best of our ability.

So on that note we will keep the record open for 1 week. If there are questions that come in we will forward them to you. Hopefully you can get them returned in a timely manner.

I apologize. Normally we have got a ton of people here. This is a very, very important issue. But as I said at the very beginning, it has been a crazy damn day, and I have got to gavel out right now. Otherwise they will close out the vote and I will not get a chance to vote.

So I just wanted to thank you all for being here. This hearing is adjourned.

[Whereupon, at 4:44 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

STATEMENT OF
THOMAS J. MURPHY, ACTING UNDER SECRETARY FOR BENEFITS
VETERANS BENEFITS ADMINISTRATION (VBA)
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE

"SUPPORTING DISABLED VETERANS: THE STATE OF CLAIMS PROCESSING
DURING AND AFTER COVID-19"

May 12, 2021

Chairman Tester, Ranking Member Moran and Members of the Committee: Thank you for the opportunity to testify today about the current state of VBA and our efforts to continue providing the benefits and services Veterans deserve during the unprecedented COVID-19 pandemic. Joining me today are Willie Clark, Deputy Under Secretary for Field Operations, VBA, and Toby Mathew, Chief Officer, Office of Disability and Medical Assessment, Veterans Health Administration (VHA).

State of VBA Claims Processing

VBA's core responsibility is to ensure Veterans, their families and survivors have timely access to their earned VA benefits. Within weeks, following the onset of the pandemic, VBA seamlessly transitioned to a virtual environment and continued to provide benefits and services to Veterans while ensuring the safety and well-being of both Veterans and employees. The success in continuity of service to Veterans while operating in a mass telework environment stems from VBA's already flexible telework policy and a long-standing commitment to information technology modernization and digitization efforts.

In response to the national emergency on March 13, 2020, VBA transitioned to maximum telework. Despite a changing environment, VBA remained focused on delivering excellence for Veterans. In fiscal year (FY) 2020, VBA topped 7,000 claims completed in a single day on 18 occasions, a third of which (6) occurred after the national emergency declaration. VBA is serving more Veterans and families while improving the accuracy of completed disability claims. The issue-based quality rate in the last three months reached 96%. VBA has shown a .54% uptick in quality from February 2020 to February 2021.

VBA has also focused on improving service levels across our entire portfolio. Since March 2020, VBA has placed emphasis on drawing down the inventory and average days pending (ADP) of the "Not-Rating Inventory." Below are the achievements made between March 31, 2020, and April 21, 2021:

- Overall, Not-Rating Inventory reduction of 51% (from 379,014 to 185,340) with a reduction in ADP by 32% (from 179 days to 121 days).
- Accrued claim inventory reduced by 81% (from an inventory of 13,215 to an inventory of 2,464) with a reduction in ADP by 50% (from 367 days to 182 days).
- Freedom of Information Act/Privacy Act inventory reduced by 56% (from an inventory of 100,780 to an inventory of 44,576) with a reduction in ADP by 37% (from 159 days to 100 days).

- Initial survivor pension inventory was reduced by 78% (from an inventory of 17,247 to an inventory of 3,841) with a reduction in ADP by 49% (from 100 days to 51 days).
- Survivor Burial inventory was reduced by 81% (from an inventory of 31,163 to an inventory of 5,811).
- Hospital adjustment inventory was reduced by 96% (from 5,549 to an inventory of 208) with a reduction in ADP by 82% (from 197 days to 36.4 days).

VBA regional offices (RO) that can reopen have done so, with nearly all providing public-facing services, to include allowing Veterans to participate in hearings with the Board of Veterans' Appeals judges. Additionally, VBA's National Contact Centers (NCC) focused all available resources to ensure Veterans had access to assistance during the pandemic. From March 1, 2020 – March 31, 2021, the NCC answered over 7.5 million calls, with an average speed to answer of 29 seconds and an abandoned call rate of 1.59%. This performance showed a marked improvement from the previous fiscal year.

- FY 2020 through 3/31/20: 3.2 million calls answered with an average speed to answer of 6 minutes and 22 seconds and an abandoned call rate of 11.76%.
- FY 2021 through 3/31/21: 3.6 million calls answered with an average speed to answer of 25 seconds and an abandoned call rate of 1.26%.

VA Home Loan Guaranty (LGY) Program

The COVID-19 pandemic required VA to temporarily adjust policies and issue guidance to ensure Veterans, stakeholders and employees had the necessary tools and information to ensure program continuity. During FY 2020, LGY guaranteed over 1.2 million loans (including an all-time high of 428,000 purchase loans) for \$375 billion, a 100% increase over FY 2019. VA is on pace to achieve another record-breaking year, guaranteeing nearly 1 million home loans fiscal year to date. VA also assisted over 110,000 Veterans at risk of falling further behind on their mortgage payments, which could ultimately lead to foreclosure, to retain their home or avoid foreclosure this fiscal year. Additionally, over 1,200 Specially Adapted Housing grants have been approved to modify Veteran homes to help them live more independently.

In February 2021, VA collaborated with other Federal housing programs and agencies to ensure a consistent federal approach to assist borrowers who were financially impacted by the COVID-19 pandemic. For example, an interagency workgroup coordinated extensions for forbearance requests and moratoriums on eviction and foreclosure. Additionally, VA worked with other Federal housing agencies and the Consumer Financial Protection Bureau to publish fact sheets and launch a comprehensive website for COVID-related housing assistance and resources to include information about the Coronavirus Aid, Relief, and Economic Security Act

VA Transition Assistance Program (TAP)

Despite the challenges of COVID-19, from the beginning of FY 2021 to April 20, 2021, VA conducted 791 Benefits and Services briefings for TAP (732 in-person briefings and 59 briefings via our instructor-led virtual delivery platform), completed 15,930 one-on-one engagements and now has full operational capacity to offer virtual Benefits and Services briefings at installations worldwide. For the same period of FY 2019 through April 2019 (prior to

the pandemic), we conducted 3,660 Benefits and Services briefings and 43,435 one-on-one engagements. For FY 2020 through April 2020, we conducted 2,851 Benefits and Services briefings and 38,833 one-on-one engagements. Additionally, VA continues to provide support to transitioning Service members, newly separated Veterans and their families through the online Women's Health Transition Training, Personalized Career Planning and Guidance Tele-counseling, virtual Economic Development Initiatives and VA Solid Start.

COVID Relief for GI Bill Students

From the beginning of COVID-19, VA has worked with Congress to preserve GI Bill benefits for those students impacted by COVID-19. In the Spring of 2020, P.L. 116-128, P.L. 116-140 (Student Veteran Coronavirus Response Act of 2020) and section 5202 of P.L. 116-159 (Continuing Appropriations Act 2021 and Other Extensions Act) were enacted. These laws gave VA temporary authority (from March 1, 2020, through December 31, 2021) to pay education benefits and Monthly Housing Allowance payments to GI Bill students at the higher in-person training rate when a student was forced to convert to online learning solely due to COVID-19. Furthermore, P.L. 116-315 (Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020) further extends COVID-19 relief through various authorities to continue to pay benefits based on a student's enrollment status prior to the pandemic and providing other assistance that helps to minimize the impact of COVID-19 on a student's educational benefits and goals.

Veteran Readiness and Employment (VR&E)

Due to the COVID-19 pandemic, VR&E Service transitioned to using tele-counseling and telephone contact to continue to provide case management services. Since the start of the pandemic (March 2020) through April 2021, VA has completed over 175,630 tele-counseling appointments. VA continues to offer tele-counseling services to Veterans who prefer this option. Additionally, P.L. 116-140 allowed VR&E Service to extend periods of services for the 18-month limitation of employment services and extend beyond of the 12-year eligibility termination date.

Outreach, Transition and Economic Development (OTED)

In response to the pandemic, VBA transitioned to virtual outreach in March 2020 and conducted over 2,900 outreach events (93% virtual); reaching over 173,000 Veterans and receiving over 1,560 VA benefit(s)/health care claims through December 2020. In the first quarter of FY 2021, VBA completed over 1,030 outreach events (93% virtual) reaching over 108,000 and interacting with nearly 14,000 Veterans while receiving over 1,000 VA benefit(s)/health care claims. From March 1, 2020 through December 31, 2020, the VA Solid Start program reached more than 71,000 newly separated Veterans. During these conversations, VA Solid Start representatives provided information on a wide variety of VA benefits and services.

Claims Processing

The pandemic has created delays in VA's ability to reach decisions on Veterans claims, resulting from our inability to obtain Compensation and Pension (C&P) examinations and Federal records, which are critical evidence necessary to decide disability claims. As of April 2021, approximately 65% of the total claims inventory is awaiting an examination and 10% is pending Federal records. VBA is making every effort to process as many disability

compensation claims as possible during the pandemic and will not deny a claim due to the pandemic-related inability to complete in-person exams or receive Federal records.

VBA is committed to ensuring all claims received during the pandemic are processed timely and accurately and fulfill our duty to assist. For example, VBA issued guidance to all RO claims adjudicators that the COVID-19 pandemic is considered a “good-cause” basis to grant extensions of time limits to submit claims documents, reschedule a hearing or reschedule a C&P medical examination. VBA also provided multiple avenues to conduct formal hearings, such as substituting an informal conference in lieu of a formal hearing for legacy appeals and providing virtual hearings as a substitute for formal hearings for both claims and legacy appeals.

VBA has also implemented temporary date-of-receipt policies for claimants affected by COVID-19. Traditionally, VA considers the date for benefit entitlement to be the date the claim is received by VA. However, in response to delays in mail processing during the COVID-19 pandemic, VBA issued temporary guidance that, for the purpose of determining the date of benefit entitlement, any correspondence addressed to VA will be considered received on the date of the postmark affixed by the United States Postal Service (or other mail delivery service).

C&P Examinations

Effective April 3, 2020, VBA suspended all in-person medical examinations to protect the safety and health of both VA employees and Veterans. VBA also revised its claims processing procedures to allow Veterans the opportunity to wait for an in-person examination, and they are assured that no final action will be taken on their claim until an in-person examination can be completed. Currently, there are over 58,000 non-actionable exams because Veterans have not yet elected to appear for their C&P examinations.

To minimize the impact on Veterans, VBA completed as many virtual examinations as possible utilizing telehealth technology and VA's Acceptable Clinical Evidence (ACE) process. VBA issued guidance to expand the use of ACE and increased the eligible examination types from 19 to 34 examinations for virtual completion using telehealth technology. These changes enabled VBA contract examination providers to complete 114,749 ACE examinations and 110,746 tele-C&P examinations during the pandemic, since April 2020. The changes made to virtual exam services will continue beyond the COVID-19 pandemic, and these alternative examination modalities will remain as permanent options for examination when appropriate.

VBA has proactively engaged with its contract examination providers and VHA to establish a plan to safely resume in-person examinations. On May 28, 2020, VBA implemented its plan to resume in-person examinations in phases according to local risk assessments, and by the end of FY 2020, had resumed these examinations nationwide. VBA continues to work closely with VHA and our contract providers to expand their examination capacity to help return to a normal working inventory of about 140,000 examinations by the end of this fiscal year.

Federal Records

In addition to the impacts on examinations, the pandemic also affected VBA's ability to receive Federal records required to process claims. The National Archives and Records Administration (NARA) facilities, including the National Personnel Records Center (NPRC), reduced operations, thus limiting capacity and affecting VBA's ability to receive Federal records. NPRC continues to process records requests related to burial benefits and emergency cases. VBA continues to leverage the use of all records in its custody to verify military service

exposures and stressor events. However, by law, VBA is still obligated to research other records for any verification of service. VA proactively engaged NARA for solutions to add additional shifts, including on weekends, to reduce the number of requests by 90% and as a result, as of April 11, 2021, VBA is now under our pre-pandemic working inventory. Additionally, VA offered COVID-19 vaccinations to NARA employees to support their safe return to work and expedite requests for Federal records.

Reducing the Disability Claims Backlog

VBA is working to address the large increase in its backlog through several ongoing actions. Notable steps already taken include:

- Allowing a temporary increase in VHA C&P examination capacity, to include tele-C&P, ACE reviews and in-person examinations;
- Working closely with the contract examination providers to increase examination capability, while ensuring that Veterans remain safe;
- Utilizing virtual methods to resolve and mitigate delays to development actions; for example, subject to a Veteran's consent, VBA provides virtual hearings for Veterans and their representatives to present argument on the Veteran's claim; and
- Working closely with NARA on solutions to expedite requests for Federal records required to process claims for benefits.

VBA's efforts will also be focused on the following:

- Ensuring Veteran safety and well-being. VBA will continue to hold claim decisions if Veterans do not yet feel safe to report for an examination, which may increase the volume of claims in the backlog.
- Ensuring VBA processes claims that can be worked without examinations, to include many re-adjudications required by a court order (the *Nehmer* court order) for Blue Water Navy Veterans.
- Leveraging Congress' recently expanded entitlement to disability compensation for Veterans suffering from bladder cancer, Parkinsonism and hypothyroidism; deeming these disabilities presumptively caused by Agent Orange exposure. VBA has already begun working these claims.

VBA is starting to see progress in its backlog reduction. As of May 8, 2021, VBA's claims backlog is 191,647, which is a 9.6 % improvement over the end of January 2021 when the claims backlog was about 212,000. VBA estimates the backlog will increase to the mid-200s by the end of the summer due to Blue Water Navy *Nehmer* court order claims. VBA's request for additional employees in the FY 2022 budget includes 429 employees who will directly support claims processing, to include the *Nehmer* and new Agent Orange claims, in response to continued growth in our programs. While these employees are needed to sustain long-term claims processing requirements, they require up to two years of training and experience to achieve an acceptable level of proficiency. Overtime hours worked by experienced staff will be critical to the FY 2022 performance.

By the end of FY 2022, with the above workload assumptions and existing resources, including the \$100 million Coronavirus Aid, Relief and Economic Security transfer, VBA anticipates having a backlog of about 100,000 disability claims. This estimate accounts for the anticipated increased examination production from the contract examination providers, resulting in a reduction of examination inventories to normal levels and the aggressive reduction of Federal records requests by the end of the fourth quarter of FY 2021. The continued "rollover" of claims in inventory that age over 125 days, coupled with claim receipts from the three new presumptive conditions and the requirement to re-adjudicate a large volume of Blue Water Navy claims under the *Nehmer* court order will cause the claims backlog to hit an apex in August 2021 before it begins to reduce.

VA appreciates the \$272 million authorized by the "American Rescue Plan Act of 2021" to support improvements in claims processing and appeals. As part of the funding, VBA will expand the scope of Federal record scanning, which will further reduce claims processing delays resulting from paper record requests maintained by NARA and other Federal records custodians. VBA is also prepared to process more claims in FY 2022, due in part to an additional \$100 million to fund overtime. VBA will continue to prioritize backlogged claims due to the pandemic, *Nehmer* re-adjudication efforts and claims for the three new Agent Orange presumptive conditions. By the end of FY 2022, with sustained improvement to the evidence supply chain (C&P examinations and Federal records), VBA aims to meet the Secretary's goal of reducing claims pending over 125 days to approximately 100,000.

Specialty Claims

Military Sexual Trauma. VBA is committed to serving Veterans by processing claims related to Military Sexual Trauma (MST) in an accurate and compassionate manner. VBA continues to place special emphasis on MST-related claims and the Veterans experience in VBA's adjudication of these claims during the pandemic. There are designated female and male MST Outreach Coordinators assigned to each RO that provide outreach, resources and assistance to Veterans seeking benefits based upon MST. Additionally, VA launched a national outreach effort during Sexual Assault Awareness Month to inform Veterans of free counseling and treatment being offered by VA for mental and physical health conditions related to MST.

In November 2018, VBA mandated that only specialized groups of trained Veterans Service Representatives and Rating Veterans Service Representatives who have demonstrated high quality standards process these high priority and complex claims. VBA continues to highlight the importance of MST claims processing during national training, as well as business line and leadership conferences. VBA made sustainable improvements in MST-related claims processing, including eliminating the requirement for potentially unnecessary phone calls that could re-traumatize Veterans; mandating the use of quality checklists with every MST-related claim; improving training for MST claims processors, and continued quality reviews of MST cases through special focused quality reviews, which are used to develop annual training. VBA is in the process of centralizing this important work to five ROs in May 2021. By October 1, 2021, VBA will implement an MST Remote Operation to streamline operations and ensure tighter control and accountability for MST claim decisions. In this phase, MST claims processors will be remotely assigned to an MST division, and work will be assigned to them from the centralized site.

Toxic Exposures. During the pandemic, VBA continued processing claims based on toxic exposure. Consistent with the overall claims inventory, VBA has seen similar delays in

these claims due to delayed in-person C&P examinations and Federal records. For some medical conditions that develop after military service, the information needed to connect these conditions to military service may be incomplete. Information may be needed about specific in-service exposures, or there may be incomplete scientific or medical evidence as to whether an exposure causes a particular condition. VBA is committed to a full review of how it provides benefits to Veterans exposed to environmental hazards. VA believes it is possible to find the balance between the needs of Veterans and the need for an evidentiary scientific basis for action and is moving with a sense of urgency to do so.

Conclusion

Despite the global pandemic, VBA has remained dedicated to serving Veterans and their families. We are able to serve more Veterans than ever before with our strategic telework plans and digitization of records. VBA will continue to deliver accurate and timely benefits to Veterans. Chairman Tester, Ranking Member Moran, this concludes my testimony. I am happy to respond to any questions you or the Committee may have.

United States Government Accountability Office



Testimony
Before the Committee on Veterans'
Affairs, U.S. Senate

For Release on Delivery
Expected at 3:00 p.m. ET
Wednesday, May 12, 2021

VA DISABILITY EXAMS

Actions Needed to Improve Program Management

Statement of Elizabeth Curda, Director,
Education, Workforce and Income Security



Chairman Tester, Ranking Member Moran, and Members of the Committee:

Thank you for the opportunity to discuss our recent review of the Department of Veterans Affairs' (VA) planning and oversight efforts regarding its disability medical exam workloads. In 2018, VA issued contracts worth up to \$6.8 billion over 10 years' duration to private disability medical exam providers, according to Veterans Benefits Administration (VBA) officials. These exams help VBA evaluate claims from veterans seeking disability benefits for service-connected and other disabilities.

In recent years, we have issued several reports on VBA's contract exam program as the program has expanded in size and scope. We reported in March 2021 that VA has increasingly relied on VBA contracted examiners to perform disability exams—instead of staff at Veterans Health Administration (VHA) medical centers—and that various restrictions have been eliminated regarding the types of exams that contractors may perform, according to VBA officials.¹ Accordingly, the number of exams performed by VBA contract examiners increased from roughly 180,000 in fiscal year 2012 to 1.1 million in fiscal year 2020. This total represented more than three-quarters of the 1.4 million exams performed in fiscal year 2020. GAO also reported in 2018 on issues with VBA's oversight of contract medical examiners, and VBA has not yet fully implemented the recommendations from our 2018 report.²

My statement today summarizes our findings related to (1) VBA's planning for allocating disability exam workloads among VBA contractors and VHA medical centers, and (2) how VBA assesses the quality of exam

¹For example, as discussed in more detail below, VBA now permits contractors to perform exams for complex claims such as those for Gulf War Illness. For our March 2021 report, see GAO, *VA Disability Exams: Better Planning Needed as Use of Contracted Examiners Continues to Grow*, [GAO-21-444T](#), (Washington, D.C.: March 23, 2021).

²For example, we reported that VBA did not have data to reliably verify whether contractors charged the correct amount for exams completed. See GAO, *VA Disability Exams: Improved Performance Analysis and Training Oversight Needed for Contracted Exams*, [GAO-19-13](#) (Washington, D.C.: Oct. 12, 2018).

reports for certain complex claims.³ My testimony is based primarily on our March 2021 report.

For our March 2021 report, we reviewed documents and guidance from VBA and VHA on their efforts to manage the disability exam workload after the contract exam program was expanded in fiscal year 2017. We also interviewed officials from VBA's Medical Disability Examination Office, VBA's three contract exam providers, VHA's Office of Disability and Medical Assessment, selected VHA medical centers, and associated Veterans Integrated Service Network oversight offices. We also assessed how VBA plans and coordinates with VHA and contractors regarding exam needs and capacity by comparing VBA's planning activities with GAO-identified sound planning practices. In particular, we focused on whether VBA had (1) identified goals and a strategy for achieving them, (2) developed activities and timelines, (3) coordinated and communicated with stakeholders, and (4) conducted a risk assessment.⁴ We also reviewed fiscal year 2019-2020 VBA data to compare the rates at which VBA claims processors returned exam reports for correction or clarification for different exam types, and we interviewed VHA medical examiners about challenges in performing exams for certain complex claims. More information on our scope and methodology is available in our March 2021 report. Our work was performed in accordance with generally accepted government auditing standards.

Background

VBA's Use of Contractors to Perform Disability Exams

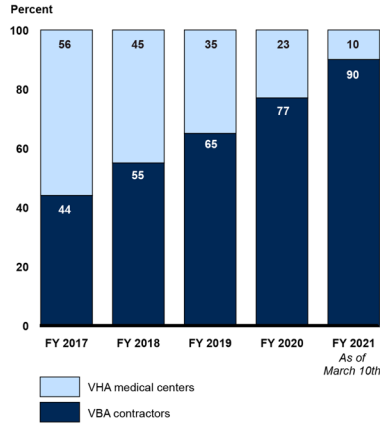
VBA has used contract medical examiners to perform disability exams in some capacity for more than 20 years. In 2014, federal law authorized VBA to expand its pilot program to use contractors for disability exams

³In this testimony, we use the term "exam reports" to refer to disability benefits questionnaires completed by medical examiners as part of their assessment of each medical condition claimed by the veteran.

⁴For information on these GAO-identified sound planning practices, see, for example, GAO, *VA Disability Compensation: Actions Needed to Address Hurdles Facing Program Modernization*, [GAO-12-846](#), (Washington, D.C.: Sept. 10, 2012) and GAO, *VA Disability Benefits: Improved Planning Practices Would Better Ensure Successful Appeals Reform*, [GAO-18-352](#) (Washington, D.C.: Mar. 22, 2018).

across all of its regional offices starting in fiscal year 2017.⁵ Since then, VBA contractors' share of the disability exam workload increased each year from about 44 percent in fiscal year 2017 to about 90 percent in fiscal year 2021 (see fig. 1).⁶

Figure 1: Shares of Disability Exam Workload Performed by VBA Contractors and VHA Medical Centers, Fiscal Years 2017-2021



Source: GAO analysis of Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) data. | GAO-21-543T

Note: Contractors performed a small number of VHA exams in fiscal year 2017 under VHA-managed contracts, according to VHA data.

VA also removed restrictions that previously excluded contract examiners from performing some types of disability exams, such as those related to claims for exposures to environmental hazards and some exams related

⁵Pub. L. No. 113-235, div. I, tit. II, § 241, 128 Stat. 2130, 2568. Prior to this authorization under federal law, VBA's contract exam pilot program allowed 10 VBA claims processing offices to order exams from contractors.

⁶Contractors performed a small number of VHA exams in fiscal year 2017 under VHA-managed contracts, according to VHA data.

to Gulf War Illness, according to VBA officials. In addition, 62 of VHA's 140 medical centers received provisional approval to transfer some of their disability exam workloads to VBA contractors between the start of fiscal year 2017 and March 2021, according to VHA.⁷

2018 GAO Report on
VBA's Oversight of the
Contract Exam Program

In 2018, we made four recommendations related to VBA's contract exam program, which VBA has not yet fully implemented as of May 2021.⁸

For example, we reported that VBA had limited information on whether contractors who perform disability exams were meeting the agency's quality and timeliness targets and recommended that VBA:

- Develop and implement a plan for using data from its new medical exam management system to (1) assess contractor timeliness, (2) monitor time spent correcting exams, and (3) verify proper exam invoicing.
- Regularly monitor and assess aggregate performance data and trends over time to identify higher-level trends and program-wide challenges.

We reported in 2019 that VBA had hired additional staff to get up-to-date on completing quality reviews that VBA uses to help assess whether contractors are meeting quality and timeliness targets.⁹ Further, in late April 2021, VBA stated that it had implemented its plans for using performance data by developing a team that monitors trends in contractor performance and produces daily snapshots of a variety of performance indicators. VBA also stated that it has implemented a financial audit process that allows it to validate monthly contractor invoices. We requested additional documentation from VBA on its newly established data monitoring efforts and financial audit process to assess whether its efforts to implement our recommendations are sufficient.

To improve its oversight of contractor training, we also recommended in 2018 that VBA:

⁷According to VHA officials, VHA requires medical centers to maintain at least some capacity to conduct disability exams, including for exams that are excluded from the contracts or that VHA is required to conduct.

⁸GAO-19-13.

⁹GAO, *VA Disability Exams: Opportunities Remain to Improve Oversight of Contracted Examiners*, GAO-19-715T, (Washington, D.C.: Sept. 19, 2019).

-
- Document and implement a plan to verify that contract examiners have completed required training.
 - Collect information from contractors or examiners on training and use this information to assess training and make improvements as needed.

VBA has taken some steps to address issues GAO identified with VBA's oversight of contract examiner training requirements, but has not yet fully implemented our recommendations. VBA reported that it signed a contract in February 2021 with a public health organization to develop an online training system to enhance its verification of all examiner training, and will use the new system to obtain feedback and enhance training content. VBA officials said the agency expects to implement the training system this year. In the meantime, they said the agency will continue to periodically audit a sample of examiner training records.

VBA Has Not Applied Sound Planning Practices in Transferring VHA Exams to Contractors

To help ensure that VBA is effectively managing its significant shift from VHA examiners to VBA contractors and that the agency is well-positioned to respond to potential disruptions to exam capacity in the future, we made a recommendation in our March 2021 report that VBA use GAO-identified sound planning practices to develop and document plans for allocating disability exam workloads. Applying these practices could help resolve uncertainty about future disability exam workload allocations (discussed below) and help ensure that VBA is prepared to manage risks related to its increased reliance on contract examiners as well as potential future disruptions to disability exam operations.¹⁰

We reported on the following four planning areas that VBA could improve.

Goals and strategy. VBA officials said that the agency's intention, as of March 2021, was to continue using contractors to meet most of its disability exam needs, while also maintaining some level of exam capacity at VHA medical centers. However, VBA had not documented a strategy to achieve this balance. Additionally, VBA had not yet

¹⁰More broadly, we have also identified the need for VA to improve planning related to its disability claims and appeals processing, and VA has taken some steps to improve. For example, we reported in our 2021 High-Risk Report that VA had identified six root causes contributing to lengthy appeals processing time frames and had addressed one root cause by redesigning its appeals process. See GAO, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas*, [GAO-21-119SP](#) (Washington, D.C.: March 2, 2021).

determined the extent to which it will be able to rely on existing VBA contractors to meet future capacity needs.

Further, it is unclear the extent to which VBA's exam allocation decisions take into account VHA medical center capacity to perform exams. For example, VBA contract exam program officials and VBA contractor officials told us they allocate exam workloads based on individual medical center capacity indicated in the exam routing system. However, staff at two VHA medical centers told us that VBA had been sending them fewer exam requests than they had the capacity to handle. Having a clear, documented strategy could help address such uncertainty and ensure that entities across VA share a common goal.

Activities and timelines. In 2016, VBA and VHA developed a transition plan that outlined a month-to-month timeline and a target date of July 2017 for transferring VHA exam workloads to VBA contractors. Though this transition is still ongoing, officials said they were not aware of any reassessment of the plan to establish new planned activities and timelines, which could help inform agency and disability exam provider actions going forward. A VBA official said that developing a timeline during the pandemic is challenging, but that they could consider it following the pandemic. Without a timeline, it may be challenging for VBA to ensure that all disability exam providers are operating with the same expectations regarding the allocation of disability exam workloads.

Coordination and communication. VBA and VHA officials meet weekly to discuss disability exam workloads, according to officials. Although VBA and VHA officials indicated in January 2021 that they had been working together since 2016 to transfer the bulk of VHA exam workloads to contractors, most officials we interviewed from VHA medical centers and VBA regional claims processing offices stated that they were not aware of an official plan.

VBA officials also said they meet monthly with contractors to discuss ongoing operations and performance. Contractor officials acknowledged that these meetings are helpful, but also said that having longer-term projections from VBA regarding workload needs would be beneficial.

Though officials from all three VBA contractors said they could continue to expand their exam capacity, better coordination and communication—including providing contractors with more information about future workload expectations—could help ensure that contractors can meet VBA's needs and performance targets.

Risk assessment. VBA has not assessed the risk of its increased use of contract examiners. VBA officials said the agency has managed potential risks by pursuing a slow transition and that following the pandemic it will assess the risk of transferring more VHA workloads to contractors.

However, VBA's current lack of a risk assessment is concerning because we identified issues in 2018 with its contract exam program oversight, and because VBA previously identified contractor performance issues that resulted in the termination of two of its five contractors. Moreover, with nearly half of VHA medical centers shifting disability exam workloads to VBA contractors, it may be challenging for them to ramp back up in the future should the need arise. The pandemic has also placed unexpected demands on the capacity of current VBA contract and VHA disability examiners to perform exams, according to officials.¹¹ VBA has also faced a surge in workloads related to changes in eligibility for certain claims, such as Blue Water Navy claims from veterans who served in the offshore waters of the Republic of Vietnam for illnesses linked to Agent Orange exposure.¹² A risk assessment could help VBA identify and manage potential risks before they cause disruptions to disability exam operations.

Exams for Complex Claims Need Further Assessment

Historically, VBA has had challenges in processing certain complex claims due, in part, to problems with the disability exam reports for these claims. In particular, prior GAO and VA Office of Inspector General reports identified issues with VBA's handling of claims for traumatic brain

¹¹In our January 2021 report on the CARES Act, we reported on how the Coronavirus Disease 2019 affected VBA contract exam workloads. See GAO, *COVID-19: Critical Vaccine Distribution, Supply Chain, Program Integrity, and Other Challenges Require Focused Federal Attention*, GAO-21-265, (Washington, D.C.: Jan. 28, 2021).

¹²The Blue Water Navy Vietnam Veterans Act of 2019 extended the presumptions of herbicide exposure and service connection for certain veterans who served on vessels off the coast of Vietnam. Pub. L. No. 116-23, § 2(a), 133 Stat. 966, 966-967. The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 added three conditions (bladder cancer, hypothyroidism, and Parkinsonism) to the list of those presumed to be service connected for certain veterans who served in Vietnam. Pub. L. No. 116-283, § 9109, 134 Stat. 3388, 4785 (2021).

injury, military sexual trauma,¹³ and Gulf War Illness.¹⁴ Mistakes with these claims—either by claims processors or due to inconsistency in exam reports—could have led to incorrect decisions on veterans' claims. Over the years, both GAO and VA's Office of Inspector General have recommended that VBA improve its training or guidance to ensure that these claims are processed properly. VBA has implemented many of these recommendations and currently requires specialized training for claims processors and medical examiners.¹⁵

Nevertheless, in March 2021, we reported that VBA could do more. Specifically, we recommended that VBA develop a process to assess the quality of exam reports completed by contractors for complex claims. For example, VBA could periodically conduct special focus reviews of completed reports for claims that involve traumatic brain injury, military sexual trauma, and Gulf War Illness.

Based on available VBA data on the frequency with which claims processors returned exam reports to examiners for correction or clarification, we found that exam reports for traumatic brain injury, military sexual trauma, and Gulf War Illness were returned at—or close to—twice

¹³We previously reported that while military sexual trauma is not itself a condition eligible for disability benefits, VA provides disability benefits for physical or mental health disabilities, such as post-traumatic stress disorder or depression, caused or aggravated by military sexual trauma. See GAO, *Military Sexual Trauma: Improvements Made, but VA Can Do More to Track and Improve the Consistency of Disability Claim Decisions*, [GAO-14-477](#), (Washington, D.C.: June 9, 2014). Though we did not focus, as part of our review, on claims for post-traumatic stress related to stressors besides military sexual trauma, VA's Office of Inspector General examined VBA's processing of post-traumatic stress disorder claims and estimated that claims processors did not follow VA regulations and procedures when processing 18,300 of 118,000 post-traumatic stress disorder claims (16 percent) in fiscal year 2019. See VA Office of Inspector General, *Posttraumatic Stress Disorder Claims Processing Training and Guidance Need Improvement*, Report No. 20-00608-29, (Washington, D.C.: December 9, 2020).

¹⁴For example, on Gulf War Illness claims, we reported in 2017 that medical examiners did not always complete medical exam reports properly and sometimes offered a medical opinion when one was not necessary, according to VBA claims processors. See GAO, *Gulf War Illness: Improvements Needed for VA to Better Understand, Process, and Communicate Decisions on Claims*, [GAO-17-511](#), (Washington, D.C.: June 29, 2017).

¹⁵However, VBA continues to work to fully implement our 2018 recommendation to document and implement a plan to verify that contract examiners have completed required training before they perform exams.

the rate as exam reports overall.¹⁶ More specifically, claims processors returned around 10 percent of exam reports for traumatic brain injury and military sexual trauma claims, compared to about 5 percent of all exam reports in fiscal year 2020. Similarly, claims processors returned about 9 percent of exam reports for Gulf War Illness claims.¹⁷

Some VHA medical examiners we interviewed described several challenges examiners can face in performing exams for traumatic brain injury, military sexual trauma, and Gulf War Illness, which may cause claims processors to return the reports or lead to inaccurate claims decisions. For example, identifying military sexual trauma can be challenging because examiners may have difficulty identifying supporting evidence in veterans' records. VHA examiners also said that having experience serving veterans is important, particularly when performing military sexual trauma exams because of their sensitive nature.¹⁸

By implementing the recommendations from our October 2018 and March 2021 reports, VBA can help ensure that contractor officials and agency officials are working toward a common goal, and can better position those performing exams to effectively plan for and manage their workloads. VA could also identify potential training needs to help contract examiners provide high quality exams that result in more timely and accurate decisions on veterans' claims for disability benefits. We will continue to monitor VBA's progress implementing our recommendations.

Chairman Tester, Ranking Member Moran, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions you may have at this time.

¹⁶VBA officials noted that exam reports may be sent back for clarification because claims processors find rating the claims challenging and not necessarily because the examiner did something wrong.

¹⁷We have also reported on challenges that claims processors and medical examiners face due to poor military records, including health and exposure records, which are critical to making claims' decisions. See [GAO-17-511](#).

¹⁸See our March 2021 report for more information on challenges VHA examiners said they may experience in performing exams for selected complex claims.

**GAO Contact
and Staff
Acknowledgments**

If you or your staff have any questions about this testimony, please contact Elizabeth Curda, Director, Education, Workforce, and Income Security, at (202) 512-7215 or curdae@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Nyree Ryder Tee (Assistant Director), Justin Gordinas (Analyst-in-Charge), and David Reed, as well as Justine Augeri, Holly Dye, Alex Galuten, Melissa Jaynes, Monica Savoy, Almeta Spencer, Curtia Taylor, and Kate van Gelder.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission	The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.
Obtaining Copies of GAO Reports and Testimony	The fastest and easiest way to obtain copies of GAO documents at no cost is through our website. Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. You can also subscribe to GAO's email updates to receive notification of newly posted products.
Order by Phone	<p>The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, https://www.gao.gov/ordering.htm.</p> <p>Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.</p> <p>Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.</p>
Connect with GAO	Connect with GAO on Facebook , Flickr , Twitter , and YouTube . Subscribe to our RSS Feeds or Email Updates . Listen to our Podcasts . Visit GAO on the web at https://www.gao.gov .
To Report Fraud, Waste, and Abuse in Federal Programs	Contact FraudNet: Website: https://www.gao.gov/about/what-gao-does/fraudnet Automated answering system: (800) 424-5454 or (202) 512-7700
Congressional Relations	Orice Williams Brown, Managing Director, WilliamsO@gao.gov , (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548
Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov , (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548
Strategic Planning and External Liaison	Stephen J. Sanford, Acting Managing Director, spel@gao.gov , (202) 512-4707 U.S. Government Accountability Office, 441 G Street NW, Room 7814, Washington, DC 20548



Please Print on Recycled Paper.

STATEMENT OF
RYAN GALLUCCI, DIRECTOR
NATIONAL VETERANS SERVICE
VETERANS OF FOREIGN WARS OF THE UNITED STATES
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON VETERANS' AFFAIRS
WITH RESPECT TO
**Supporting Disabled Veterans:
The State of Claims Processing During and After COVID-19**

Washington, D.C.

May 12, 2021

Chairman Tester, Ranking Member Moran, and members of the committee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide the VFW's insight on the state of disability claims processing at the Department of Veterans Affairs (VA).

To the VFW, this hearing is a timely opportunity to discuss persistent challenges for veterans in the disability claims process, to discuss lessons learned due to the COVID-19 pandemic, and introduce ideas on ways to better serve our veterans moving forward. This pandemic has had a devastating effect on many aspects of American life. VA was forced to make difficult decisions on how to handle VA disability claims, and those of us who advocate for veterans were forced to adapt and overcome unprecedented challenges to ensure veterans continued to have access to the benefits they earned.

The VFW is proud that our global network was able to leverage resources offered by VA and technology to ensure that our advocates continued to provide quality representation to veterans throughout the COVID-19 pandemic. In 2015, the VFW set in motion a strategic objective to be able to provide real time benefits assistance to veterans from any reliable internet connection. Working with VA, we were able to outfit most of the VFW's service officers with critical hardware and VA network credentials in December 2019 in an effort to meet this objective. Three short months later, this effort proved critical when VA was forced to shutter nearly all of its regional offices, pausing face-to-face contact for veterans.

VA should be commended for many of its modernization efforts over the years in converting its paper-based disability claims process to a computer-based system. However, in this effort the VFW recognizes that there are hurdles that VA must overcome with its partners to build a truly digital solution to the VA disability claims process. The COVID-19 pandemic shined a light on many of these hurdles, such as antiquated IT badge and credentialing processes, rigid standard

form requirements, and outdated processing rules. Under the leadership of VA Secretary Denis McDonough, we have seen the Veterans Benefits Administration (VBA) come back to the table to try to address some of these hurdles, but the situation demands that all stakeholders take a critical look at the process and work quickly to address systemic shortcomings.

First, VA, Congress, and Veterans Service Organization (VSO) stakeholders need to come together to have a real discussion on what success looks like in the VA disability claims process. When the VFW considers this process, we are very concerned that VA is not correctly defining or measuring success.

For years, VSOs have insisted that VA provide veterans with timely access to benefits. However, it seems as though VA has interpreted “timely access to benefits” to mean receiving a speedy rating decision or notification. This is not what we intended or what veterans expect.

When we say timely access to benefits, we mean that VA should have the capability to deliver the benefits that veterans deserve in a favorable or useful timeframe. While there is an element of speed to ensuring the timely delivery of benefits, we must not conflate speed with timeliness. Timeliness implies accuracy, otherwise the decision or notification is not useful to the veteran. We must also not conflate delivery of benefits with receipt of a rating decision or notification. If the decision or notification does not accurately confer the benefits to which the veteran is entitled, it is not useful to the veteran.

Nevertheless, since VA Secretary Eric Shinseki set a goal of processing disability claims in 125 days, VA has seemed obsessed with matching its measured deliverables to this arbitrary timeline. In lieu of focusing on the timely delivery of benefits, VA is measuring itself based on the speed of its decision-making and notification. While the VFW understands that VBA must find ways to measure itself and demonstrate success, we have persistently seen problems with what this interpretation means.

Speed in decision-making is only part of the equation for the timely delivery of benefits. Speed can be corrected by hiring more staff. However, accuracy is the most critical component and must remain paramount to the claims process. Speed without accuracy only results in further delays to the timely delivery of benefits.

Tragically, the VFW believes that VA’s pursuit of speed has led to worse outcomes for veterans and unnecessary delays in the timely delivery of benefits. To illustrate this, the VFW must only look back to the Decision-Ready Claims (DRC) pilot program in 2016 and the decision to eliminate VSO pre-decisional rating review in 2020.

The DRC pilot was a well-intentioned program designed to give veterans more authority over the development and processing of disability claims if they chose to work with an accredited veteran service officer. The hypothesis was that if veterans worked with an accredited veteran service officer, they would file an Intent to File (ITF) to preserve an early effective date, procure medical records, develop lay evidence, schedule and complete exams, then formally file a VA benefit claim that was ready for VA to evaluate and rate. VA proposed that this development could easily cut down processing times to less than 30 days.

The issue with the pilot program, however, was that it focused entirely too much on the speed with which veterans would receive decisions from the time they formally submitted a claim while neglecting the weeks and months of development required to file a claim that would be Decision-Ready. However, at the time VA was seemingly unconcerned about development time and solely concerned with satisfying the 30-day speed requirement in an effort to satisfy the overall 125-day requirement for all claims processing.

Veteran service officers were left to explain to disappointed veterans what their 30-day claims actually entailed. Some of our representatives had to endure angry clients who did not understand why we could not get them their benefits in 30 days or less. After recognizing the deficiencies in the program, VBA rightfully sunset the program in 2017. Nevertheless, the VFW recognizes that DRC did bring to light certain pain points in the disability claims process, and clarified the difference between what VA and veterans believe demonstrates success. VA was clearly measuring itself on whether or not veterans received speedy notifications or rating decisions. Veterans were evaluating the experience by whether or not they received the benefits they deserved in a timely manner.

Based on lessons learned from DRC, the VFW now asks whether veterans should rightfully have more authority over the scheduling of their required Compensation and Pension (C&P) exams? Today, VA holds itself to the standard that C&P exams have to be completed within the 125-day target. This may work for many veterans, but veterans dealing with multiple chronic health conditions may need more time and flexibility to complete their exams. Veterans commonly report to the VFW that they are often given little notification they will be required to attend multiple exams, often involving long drives or unreasonable timeframes in which to complete them. This creates stress for the veteran and starts to build resentment for the VA benefits system. We can fix this and offer a better experience to the veteran.

VA should consider offering veterans the option to either have VA schedule exams on VA's timeline, or have veterans schedule and complete their exams within a specified time after filing a claim. VA could easily measure these different timeframes to better reflect processing efficiency as well as overall veteran experience.

Next, in 2020 VBA arbitrarily decided to eliminate pre-decisional review of rating decisions for accredited veteran service officers—a policy that had been afforded to accredited veteran service officers since the 1950s. The primary rationale behind the elimination of the review period was again based on the premise that veterans want speedy decisions and that VA could not delay notifications by two business days. VSOs at the time argued that we would defend the two business days to any of our clients to ensure they received accurate benefit decisions. Otherwise, the veteran would face a lengthy review or appeal process that would further delay the timely delivery of benefits. This argument did not resonate with the leadership of VBA, and we were forced to seek both litigation and legislative remedy to stop it.

This year, new VBA leadership came to the table with VSOs to discuss our intersecting interests to build the Claims Accuracy Review pilot program. The VFW is optimistic that this program may provide a roadmap for improved notifications and expedited review processes for accredited veteran service officers. However, we are concerned that VA remains fixated on the speed with

which it can render decisions and notifications, touting that many times it can render a decision within hours of receiving exams and medical evidence. We applaud the capability that VA has, but we question the manner in which this capability is utilized and its overall effect on the timely delivery of benefits.

The VFW saw how this capability can delay the timely delivery of benefits when working with a veteran recently who was filing for secondary disabilities related to the natural progression of service-connected diabetes mellitus. The veteran filed for secondary peripheral neuropathy of the upper and lower extremities in June 2020 after his VA doctor diagnosed him with diabetic nerve pain and numbness.

Eight calendar days later, we found that VA had uploaded his VA treatment records into the Veterans Benefits Management System, but labeled the claim as "Ready For Decision" without ordering exams. I asked a colleague to take a look at the file, but only a few short minutes later VA had already promulgated a denial of service connection based on an Acceptable Clinical Evidence evaluation of a diabetic exam from 2019.

The VFW was able to reopen the claim based on the erroneous reading of the evidence, which demonstrated that neuropathy set in within the last six months. We believe that the regional office considered this a clear and unmistakable error, which allowed the decision to be reopened.

Fast forward to October 2020 when VA ordered an appropriate exam, the veteran completed the exam, and the VFW again reviewed the claim file. Our reading of the exam indicated that the veteran would receive service connection and a combined 100 percent rating for all conditions.

However, again, VA rendered a decision within hours of receiving the exam report, misapplied regulations and granted the veteran only a combined 90 percent rating. We again tried to point to the error, but this time the VA regional office insisted that we file a formal claim review option. We selected Higher Level Review in early November, noting that VBA misread the exam report and flipped the ratings that it should have assigned, per the regulations.

VA did not properly rate the claim until March 2021. By VA's assessment, this veteran received three decision notifications, each of which met or exceeded VA's requirement for speedy processing with an average time of about 90 days for each claim action. However, the veteran waited more than eight months to receive an accurate decision. Moreover, the accurate decision was not issued until a new calendar year, which means the veteran likely forfeited earned state and municipal benefits that would have taken effect with his higher evaluation rating. The VFW does not consider this timely delivery of benefits.

The interest of VSOs in pre-decisional review was to make sure veterans receive the benefits they have earned the first time around. Though VA can report that multiple speedy decisions look like success, this really creates more stress and resentment for the veteran by delaying timely access to benefits.

We have seen numerous examples of how VA sacrifices quality for speed over the years in an effort to satisfy its 125-day goal. We have heard from VA employees who are equally concerned about burnout and sloppy work when seeking to meet arbitrary speed quotas.

Meanwhile, the VFW is unaware of any VA data that speaks to overall customer perceptions of the VA disability claims process. The VFW collects our own data from the veterans we serve who recently transitioned out of the military, which demonstrates to us that VA needs to have a real conversation on what success means to the veterans' community. We speculate that the stress and resentment created during the disability claims process may make veterans less likely to access other benefit programs, like VA health care, but we need to know for sure.

This discussion is critical to better understanding how veterans engage with VA and why they may or may not choose to access certain benefit programs. For years, VA has struggled to move the needle on veteran suicide. Meanwhile, VA's own research demonstrates that often social determinants of health can be predictive or protective factors against suicide.

Though the Veterans Health Administration (VHA) has worked to understand this epidemic and provide resources to veterans before critical mental health emergencies, the veterans' community is concerned that this has been pigeonholed as only a veterans' health problem. VA must take a "Whole VA" approach to veteran suicide so we can better understand both risk factors and protective factors for veterans. Part of this picture is understanding how veterans interact with VBA and its programs.

Sadly, when VA publishes its annual suicide prevention report, the data capture only veterans who engaged with the VHA within the last year. The VSOs know that VA has more at its disposal, especially since VA's own research demonstrates that social determinants of health are often better predictors of suicide than a diagnosed mental health condition.

We must work together to break down silos within VA so that we can learn whether programs like disability compensation, vocational rehabilitation, or the G.I. Bill are protective factors against suicide. Moreover, this approach could help VA reach veterans who are not under VA care, or who may not be aware of other benefit programs that could mitigate risk factors for suicide.

Under the last Administration, VA created or updated dozens of claims forms used at different phases in the VA disability claims process. In many instances, the Secretary exercised his authority to require these new standard forms. However, VA electronic systems such as self-service through eBenefits or direct submission capabilities through claims management databases did not keep pace with these changes. As a result, veterans who sought to file certain claim actions through electronic means had their claims for benefits rejected on the technicality that they were not submitted on the correct standard form, often delaying benefits to veterans.

When the VFW asked VA why it was being so rigid in its paperwork requirements, we were told that the Secretary had the authority to require standard forms. We rejected this notion at the time, pointing VA to its requirement to accept substantially complete applications for benefits. This

also led to the epiphany for the VFW that VA had not built an electronic claims system, but rather a paper-based system that just happened to be on a computer.

A glaring example of this deficiency is in VA's interpretation and implementation of the new supplemental claims process authorized under the Appeals Modernization Act (AMA). Shortly before AMA went live in February 2019, the VFW and our partners at Disabled American Veterans (DAV) raised the alarm about scenarios through which veterans could be denied benefits based on our reading of VA's regulations—requiring a standard supplemental claim form, VA Form 21-0995, for all claims that VA considers to be supplemental and barring veterans from preserving the effective date through the ITF process on all claims that VA considered to be supplemental.

The VFW believes that VA is misinterpreting AMA in both instances. First, in negotiating AMA, VA conceded that supplemental claims would be treated like “any other claim.” The law reinforces this by only prescribing how supplemental claims would be processed. Second, while it is reasonable for VA to disallow for an ITF while a claim is in the one-year review period, the VSOs believes that denying veterans the ability to preserve an effective date for development purposes for any claim after the review period has expired does not keep with the intent of the ITF process.

When the VFW and DAV raised the issue in February 2019, we were assured by VBA that it would monitor closely. In April of 2019, we started to see examples of veterans having claims closed out for what VA determined to be supplemental claim actions submitted on the wrong forms. To exacerbate this problem, when these claims were closed out, the veterans lost the earliest possible effective dates due to the bar on ITF.

The major VSOs brought this issue to the attention of then-Under Secretary for Benefits Paul Lawrence in June 2020, officially requesting that VBA work with VSOs to resolve both the standard form and ITF dilemmas. Dr. Lawrence scheduled several meetings to discuss the issue with VSOs and even committed to drafting new regulations to address the ITF issue. However, when the COVID-19 pandemic hit, VBA communicated to the VSOs that it would no longer pursue these new regulations and dismissed our ongoing concerns regarding standard forms.

To date, this remains a problem for veterans seeking to access their earned benefits. Sadly, the VFW has no way of knowing how many veterans have lost benefits as a result of this misinterpretation, which is why we call on VA to publish reports on how many veterans have been affected and to immediately propose regulations to overturn these arbitrary and harmful rules.

Finally, the VFW once again calls upon Congress to work in a bipartisan manner and with stakeholder VSOs to develop a comprehensive solution for toxic exposure. We need a solution that will take care of all veterans from past generations, provide current service men and women the reassurance they will be provided for, and have a system in place to ensure that all future generations of service members receive care and benefits if they face exposures as well.

During the last century, veterans returned home from war with an array of unexplained health conditions and illnesses associated with the toxic exposures and environmental hazards they encountered in service. Today is no different, and toxic exposure has become synonymous with military service. For this reason, it is time for Congress to change the framework through which VA benefits are granted for individuals with conditions associated with toxic exposures and environmental hazards.

In recent hearings before Congress, VA has called for a reprieve from legislation that would ensure delivery of benefits to veterans exposed to dangerous toxins and build a framework to protect generations to come. Veterans do not want a reprieve. We demand reform.

While the VFW understands that the Secretary of Veterans Affairs enjoys certain authorities to grant benefits under many circumstances, we are all too familiar with how inconsistently this authority has been leveraged over time. Even if Secretary McDonough chooses to act on certain exposures and finds innovative ways to deliver benefits to those who need them, the system still needs to be reformed.

Chairman Tester, Ranking Member Moran, this concludes my testimony. I am prepared to answer any questions you may have. Thank you.



National Service & Legislative Headquarters
 807 Maine Avenue SW
 Washington, DC 20024-2410
 Phone: 202-554-3501
 Fax: 202-554-3581

**STATEMENT OF
 SHANE L. LIERMANN
 DEPUTY NATIONAL LEGISLATIVE DIRECTOR
 OF THE DISABLED AMERICAN VETERANS
 FOR THE SENATE COMMITTEE ON VETERANS' AFFAIRS
 MAY 12, 2021**

Chairman Tester, Ranking Member Moran, and Members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to provide testimony for the Senate Veterans' Affairs Committee hearing on "Supporting Disabled Veterans: The State of Claims Processing During and After COVID-19."

Mr. Chairman, the COVID-19 pandemic has negatively impacted the Department of Veterans Affairs' (VA), Veterans Benefits Administration's (VBA) ability to process veterans' claims and appeals, contained questionable policy changes and has dramatically increased the backlog of pending cases. While VA is actively addressing the issues created by the pandemic, we are concerned that VA policy decisions are too often driven by their self-imposed metrics and not focused on the non-adversarial, veteran-centric nature of the VBA claims and benefits process.

With a growing backlog of VA examinations and VA disability claims, today's hearing is so important. Our testimony will address the VA goal of 125 days, VA policy changes, the impact of the pandemic and the current state of the claims backlog.

VA'S GOAL OF 125 DAYS

The March 2009 VA Office of the Inspector General (OIG) report, "Audit of Veterans Benefits Administration Compensation Rating Accuracy and Consistency Reviews," found that 22% of all veterans' claims for disability compensation were decided incorrectly in the 12-month period reviewed. During that period, over 200,000 veterans received inaccurate decisions on disability compensation. The report stated that VBA officials understated their error rate by 10% and did not implement a plan to ensure rating consistency.

Additionally in 2009, statistics from the Board of Veterans' Appeals and the Court of Appeals for Veterans Claims revealed that approximately two-thirds of cases appealed contained errors committed by the VA regional office (VARO) of jurisdiction.

In June 2009 testimony before the House Veterans' Affairs Committee, then-Secretary Eric Shinseki said that he was working to reduce the six-month delay in paying veterans' disability claims and wanted to move quickly in adopting an all-electronic claims system and that VA would hire 1,100 additional staff to address the serious backlog of cases.

Shortly thereafter, VA announced the goal of processing all disability claims within 125 days at a 98% accuracy level. In 2010, then-Secretary Shinseki set a goal of eliminating the claims backlog of cases pending more than 125 days in 2015. The established goal was not predicated on any data or metrics showing that VA could provide accurate and favorable decisions within that time period; however, this was the start of VBA's determination that anything older than 125 days is not timely and worked to reduce those numbers.

VBA did not eliminate the backlog in 2015, but reported it had reduced the pending backlog from a peak of 611,000 in March 2013 to 71,690 at the end of September 2016. While we applaud VA's commitment to aggressively reduce the claims backlog, we are more concerned with VA providing veterans with timely, accurate decisions than an arbitrary goal of 125 days.

Review of accuracy of reported pending disability claims backlog statistics

The September 2018 VA OIG Report, "Review of Accuracy of Reported Pending Disability Claims Backlog Statistics," found that VBA's reported backlog did not include all claims that had been awaiting rating decisions for more than 125 days during the first and second quarters of FY 2016.

The OIG estimated VARO staff completed about 63,600 claims that required rating decisions that took over 125 days to complete, but that VBA did not count as part of the backlog. As a result, the OIG estimated that in its completed backlog, VBA only reported about 79% of the claims that required rating decisions that took over 125 days. In addition, inaccurate claims classifications and date of claim misrepresented the status of some claims. For instance, the OIG estimated that 8,000 incorrect changes altered the backlog status of existing claims on the days they occurred. In some cases, VBA policy changes directed staff to make these changes.

The OIG found that VBA's prioritization of its backlog resulted in delays in processing other claims, even if they were older and required rating decisions. This is clear evidence that the intent of some policy changes were driven toward VA's backlog reporting.

VBA POLICY CHANGES BEFORE AND DURING THE PANDEMIC

We are grateful for VA's significant process in reducing the backlog by adding new programs such as an electronic claims file, the Veterans Benefits Management System and realizing efficiencies with the National Work Queue. However, we wonder if

some of the policy changes were made for the purpose of improving the timeliness and quality of disability claims decisions or if they were made only to improve VA's self-imposed metrics.

Standardized VA forms cost veterans effective dates

Effective March 24, 2015, VA started a major change in its policy and regulations regarding use of standard forms. The expressed motivation to use standardized forms was to allow VA to streamline, scan and automate parts of the claims submission process. VA eliminated informal claims and replaced it with an Intent to File form, which acts as a placeholder, preserving the effective date for one year. VA further requires all claims and appeals to be submitted on specific forms and will not accept any claim or appeal on the incorrect VA form.

Currently, if a veteran submits a claim or appeal on the wrong form, it may take VA months to review and advise the veteran that the claim will not be accepted because it was submitted on the wrong form. Additionally, VA does not consistently advise the veteran which form should have been used and does not provide the correct form to the claimant to file. Thus, when a veteran does file the correct form, they can lose months of entitlement as VA does not accept the claim submitted on the wrong form as a claim submission or as a place holder for benefits, even though the exact same information may have been provided by the veteran on both forms.

This issue was complicated by the implementation of the Appeals Modernization Act (AMA). VA will not accept any claims for previously denied issues on any form except a Supplemental Claim, which again can lead to a significant delay before the correct form is submitted and loss of an earlier effective date. The complexity increases as the VA's Intent to File form cannot be associated with a supplemental claim and many claimants are not aware of what conditions were applied for in the past. Additionally, if a veteran submits an appeal directly to the Board of Veterans' Appeals on the wrong form, it may be months before it is discovered and the veteran may lose an earlier effective date or even expiration of the appeal period.

VA's current processes are firmly placing an unnecessary burden on too many veterans, which was not the intent of Congress when the AMA was enacted into law. When a veteran submits a claim and it is understood by VBA what the veteran is seeking, it should accept that as a date of claim, advise the veteran on the correct form, provide the correct form, and adjudicate said claim. At the very least, VBA should consider the incorrect form as an Intent to File and protect the veteran.

On multiple occasions, DAV addressed the standardized form and effective date issues directly with VBA. We were encouraged to hear VBA agree with us and advised that they would work on formal rule changes to the Federal Register. However, after many attempts to follow up with VBA, we were finally notified that they could not make the changes.

Additionally, DAV has inquired with VA as to the number of veterans that have been impacted by submitting incorrect forms and VA has not been able to provide us with this information. VA should have the ability to determine the number of incorrect forms or incomplete applications they received especially because they are directly notifying the veteran. If VA is not able to determine the number of veterans impacted, they need to establish a mechanism to do so and report that information to all interested parties.

While serving as the Administrator of the Veterans Administration, General Omar Bradley stated, "we are dealing with veterans, not procedures; with their problems, not ours." In reference to the standardized forms, veterans need VA to live up to this ideal.

Policy changes regarding standardized forms may have made VA more efficient in establishing claims, but by not accepting the form submitted even as an Intent to File, the policy negates any effective date until the veteran submits the correct form. Once the veteran submits the VA-dictated correct form, then it would be established as a claim. This policy takes months of entitlement from veterans and does not provide them with timely access to their earned benefits. However, it does allow VA to control how and when claims are established and possibly reduce the number of days a claim is pending in VA's inventory goal, which may help VA realize the 125-day goal.

Elimination of the VSO pre-decisional review

For over seven decades, VBA maintained a policy, as previously included in their M21-1 Adjudication Procedures Manual, which allowed accredited veterans service organizations (VSOs) a pre-decisional review period of all VA decisions on those veterans and claimants they represented.

The pre-decisional review period of 48 hours assisted VSOs in identifying errors before the decisions were formally promulgated. The types of mistakes identified included: incorrect effective dates of grants, incorrect combined evaluations, incorrect evaluations and incorrect denials of benefits. This process helped thousands of veterans and claimants avoid the time-consuming appeals process.

Although DAV and seven other VSOs representing millions of veterans and 42 State Attorneys General representing millions of citizens opposed the removal of this policy, on April 24, 2020, VBA officially eliminated the pre-decisional review period during the early days of the pandemic. DAV believes VBA's decision was wrong, ill-timed and responsible for additional negative impacts on veterans and their representatives. At the beginning of the COVID-19 pandemic, VA ceased delivering paper copies of written notices to VSOs that are co-located at VA facilities. Due to the elimination of the review period, VA was not advising VSOs electronically of decisions being rendered.

Since February of this year, VBA has reengaged and collaborated with the VSO community to address the notification concerns and errors in decisions. On April 19, 2021, VBA launched the pilot, Claims Accuracy Request (CAR). The program allows accredited representatives to request a review of errors in VA decisions. If successful, VBA may make this pilot program permanent and expand its scope to include all claimants.

DAV is encouraged by the collaboration with VBA and optimistic that changes to the notification process and the CAR pilot will address our concerns and if successful, we will request this be codified into law. However, we remain vigilant and if these collaborations with VBA fail, we will need legislation such as S. 458, the Veterans Claim Transparency Act, to again provide the 48-hour review period.

When collaborating with VBA earlier this year, it was made clear that the 48-hour period would not return as its elimination provided VBA the opportunity to continue to drive down the days pending of backlogged claims. This is yet another example of a policy change that impacts the 125-day goal more than providing quality decisions to veterans.

Removal of publicly-available Disability Benefit Questionnaires (DBQs)

Disability Benefits Questionnaires (DBQs) were introduced in 2010 to facilitate the collection of evidence for veterans' claims for disability compensation benefits. Although originally designed for veterans by the VBA, for more than a decade, DBQs were used internally by VA physicians and by private medical providers to supplement disability claims evidence.

In 2016, VBA changed its policy to disallow veterans to have DBQs completed by a private physician via telehealth. However, VBA did not advise veterans or indicate on any of the forms that this policy had changed.

A February 2020 Office of Inspector General (OIG) report, "Telehealth Public-Use Questionnaires Were Used Improperly to Determine Disability Benefits," posits that DBQs may have been used by veterans to perpetrate fraud in disability claims. The report notes that although VBA prohibits the use of private provider telehealth appointments for the submission of claims evidence, many of the claims investigated by the OIG may have involved telehealth examinations. At no point did the report substantiate this claim or explain the basis for this conclusion. Moreover, although the report makes vague reference to fraud, this assertion was merely conclusory. The OIG doesn't cite a single instance of fraud in its report.

Another problem cited by VBA was that public-facing DBQs must be updated under the requirements of the Paperwork Reduction Act of 1995 (PRA), a process that can take more than one year for each of the over 60 DBQs. VBA often noted that time delays of updating the DBQs and keeping them current, which negatively impacted the amount of time to process claims with privately completed DBQs. Without implementing

any of the recommendations from the OIG report, in April 2020, again during the early stages of the pandemic, VA removed public-facing DBQs from its website, thereby preventing private medical providers and veterans from accessing these forms.

We thank this Committee for its support and ultimate passage of Public Law 116-315, which included provisions requiring VA to make all DBQs available via their website. All of the DBQs are again available for veterans to use.

The policy changes that were implemented during the pandemic were at best ill-timed, and at worst were opportunistic changes during a national emergency that has challenged VA to maintain timely and accurate disability claims decisions.

IMPACT OF THE PANDEMIC ON VA CLAIMS PROCESSING

The COVID-19 pandemic has negatively impacted VBA's ability to fulfill its mission. In late February 2020, states and local communities began declaring emergencies and issued shelter-in-place directives. On March 13, then-President Trump declared a national emergency in response to the COVID-19 pandemic. As a result of the pandemic and quarantine, VA experienced significant delays in scheduling VA examinations and obtaining records from the National Personnel Record Center.

VA exams during the pandemic

On April 6, 2020, VBA issued guidance that the COVID-19 pandemic was considered an acceptable cause for veterans failing to report for an exam. It instructed VARO staff to reschedule the exam. This guidance was retroactive to March 1, 2020, based on the presidential proclamation declaring COVID-19 a national emergency effective on that date. On April 24, 2020, VBA assured veterans no final action, including denials of their claims, would be taken when an in-person exam was needed.

In May 2020, VA released its plan for resuming normal operations. "Charting the Course: Maintaining Continuous Services to Veterans and Resuming Normal, Pre-COVID-19 Operations" provided limited information on exams. It stated VBA would work with its contractors to formulate a plan to resume in-person exams. Also in May, VA established the Program Integration Office to oversee disability exams. It was designed to provide new leadership and oversight as VBA has taken on more responsibilities for conducting exams so that VHA can focus on its health care mission and additional demands related to COVID-19.

A press release dated May 28, 2020, announced in-person exams would be restarting in 20 locations at contract exam facilities. VA has since expanded these in-person exams to other locations based on local COVID-19 risk assessments.

In October 2020, VA announced plans to shift a majority of all VA disability examinations to contract examiners in an effort to allow VHA physicians to focus on the

pandemic. This shift means that VHA will be conducting only 10 to 15% of all VA exams.

As of March 18, 2021, VA in-person disability medical exams by VBA contractors became available for scheduling throughout the entire country. Facilities in some areas are performing in-person exams but do not allow removal of personal protective equipment while other areas allow removal during in-person exams as determined by the contract examiner.

Lessons learned

The enormity of the impact of the COVID-19 pandemic will be felt for years if not decades to come with continued lessons learned. In November 2020, the VA Office of the Inspector General (OIG) report, "Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams," made the following findings:

- VBA discontinued in-person exams to protect veterans
- Protective measures contributed to VBA's exam inventory growth
- VBA prepared for increased use of telemental health and ACE exams
- VBA's use of telehealth was limited by the need for a telepresenter for some exams
- VBA prematurely or improperly denied claims based on canceled exams
- VBA needs to further develop and test its strategy to address the inventory of exams

Prior to the pandemic, there were roughly 140,000 pending VA exam requests with an average 21 days to completion. As of March 23, 2021, there were over 350,000 pending exam requests with an average 90 days to completion.

At the House Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs hearing on March 23, 2021, David McLenachen, Executive Director of the Medical Disability Examination Office, noted that over 55,000 exam requests were deferred awaiting the veteran to acknowledge their willingness to appear for an in-person exam. Further, it was recommended by the Government Accountability Office that VBA must have a written action plan for scheduling and providing VA examinations through VHA or VBA contractors. VBA acknowledged that they did not have a written action plan.

These pending exam requests have already impacted the number of pending VA compensation claims and if not aggressively addressed, veterans will be waiting additional months, if not years, for their earned VA benefits and health care.

National Personnel Record Center (NPRC) during the pandemic

The National Personnel Records Center (NPRC) is one of the National Archives and Records Administration's (NARA) largest operations. Located in St. Louis, it is the central repository of personnel-related records for both the military and civil services of the United States Government. Due to the COVID-19 pandemic, the NPRC had been closed and only completing emergency requests. On March 8, 2021, the NPRC entered into a phased expansion of its onsite workforce.

VA requires medical evidence obtained from military personnel records to adjudicate veteran claims for compensation. Due to pandemic-related facility work restrictions, NARA has had limited onsite ability to process requests for military personnel records. These documents are only accessible through copies made available by NPRC, thus, the pending claims count will continue to increase while waiting for requested documents.

VA announced on April 1, 2021, there are more than 25,000 pending requests for personnel records. However, a recent letter from members of the House of Representatives notes, "According to the National Archives and Records Administration's (NARA's) own reporting, in March 2021 there was a backlog of almost 500,000 records requests." This large of a discrepancy between the reported numbers is disconcerting and requires a thorough explanation. NARA needs to provide a report, at the very least, addressing the number of pending veteran records requests and the number of pending VA records requests.

The pandemic had a serious long-term negative impact on VA claims processing, specifically on scheduling and providing VA disability exams and obtaining necessary records from the NPRC. While VA is not to blame for these two major challenges, we do have concerns on how the increased backlog will guide VA's path and policy decisions moving forward to address the current status of VA claims.

CURRENT STATUS OF VA CLAIMS

In February 2020, VA had only 70,000 pending claims; however, today there are nearly 200,000 claims pending over 125 days. The number of pending claims has nearly tripled in the last year due to the enormous impact of the pandemic. The largest contributor to this increase is the backlog of VA C&P examinations, which is now over 350,000. However, there are other factors that VA must be cognizant of, such as the pending Blue Water Navy claims.

In January 2020, VBA started processing Blue Water Navy claims for diseases related to their now-conceded exposure to Agent Orange. To date, VA has received over 82,000 claims and has adjudicated over 47,000 claims but still has almost 35,000 pending claims. In many instances, these have been delayed due to closure of the NPRC during the pandemic. These are vital for establishing the veteran's ship location off the coast of Vietnam.

Usually, VA will not request C&P examinations for these claims until they have the records requested from NPRC; thus, there are potentially another 35,000 claims awaiting examinations, which will further confound the existing backlog.

Public Law 116-283 added three new diseases, bladder cancer, hypothyroidism, and Parkinsonism, as presumptive conditions to Agent Orange exposure in January of this year. VA has already received thousands of claims for these new conditions.

At the May 5 House Veterans' Affairs Committee hearing, VBA noted that its policy memo to start adjudicating claims for these three new presumptives is in concurrence. Once released in the next few months, VA will need to verify each of these Vietnam veterans' exposure to Agent Orange in-country or aboard ship. These thousands of new claims will also require C&P exams once VA starts developing these claims, again adding more examinations to the pending backlog and increasing the weight of the already growing backlog of claims.

Although VBA reacted quickly with the use of telehealth, ACE exams, and has recently increased the contractors' workload by 20%, these alone will not aggressively reduce the backlog of exams and in turn, the backlog of VA claims.

DAV is especially concerned that, if not appropriately addressed, the VA examination backlog, the pending Blue Water Navy claims and the looming addition of new Agent Orange presumptive diseases, could be the catalyst to a backlog of historic proportions. This gives us pause, as it has been shown that some VA policy decisions made to address the backlog have been overly driven to the 125-day goal rather than focused on providing veterans and their families a thoughtful, quick and agile response plan from VA.

RECOMMENDATIONS

Reducing VA's backlog of exams

VA contract examiners constitute the lion's share of all pending examinations while VHA is currently only conducting telehealth examinations for approximately 10 to 15% of those requests. This, coupled with contractors increasing their workload will not quickly reduce the number of pending examination requests. Although contract examiners completed over 1.1 million exam requests in calendar year 2020, during the national emergency, we need a strategy to consider all available means.

In order to attack this problem head-on, we recommend that VHA increase its workload of C&P examinations to their upper capacity levels. This should include in-person examinations as well. While we understand that VHA is under significant stress in providing COVID health care and vaccinations, VBA needs to utilize VHA as an experienced resource to slow down the steadily rising exam requests and address the backlog. We recommend an "all hands on deck" approach to drive down the backlog.

We further recommend moving forward, that VHA have primary responsibility for all VA C&P exams for initial post-traumatic stress disorder (PTSD) claims, military sexual trauma (MST) claims, traumatic brain injuries (TBI), prisoners of war (POW), amputees and the catastrophically disabled. VHA is a world leader in PTSD, TBI and amputee treatment and these should benefit from VA's unmatched expertise. Examination requests from claims filed through the Benefits Delivery at Discharge (BDD) program and the Integrated Disability Evaluation System (IDES), should also be filtered through VHA.

We recommend that VBA also provide updates and reports on the decisions identified by VA OIG that were prematurely denied without a VA C&P exam. Just as important are the number of claims that have examinations deferred waiting for exams. We recommend that VBA track and provide routine updates on these cases as well.

Oversight and quality of VA exams

DAV wants to ensure that all veterans receive timely and quality C&P examinations whether they are conducted by contract examiners or VHA. VBA must have oversight and management of all VA examinations, which is imperative for quality exams. This has been problematic in the past.

Quality examinations are critical in the VA claims process and essential to veterans gaining access to their earned benefits and health care. We recommend that VBA continue its monitoring and oversight of contract examiners, but also believe that all VHA C&P examinations must be included as well. We have recommended to expand their ability to provide more examinations and thus VBA should have the same oversight. VA's Program Integration Office should have the ability to review VHA examinations based on quality and return them when deemed inadequate.

VBA must continue to provide training and information for all examiners and needs a dedicated professional platform to provide, monitor and track this training. Although VBA is currently doing this manually, an online platform will provide better oversight and control.

VBA's tendency to overdevelop

Another contributing factor to the backlog of examination requests and claims, is VBA's tendency to overdevelop a claim. For example, if a veteran submits VA or private medical evidence or a completed Disability Benefits Questionnaire (DBQ) that is sufficient for VA to decide the case, in many instances, VBA will still request a VA C&P exam.

When the submitted evidence or DBQ does not contain the required information, we agree that a C&P exam should be requested; however, our service officers often review decisions that could have been rendered based on the evidence without a C&P

examination. In some instances, the additional C&P exam is used as a reason to deny the benefits veterans are seeking.

We recommend that VBA create a tracking mechanism in VBMS for all decisions that have privately completed DBQs, yet an exam is requested and provide reporting to all interested parties. This can provide insight to the examination request culture and even reduce the number of requests, thus aiding in reducing the exam and claims backlogs currently facing VA.

We believe that all of these recommendations can assist in reducing VA's current backlogs. These and the lessons learned from the pandemic can be used to develop a response by VA for future national emergencies or a resurgence of the current pandemic. In addition, these lessons will help make VBA more efficient beyond the pandemic both in managing workload and better serving veterans, not just focused on its self-imposed 125-day metric.

In conclusion, the pandemic contributed to over 350,000 pending exam requests and nearly 200,000 pending disability claims. Without quick and decisive actions, the current backlog of exams and claims, coupled with nearly 35,000 pending Blue Water Navy claims and the incoming claims for the new Agent Orange presumptives, VA's backlog of claims will reach historic levels.

Mr. Chairman, the increased number of pending claims is very concerning. While VA measures its performance on metrics that are intended to provide faster decisions, veterans are more concerned about receiving an accurate decision the first time. Does getting a favorable decision after going through the CAR pilot, a Higher Level of Review or an appeal to the Board of Veterans' Appeals reflect timeliness? It does not. Veterans need VA to be prepared with a VA-wide approach, a veteran-centric response and a plan for the future. We need to ensure that VA policy choices will focus on accurate claims decisions not just a decision within 125 days.

Mr. Chairman, this concludes my testimony and I would be pleased to answer any questions you or members of the Committee may have.



National Service & Legislative Headquarters
 807 Maine Avenue SW
 Washington, DC 20024-2410
 Phone: 202-554-3501
 Fax: 202-554-3581

**STATEMENT OF
 CARMEN MCGINNIS
 DAV (DISABLED AMERICAN VETERANS)
 COMMITTEE ON VETERANS' AFFAIRS
 UNITED STATES SENATE
 MAY 12, 2021**

Chairman Tester, Ranking Member Moran and members of the Committee:

Thank you for holding this important hearing to discuss the claims process for military sexual trauma (MST), and inviting me to share my experience both as an advocate for veterans through DAV—Disabled American Veterans—and as an MST survivor myself.

I am a veteran of the United States Marine Corps. I enlisted on September 11, 2001—happenstance, as I turned 17 the day prior, but the events of that morning did not deter me. I served in Beaufort, South Carolina, with Marine Air Control Squadron-2 with a military occupational specialty of long-range radar repair. I served one tour in Afghanistan in support of Operation Enduring Freedom in 2003/2004. Upon return to the States, I went on to serve in Paris, France, Colombo, Sri Lanka, and Munich, Germany, as a Marine Security Guard protecting classified material, before my honorable discharge in 2008.

I am proud to have served—incredibly proud to be a Marine. But my service was marred by the actions of another. I am before you today because I am an MST survivor.

Like so many others, I will carry that scar for life. But I have also found great purpose and fulfillment in the years that followed. Today, I work for DAV in our National Service Office in Denver and this is now my tenth year as a national service officer, helping ensure my fellow veterans are able to access the care and benefits they have earned.

During this time, I have filed countless claims for MST survivors and fought alongside them on their journey through the daunting claims and appeals process. Before I knew about DAV, I filed my own claim for post-traumatic stress disorder (PTSD) due to MST with the encouragement of my Department of Veterans Affairs (VA) mental health therapist. I have been there myself, and I am glad to be there for others who have had similar experiences. And today I am here to be a voice for those who cannot speak, for those who feel they have no voice, and for those who feel that no one is listening.

I joined the Marines to serve my country. I did not join the military to be raped by a fellow Marine—nor did the thousands of other individuals who report experiencing unwanted sexual assault, contact or harassment each year in the armed forces.

I know this statement may make some people uncomfortable, but it is important to talk about this issue, and the myriad problems that stem from it. I share my story and use my voice because I can. I am fortunate because my assault was reported and well-documented and I had very little burden in proving my claim. Sadly, many other veterans are not in my situation, and those survivors are who I want to speak about today.

Specifically, I would like to address three areas that would make the claims process for MST survivors more compassionate, more respectful and more in keeping with the best interest of the veteran. These areas are:

- Changing the evidentiary burden placed on veterans to prove incidents of MST
- Improved coordination between the Veterans Benefits Administration (VBA) and the Veterans Health Administration (VHA) in handling MST cases and communications with veterans
- Policy changes to improve VBA's approach to handling MST casework

Evidentiary Burden of MST Claims

When it comes to MST, the disconnect between VBA and VHA could not be more apparent and often adds to the confusion veterans experience during the process of filing a claim or accessing care. VA's website clearly states: "You don't need documentation of MST experiences or a VA disability compensation rating to get care."¹

While we applaud this veteran-first approach to ensuring adequate care is being offered to MST survivors, it calls into sharp contrast the lack of support these claimants are receiving from VBA for the exact same traumatic experiences. How can one arm of VA essentially validate and believe their claim of sexual assault, but not the other?

There were 6,888 reports of sexual assault made by military members in 2019.² We know that despite the prevalence of MST and an increase in reporting in the military over the past few years, many assaults still go unreported and have for decades. Yet, the VA continues to focus efforts on identifying official records to prove an assault when rating a veteran's claim. Records may be scant, if any exist at all. I have witnessed many veterans cry and express a feeling of defeat as they realize that despite the

¹ <https://www.va.gov/health-care/health-needs-conditions/military-sexual-trauma/>

² https://media.defense.gov/2020/Apr/30/2002291671/-1/-1/1/3_APPENDIX_B_STATISTICAL_DATA_ON_SEXUAL_ASSAULT.PDF

trauma they endured and the life-long impacts it has had, they simply could not provide the proof required for VA to acknowledge they were sexually assaulted.

In contrast, combat veterans are not subject to the same rigorous evidentiary standards as those who claim sexual assault. As long as a veteran's record substantiates that they served in a combat zone, VA takes their word as fact. If, for example, they served in a combat zone but did not receive a combat award, it is enough for them to claim that they feared for their life. I expect if asked—many MST survivors would report they feared for their lives. I certainly did. Our trauma is no less significant, and our pain and suffering is just as real.

Some have expressed concerns about lowering the evidentiary standard for MST as an invitation to fraudulent claims. DAV has spoken to numerous clinicians over the years who work with high volumes of MST survivors, and they unequivocally attest to the fact that the frequency of false reporting is likely very minimal, particularly in the face of continued widespread problems substantiating sexual assault and harassment in the military services.

Last month, the DOD appointed a 90-day Independent Review Commission to look at sexual assault in the military, and to review and make recommendations on department policies concerning accountability; prevention; climate and culture; and victim care and support. Defense Secretary Lloyd Austin himself has stated that "Sexual assault and harassment remain persistent and corrosive problems across the total force."³ For decades, this issue has been highlighted and has received national media attention, groundswells of public support and Congressional action, yet the problem remains.

As we address this long-standing issue, DAV believes it is important to protect the integrity of the claims process. However, the refusal to lessen the burden of proof for these types of claims as means of deterring false claims is incongruent to the reality of the current climate of assault and harassment that are known to exist in today's military—and which has existed for decades prior.

Currently, in cases where documentation of an actual "stressor" is not available, such as a police report, VA will look for other "markers" like weight gain or loss, sudden onset of physical ailments or behavioral incidents corroborating the "stressor" had occurred. However, in many cases, even these "markers" may not exist. Following my assault, I internalized my pain. I rarely ate or slept and pushed myself deeper into my work. Rather than being seen as the victim of a heinous crime, I presented outwardly as a dedicated and overachieving Marine when in reality, I was self-destructing from the inside out. Everyone reacts—and survives—differently.

In the past, DAV has supported legislation to further relax the evidentiary standards for "stressor" requirements in claims for conditions related to MST.

³ <https://www.defense.gov/Explore/News/Article/Article/2548632/commission-begins-90-day-look-into-sexual-assault-in-military/>

Specifically including a requirement that the VA Secretary accept as sufficient proof: a diagnosis of a mental health condition by a medical professional along with satisfactory lay or other evidence and an opinion by the mental health provider that the condition is related to MST if consistent with the facts of the veteran's service, notwithstanding the absence of an official record of the event. To that end, VA shall resolve every reasonable doubt in favor of the veteran.

For many MST survivors, establishing service connection for mental and/or physical injuries caused by MST represents personal validation as well as recognition of and gratitude for their honorable service. DAV supports lessening the evidentiary burden for MST cases, more closely in line with what is currently required for combat veterans.

VBA/VHA Coordination and Communications with Veterans

Beginning in 1992 with the enactment of Public Law 102-585 and in the years since, VHA began offering veterans counseling and services to address physical and mental health issues related to MST, without requiring a service-connected rating or proof of the event. However, a lack of coordination between VBA and VHA means that MST survivors filing for claims are often left without any guidance on the immediate health services available to them through VA.

DAV service officers help to ensure veterans are aware of VA's available benefits and services, but especially in cases where veterans are filing directly through VA, they could very well wait through the entire claims—and potentially appeals—process unaware that they could be receiving much-needed treatment to address the complex physical and mental health conditions that frequently stem from their assault. Additionally, veterans who try to access these services or are seeking more information often report that they have explain their situation to multiple VA employees before being connected with the right person which can be demoralizing and re-traumatizing.

As such, we believe a warm handoff approach from VBA to VHA would benefit veterans without overwhelming them. Once an MST-related claim is filed, this should automatically initiate a communication to the veteran providing direct contact information for both a VBA MST coordinator and a VHA MST coordinator, clearly explaining how each can provide assistance. This correspondence should also contain information about the services MST survivors are eligible to receive through VHA. This can help to reduce the need for survivors to continuously recount their experience to strangers when attempting to seek assistance.

I can tell you as someone who has been through the process personally and as someone who has sat with veterans as they muster every ounce of courage to relive the details of these horrific, traumatizing events that the VA claims process for MST can be cold, impersonal and is often carried out with very little compassion for the dignity and

humanity of the survivor. VA has attempted to standardize this process, but let me be clear: no sexual assault is standard.

The language used by VBA in communications to survivors of MST is important. Whether drafting official correspondence or determining requirements for exams, VBA must recognize MST claims are unique and approach them with care.

VA must recognize that MST survivors often experience common feelings of shame, and that the event was somehow their fault and they are not believed. When VA sends a development letter to the veteran who has already presented all the information necessary to concede a stressor, VA is reinforcing these feelings. While VA may see their letter as a simple request for additional information, an MST survivor reads it as, "We don't believe you."

When drafting official VBA correspondence for MST-related claims, we recommend consulting with VHA psychologists and experts specializing in sexual assault to ensure language used in letters to veterans is not inflammatory or impersonal. It is important that these letters be viewed from the perspective of the veteran, not just the VA. These communications should include MST coordinators' contact information as well as information for the Veterans Crisis Line and VHA health care.

Likewise, the standard approach to scheduling contract exams can, in many cases, lead to re-traumatization of MST survivors. We recently heard from a veteran who was asked to undergo multiple Compensation & Pension (C&P) exams when filing for an increase to her existing service-connected rating for a condition related to MST. After numerous calls to determine the cause for the additional exams, she was told it was due to human error and the additional C&P examinations were subsequently canceled. Such unnecessary exams open the veteran up to stress and anxiety they should not have to endure.

VBA Handling of MST Casework

As a service officer, I can appreciate that VBA has made changes over the past several years to how MST cases are processed and recognized for their sensitivity and complexity. In fact, as of May 3rd, VBA has directed all MST claims be consolidated through five designated Regional Offices (RO)—Lincoln, Nebraska; Hartford, Connecticut; Columbia, South Carolina; New York, New York; and Portland, Oregon.

Due to the specialized nature of MST claims, it makes sense for smaller, more specially trained groups to be responsible for processing them. While the National Work Que has proven helpful in improving overall productivity and efficiency for most claims, it is difficult to ensure adequate staff training for these types of claims. Many times when I see a denial, it is because the claim processor failed to recognize signs in the service treatment records that I—and other trained individuals—know to look for. This can include the gaining or loss of weight over a period of time; dental records showing a

gradual deterioration in the teeth due to bingeing and purging; unexplained reports of stomachaches, heartburn or onset of headaches; or even sudden breakouts of acne because of stress. The VA often tends to miss these "markers" as being linked to MST. Historically, we have seen more success when VA processors are able to focus on higher volumes of MST claims, effectively becoming experts in developing these unique cases.

We do, however, believe continued oversight is imperative to successful implementation of this consolidation. VBA should provide information about how many MST cases are currently pending and how many people in each regional office will be handling these cases. The goal is for decisions to be both accurate and timely, and we want to be sure that this approach will be sufficient to meet the caseload. Adequate staffing, along with consistent and continuous training will be critical to success.

Mr. Chairman, just last month, VA published a blog article entitled, "VA believes in survivors of military sexual trauma." Words matter, but they mean little when not backed by appropriate action. In so many cases, the message to veterans is that because they did not report their assault, it never happened in the eyes of the VA. Many survivors become disheartened and frustrated when they receive a VA letter indicating the types of evidence they will need to provide. Worse yet, some get part of the way through but are so re-traumatized by the process, they abandon their claim all together.

It's not enough for VA to say they believe survivors, but then subsequently deny their claim for lack of evidence or fail to provide the necessary supports to handle these very specialized cases and veterans who may be particularly vulnerable. VA simply must do better by veterans who have experienced MST and have chronic conditions related to the assault. It is time to unify VA's belief in survivors across the entire Department, and put the best interest of veterans at the heart of its approach to handling this often complex and painful process.

Mr. Chairman, this concludes my testimony and I am happy to answer any questions you or the members of the Committee may have.

QUESTIONS FOR THE RECORD

Senator Bernard Sanders

Question 1. Mr. Murphy, according to your testimony, the VA has a total claims inventory of 242,240. Does this represent all current open claims at all stages and of all types, including new, reopened, remanded, appealed, and other claims?

VA Response: As of May 10, 2021, VA's pending inventory of compensation and pension rating claims was 525,613. This number includes all claims for benefit entitlement at all stages. The inventory includes all rating claims, which includes new, reopened and supplemental claims for disability compensation, non-service-connected pension, and dependency and indemnity compensation claims. This figure does not include legacy appeals or remands or 21,000 requests for higher level review.

Question 2. The average claims processing time of those indicated in your testimony is 98.08 days. Your testimony also states that 65% of the VA's total claims inventory are veterans awaiting a Compensation & Pension (C&P) exam. It strikes me as a long time for approximately 157,000 veterans to be in waiting. If the veteran doesn't currently have a disability rating, does the veteran have access to health care during that 98-day waiting period?

VA Response: Veterans do not automatically have access to VA health care while waiting for a disability compensation claim to be adjudicated. However, Veterans who do not have a service-connected disability rating may be eligible to enroll in the VA health care system based on other eligibility criteria other than a service-connected disability rating and thus would have access to VA health care during the waiting period. Some of these Veterans may be subject to a copayment, but would no longer have to pay certain copayments if they were to receive a service-connected rating and be placed in a higher priority group for VA health care enrollment. For those Veterans who are not eligible to enroll based on eligibility criteria for enrollment in any VA health care priority group, there is another possibility to receive VA health care pending the disability compensation claims determination. Pursuant to 38 C.F.R. § 17.34, and subject to the provisions of sections 17.36 through 17.38, when an application for hospital care or other medical services (except outpatient dental care) has been filed that requires an adjudication as to service connection or a determination as to any other eligibility prerequisite that cannot immediately be established, the service (including transportation) may be authorized without further delay if it is determined eligibility for care probably will be established. Tentative eligibility determinations under this section, however, will only be made if: (a) in emergencies: the applicant needs hospital care or other medical services in emergency circumstances, or (b) for persons recently discharged from service, the application was filed within 6 months after date of honorable discharge from a period of not less than 6 months of active duty. We note that Veterans who served in a theater of combat operations after November 11, 1998 are eligible to enroll in priority group 6 within five years from the date of discharge.

Question 3. Late last year, VA unilaterally decided to privatize ALL C&P exams without the consent of Congress. How has the privatization of C&P exams affected the VA backlog?

VA Response: The use of contracted medical disability examination providers has not negatively affected the VA backlog. The COVID-19 global pandemic caused the number of pending examination requests to increase, which impacted the VA backlog.

In 1996, Congress first authorized contract examinations at 10 Veterans Benefits Administration (VBA) Regional Offices (ROs). Additional authority was granted to VBA in 2003 to allow VBA to use its appropriated funds to provide additional support by adding contract exam services to additional VBA ROs. This process accelerated in 2014 when Congress authorized an expansion of the contract authority to additional regional offices in fiscal year (FY) 2015, and FY 2016, and then nationwide in 2017. This long-term transition allowed the Veterans Health Administration (VHA) to increase its focus on its core mission of providing medical care for Veterans while also allowing VBA to develop a high-quality international examination network.

In response to the COVID pandemic, VBA issued guidance on March 18, 2020 to claims processors to thoroughly review claims files and focus on identifying claims where the record already contains sufficient medical evidence necessary to render decisions or to use Acceptable Clinical Evidence (ACE) to avoid Veterans and Service members potentially being exposed to COVID-19 during an in-person medical examination. On the same day, VBA provided its contract vendors instructions for handling appointments affected by the COVID-19 outbreak and encouraged them to use ACE and Tele-C&P modalities whenever possible.

On April 2, 2021, the VHA Executive in Charge notified the Under Secretary for Benefits that VHA would transition C&P exams to VBA so VHA facilities could prioritize health care services in response to COVID-19. VHA maintained support of C&P exams through the use of Acceptable Clinical Evidence (ACE) and other virtual telehealth services as VHA Facility conditions allowed. On April 3, VA suspended all in-person examinations to ensure the safety of Veterans and examination providers.

The 2-month complete suspension of in-person C&P exams caused over 200,000 examination requests to accumulate. VBA incrementally resumed exams where it was safe to do so in June 2020 and stopped the growth of the examination inventory by the end of FY 2020. In FY 2021, VBA's vendors increased their capacity to complete examinations by over 20% and continue to add capacity to eliminate their excess pandemic-related examination inventory.

In FY 2019, prior to the pandemic, VHA completed about 578,000 exam requests, or 35% of total VA exam requests, using VHA C&P examiners supplemented with VHA fee basis examiners in some VHA Facilities. At the start of FY 2020, VHA completed approximately 43,000 exam requests per month using both VHA C&P examiners supplemented with VHA fee basis examiners as needed. Starting in April 2020, the average monthly volume decreased to approximately 13,000 per month. In March 2021, VHA expanded C&P capacity to complete approximately 18,000 exam requests per month using in-person, ACE, and telehealth modalities.

Question 3a. Would the VA be able to process C&P exams in a timelier fashion internally?

VA Response: VA has historically met performance goals for timeliness using a combination of VHA C&P examiners and VBA contracted resources. VA remains

flexible in applying the resources necessary to ensure Veterans receive timely examinations. The use of VBA contracted examiners increased from 24% of all examinations completed in FY 2016 to more than 77% in FY 2020. VHA provided additional capacity not provided by the VBA contractors. During the same time, VBA claim production increased 13%, while the Average Days Pending decreased from 84.9 days to 83 days, and Average Days to Complete decreased from 123.2 days to 106 days.

Question 3b. In 2016 VA spent \$6.8 Billion on outsourcing C&P exams. Do you have numbers on the costs of conduction C&P exams per veteran, per exam in the private sector vs. at the VA?

VA Response: The 2016 \$6.8 billion figure refers to the total awarded cost of the 10-year contracts for VBA Contract Medical Exams. The actual cost of 2016 VBA Disability Contract Exams was \$292,138,561. The average cost per Veteran for contracted C&P exams conducted by VBA contractors is currently \$1,053.

Average cost per Veteran data is available to compare for FY 2016 to FY 2018 in the following table.

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FYTD 2021 (a/o 6/22/21)
VBA Contract Exam Request Completions	289,428	592,831	797,799	1,061,789	1,063,587	1,147,831
VBA Exam Contract (Private Sector) Average Cost per Veteran*	\$1,009	\$1,080	\$1,140	\$1,083	\$1,042	\$1,053
VHA Exam Request Completions	932,411	754,510	653,144	577,678	326,305	132,082
VHA Average Cost per Veteran **	\$1,013	\$1,081	\$1,137	\$1,191	\$1,285	\$1,378

*The data could include more than one exam request per Veteran.

**VHA provides fully burdened costs for VHA C&P exams using C&P staff, supplies, medical center administrative and engineering support to operate C&P clinics, and a stepped down portion of the obligations for VISN C&P operations, VHA Programs Office, VHA Central Office and capital expenditures.

Question 4. The Government Accountability Office (GAO) reported in 2018 that the department doesn't track whether contractors are meeting quality and timeliness standards. According to many veterans, the facilities used for these examinations are substandard and unhygienic. One of my staffers attended a C&P exam in a New York facility with dead cockroaches on the floor. Are these adequate standards for VA's private sector contractors, and how can we expect facilities that can't maintain basic hygiene practices to keep up with the workload demanded of them?

VA Response: VBA tracks the performance, to include Veteran satisfaction, of all exam contractors on the metrics of quality and timeliness quarterly and provides each contractor with an indication of how well it is performing. Timeliness is evaluated by measuring the pending inventory monthly. VBA evaluates timeliness (based on completed and pending inventory), quality and Veteran satisfaction quarterly. VBA holds monthly teleconferences for feedback and informational purposes with each exam contractor. Since 2018, VBA changed the system that captures this data. VBA is now able to create detailed examination inventory information and ensures complete visibility into vendor inventory and pending examination workload. VBA continues to take steps to improve performance assessment and improve data transaction efficiencies. This improvement includes the Medical Disability Examination Office's (MDEO) ability to assess contractor timeliness and steps to process the examination scheduling requests (ESR) within the lifecycle.

VBA tracks Veteran satisfaction with services, including cleanliness of the examiner's facilities through a third-party contract. For the past 2 years, 95% of Veterans responded they were somewhat or very satisfied with the cleanliness of the examiner's facilities. All VBA exam contractors are required to inspect and provide documentation that all facilities and subcontractor facilities are compliant with Occupational Safety and Health Administration (OSHA) standards and the Americans with Disabilities Act (ADA). VBA conducts site visits on a random and complaint basis to ensure facilities are in compliance. The standard of review for a site visit will be based on the ADA, Joint Commission on Accreditation of Healthcare Organizations (JCAHO), OSHA, and any applicable state or local standards.

Question 5. Is VA deliberately using VBA as a gatekeeper to deny claims and save money on benefit and healthcare costs?

VA Response: VA is committed to providing Veterans and survivors with the benefits and services they are entitled to and does not deny claims to save money on benefit and healthcare costs. Prior to making a decision on a claim, VA assists Veterans and other claimants in several ways, such as gathering records in support of their claim and providing medical examinations as needed. Further, in deciding a claim, when there is an approximate balance between positive and negative evidence which does not satisfactorily prove or disprove the claim, VA gives the benefit of the doubt to the claimant.

Question 5a. When I attended the 1st National Gulf War Resource Center Convention as the keynote speaker, the VA denied 80-90% of disability benefit claims for gulf war veterans, and denials remain at around 80-90% today. VSO's Veterans for Common Sense and Vietnam Veterans of America have won 100%, which indicates an error rate of 100%. With such a high error rate, how are we to believe this isn't simply a mechanism to deny claims and keep spending down?

VA Response: VA strives to advocate for our Veterans and takes our mission of caring for the Nation's Veterans seriously. VA assists Veterans in several ways, such as gathering records in support of their claims and providing medical examinations as needed. Further, in deciding a claim, when evidence is in equipoise, VA gives the benefit of the doubt to the claimant. VA appreciates the advocacy and assistance our service organization partners provide to Veterans in assisting them with requesting and obtaining

benefits and services. VA data from March 2021 shows that of the approximately 2.5 million Gulf War Deployed Veterans (post 9/11) who were potentially exposed to a wide range of toxins, VA received more than 1.6 million claims. Of these claims, VA granted disability compensation benefits for one or more medical conditions for over 1.5 million (or 94%) of those deployed Veterans. VA always seeks to grant where it can in deciding Veterans claims for compensation benefits. In fact, VA pays out over \$91 billion in annual compensation payments to over 5 million Veterans (per Annual Benefits Report FY 2020).

Question 6. To address these problems, in simple terms, please explain what the VA needs to fill its claims backlog and get veterans the care and services they need? Is it better training, more staff, better control of its budget or maybe a combination of these factors?

VA Response: VBA has taken several steps to stop backlog growth and reduce the backlog, to include proactive partnerships within and outside of VA that enable claims processing and changes to internal procedures. VA made numerous changes internally to deliver benefits expeditiously in the face of the pandemic. In 2020, VA streamlined mail processing and all new claims and correspondence are incorporated into the Veteran's electronic claims folder within 24 hours, ensuring all critical evidence is available to decisionmakers as quickly as possible. VA used virtual methods to resolve and mitigate delays to claim development actions. For example, subject to a Veteran's consent, VA used and provided virtual pre-determination hearings, which historically required in-person participation. In addition, VA expanded use of telehealth examinations where feasible.

Externally, VA partnered with the National Archives and Records Administration (NARA) to expedite records requests for VA claims. Through this partnership, VA placed its own employees at the National Personnel Records Center (NPRC) to acquire and scan military records needed to support claims, reducing a pending inventory from approximately 80,000 to 8,000 in April 2021. The reduced volume (8,000) is considered the normal working inventory. VBA took several actions to prepare for known impacts to its ability to deliver benefits and services to Veterans in a way that honors their service. VBA is prioritizing re-adjudications for more than 60,000 Blue Water Navy Veterans, which it began processing in April 2021, and is projecting another increase in inventory for three new presumptive conditions due to Agent Orange exposure. These claims will require significant use of resources to process because they are, on average, approximately four times more complex than an average claim.

Advanced resource planning and strong action from Congress will help to mitigate strain to VBA's workforce caused by increased workload and supply chain difficulties. In recent years, VBA prioritized hiring and currently is staffed fully in its claims processing teams. The increase in the FY 2022 President's Budget for general operating expenses includes VBA's request for 432 additional employees. The additional employees, plus additional resources from Congress, ensure VBA's claims processing teams are appropriately sized and properly trained to address the known workload. The additional resources from Congress include:

- Transfer authority for up to \$140 million in Coronavirus Aid, Relief, and Economic Security (CARES) Act funding from the Medical Services account to the General Operating Expenses, Veterans Benefits Administration account to support claims processing overtime, of which all \$140 million has been transferred as of May 27, 2021.

- \$262 million in American Rescue Plan (ARP) funding to support improvements in claims processing. VBA plans to use funding from the ARP to increase overtime to process claims and expand scanning of Federal records to eliminate the dependency on NARA. Investments include:
 - \$100 million will be used for overtime for claims processing to reduce the backlog of rating claims.
 - \$150 million will be used to expand the scope of Federal record scanning, to reduce further claims processing delays resulting from paper record requests maintained by NARA. Closures at NARA facilities due to the COVID-19 pandemic have impacted VA's ability to process claims that require records from NARA to support the Veteran's contentions. In addition, expanded and proactive scanning capabilities at the NPRC facilities would improve VA's ability to access all Veterans' records in support of claims processing.
 - \$2.5 million will be used for Customer Relationship Management system enhancements, which will allow call center agents to complete simple claims over the phone.
 - \$10 million will be used to implement Integrated Hearing Scheduling. VBA handles hearings virtually and in-person, and all scheduling is occurring locally to synchronize technology, employees, conference rooms, Veteran schedule, and Power of Attorney schedule. The Integrated Hearing Scheduling tools will allow Veterans to self-request from identified timeslots and improve the Veteran experience for in-person and virtual hearing scheduling.

By the end of FY 2022, with these resources, with projected new claims from the Agent Orange-related claims, and with sustained improvement to the claims evidence supply chain, VBA aims to reduce claims pending over 125 days to approximately 100,000.

For future planning, VBA is working with the Office of Management and Budget to make further improvements to records availability. VBA believes greater records availability will reduce errors and expedite decisions for many claims. If enacted, significant new legislation under consideration in Congress would increase VBA's workload and strain our most valuable resource, our employees. If implemented on a short timeframe, hiring and training processes will be strained, and additional resources would be required to address the workload.

Question 7. If Congress were to make the VHA budget mandatory spending, would this help solve some of the budgetary problems by elevating the need to cut costs at the veterans' expense?

VA Response: In the past, Congress ensured the VA Medical Care program's financial stability through discretionary advance appropriations and additional discretionary funding provided in the subsequent year as a "second bite" on top of the advance appropriations, as well as additional funding as required to meet emergent issues. Responses to emergent issues have included discretionary funding (CARES Act; hurricane supplementals) and mandatory funding (Veterans Choice Act, MISSION Act, American Rescue Plan Act). We commit to sustaining and improving collaboration, transparency, and efficiency as we communicate with Congress regarding what resources are necessary to provide Veterans with high quality, timely health care in the most appropriate and desired settings. As we honor this commitment and continue to make investments

to further enhance the VA Medical Care program, we look forward to working with Congress and all stakeholders to determine how best to meet needs for VA medical care while ensuring the highest integrity, stewardship, and accountability of taxpayer resources.

Question 8. Before the National Work Queue, when each claim moved through the Regional Office it was assigned to, it was easy for staff to know every individual who had worked on a claim and easy for a claims processor to ask a colleague a question if clarification was needed on a particular claim. Since the implementation of the National Work Queue, a claim can be assigned to almost any staffer regardless of where they are located, and it is difficult if not impossible for a staffer to ask someone a question about their work, often creating more work, and slowing down the claims process. What would it take for VBA to change the system to make it easy to identify every employee who touched a claim, and for example allow a RVSr in Vermont to ask a VSR from another state a five-minute question, instead of creating hours of additional work that could go towards helping another veteran?

VA Response: The National Work Queue (NWQ) is a workload distribution tool that was designed to maximize workload assignment to VBA's capacity. NWQ centrally manages the national claims workload by prioritizing and efficiently distributing claims across VBA's network of ROs to improve processing timeliness and better serves Veterans and their families. In March 2016, prior to the rollout of NWQ in April 2016, VBA completed claims in an average of 156 days. Prior to the COVID-19 pandemic and resulting evidence supply chain problems, VBA was processing most claims within 90 days. The Veterans Benefits Management System (VBMS) easily identifies prior assignment of claims for historical reference, and employees can communicate across the Nation through Microsoft Teams chat and audio/video call functionality, email, or telephone. Claims eFolders can be reviewed by claims processors, regardless of assignment, to provide status updates as needed. In addition, recent enhancements to NWQ allow claims to be routed back to the same claims processor who previously worked the claim.

Question 9. When I speak with VBA claims processors at the regional office(s) in my state and from across the country, and ask what the single biggest obstacle is to helping veterans, the most common answer I receive is "employee performance standards." If a Veterans Service Representative (VSR) or Rating Veterans Service Rep (RVSR) determines that a claim is not ready to move forward and requires a deferral, the employee making that determination gets no credit for the work they did related to that claim. This in effect is punishing the employee who does not want to incorrectly deny a veteran's claim when more information is needed. What can VBA do to address this specific problem, and give credit to employees doing what is in the best interest of the veteran?

VA Response: VBA develops, reviews, and updates performance standards based on data-driven analysis. VBA established VSR and Rating RVSR performance standards based on all actions taken on a claim and determining a baseline. VBA develops its performance standards using past performance data and reviews them regularly for possible adjustments to elements within the standards and is committed to developing fair standards that permit accurate and objective assessment of employee performance by ensuring performance standards are understandable, challenging, realistic and attainable. VBA factored the deferral process into developing these standards. VBA continues to evaluate and adjust standards, including the latest adjustments in April 2021.

Question 10. Following up on a letter all VA Committee Democrats sent last fall, I want to talk about the customer service our veterans receive when calling about their claims, and discuss the performance standards for Legal Administrative Specialists, who literally answer veterans' questions in VBA's eight national call centers. These employees are measured in large part on their "talk time," which as it sounds measures how long employees are on the phone with veterans. Employees get penalized if they go over their allotted time, which can be as little as 8 minutes and 30 seconds depending on an employee's GS level. This is a one size fits all standard that doesn't take into account common issues veterans call in about including:

- a. A first notice of death call where a veteran's spouse is calling to inform the VA that the veteran has passed away (which can take 20-30 minutes);
- b. A senior citizen veteran who has difficulty communicating;
- c. A veteran who has more than one question or issue to resolve;
- d. And lastly, it disincentivizes an employee for making a suggestion to a veteran about a benefit or program she may be eligible for but doesn't know to ask about, because it would take more time on the phone.

These performance standards are 100 percent within the VA's purview, and I would like to know what can be done to address this today, especially since this particular standard is relatively new?

VA Response: VBA arrived at the established average talk time requirements through data-driven analysis, that encompassed all types of calls and factors in agent experience levels, to include the call examples referenced in this question. As the requirement is an average, agents are not expected to keep the talk time for each interaction below the established requirement. Instead, agents are evaluated based upon the average talk time of all calls managed by the respective agent.

Since the implementation of the standards on December 1, 2019, VBA has closely monitored the impact on the customer experience and overall call quality, which includes a review of the customer service and the technical accuracy of the interaction, to ensure the level of service provided continues to meet the expectations of the organization. Since the implementation of the standards, VBA has seen a slight increase in both the VSignals (VA's customer survey tool) Employee Helpfulness Customer Experience (CX) Domain results and the overall call quality. The national legal administrative specialist performance standards in place ensure VBA provides excellent customer service to our Nation's Veterans.

VBA continually reviews and updates performance standards based upon data-driven analyses. Since the implementation of the standards on December 1, 2019, VBA has not identified any data that supports the need to change the talk time requirement.

Senator Sherrod Brown

Question for Mr. Thomas Murphy, Acting Under Secretary for Benefits Administration:

Question 1. Mr. Murphy, in the CARES Act, Congress provided approximately \$13 million to VBA to improve telework capabilities for claims processors. Has you used all that funding? If so, are there still gaps in VBA's IT infrastructure that would hinder VBA employees from continuing to process claims while teleworking?

In the end of the year omnibus, Congress provided a transfer authority of \$338 million from VHA to VBA. It's my understanding that about \$90 million has been obligated thus far. Can you breakdown how VBA intends to obligate that funding to process the backlog-will VBA hire more staff, authorize overtime?

VA Response: As of May 31, 2021, VBA obligated approximately \$10 million of the CARES Act funding.

The teleworking infrastructure is an integral part of VBA's claims processing capabilities during the COVID-19 pandemic. VBA received adequate support from VA OIT during the onset of the global pandemic (and continues to do so) and ramped-up teleworking capabilities between March 2020 and April 2020, which increased the teleworking footprint to support VBA employees teleworking full time.

VA OIT doubled bandwidth availability for claims processors, increased laptop capacity by more than 60% and ensured network availability during peak production hours. These areas supported more than 25,000 VBA employees across the enterprise operating in a 100% telework environment. As we move beyond the COVID-19 pandemic, VA OIT will work to ensure this production model is supported long-term.

In the Consolidated Appropriations Act, 2021 (P.L. 116-260), Congress provided transfer authority of up to \$338 million from VHA to VBA. As of May 31, 2021, \$338 million has been transferred to VBA, and approximately \$72 million has been obligated.

The legislation prohibits funding to be used to hire additional staff. However, VBA allocated \$75 million for overtime to support the claims backlog.

Question 2. Last year, VA wanted to shift more C&P exams out to contractors from VHA. This Committee voted on language to increase oversight and stop VA from eliminating medical examiners. VA announced it was suspending all in-house exams when the Department knew there was a growing exam backlog. VA's medical staff has critical knowledge related to MST, PTSD, TBI and toxic exposure, which should be retained for C&P exams.

GAO's testimony raises oversight and accountability concern of contractor performed exams. GAO also questions whether VA has the correct balance of in-house and contracted exams.

Mr. Mathew, is VBA is on track to submit the medical examinations report required by Section 2002 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020?

VA Response: Yes, VBA is actively collaborating with VHA to submit the report required by Section 2002 of the Johnny Isakson and David P. Roe M.D. Veterans Health Care and Benefits Improvement Act of 2020.

Question 2a. That section also requires VA to halt the elimination of medical examiners. Can you update the Committee on whether the Department is complying with that, and VBA's plan to assess in-house exams and contracted ones?

VA Response: VA is continuing its long-term transition to using its contract examination authority as the primary source for C&P exams. In fact, during the COVID-19 pandemic, VHA expanded its contribution to support VBA with the excess pandemic-related exam inventory to target certain high-volume, in-person exams. VHA will continue to maximize the completion of other exams using its telehealth technology and VA's Acceptable Clinical Evidence (ACE) procedures, and VBA's contract vendors will continue to focus on all types of pending in-person exams. VA anticipates this strategic approach to addressing the exam inventory will result in the goal of returning to a normal C&P exam inventory by the end of FY 2021.

Question 3. VHA has a national directive for medical professionals to provide written statements in support of veterans VBA claims.

However, my office has heard reports from veterans and VSOs that medical centers in Ohio don't do this or at least don't work with the veteran to support VBA claims. Please tell the Committee why medical center directors wouldn't support their providers assisting veterans' VBA claims?"

VA Response: Completion of forms and written statements on behalf of Veterans is an important part of the VHA mission and a way for VA providers to advocate for Veteran patients. All VA health care providers are responsible for completing these forms at the request of a patient or their personal representative. We are saddened to hear Veterans and Veterans Service Organizations (VSO) in Ohio reported these activities are not being adequately supported; VISN 10 followed up with all Ohio facilities and confirmed all Medical Center Directors are aware of their responsibilities in this regard. VHA would be happy to follow up on any specific cases if details can be provided.

Senator Mazie K. Hirono

Questions for Thomas J. Murphy, Acting Under Secretary for Benefits, Veterans Benefits Administration (VBA), Department of Veterans Affairs

Hawai'i Benefits Office

My staff have heard reports from our local benefits office that employees are now handling more appointments than ever before, and that appointments via telephone have greatly impacted their ability to work with veterans.

Question 1. If this increased demand continues, what adjustments can VBA make to accommodate a higher volume of appointments?

VA Response: Virtual and in-person appointments continue to increase at the Honolulu RO; however, the appointments are manageable with existing staff. The RO is monitoring and adjusting its staffing levels constantly for virtual and in-person appointments to ensure it can meet Veterans' needs in public contact.

Military Sexual Trauma claims

Your testimony stated that VBA has and continues to place "special emphasis" on processing MST during the COVID-19 pandemic.

Question 2. As VA works through backlogged claims, does that mean VBA will afford preference to or siphon off particularly complex or time-sensitive claims – e.g., for MST or catastrophic injuries – in order to ensure those claims are handled with the proper amount of sensitivity and speed?

VA Response: VBA is committed to serving Veterans by processing claims related to Military Sexual Trauma (MST) in an accurate and compassionate manner. In May 2021, VBA centralized this important work to five ROs. By October 1, 2021, VBA will implement an MST Remote Operation to streamline operations and ensure tighter control and accountability for MST claim decisions. In this phase, MST claims processors will be remotely assigned to an MST division, and work will be assigned to them from the centralized site.

In addition, VA consolidated processing for Agent Orange claims for Blue Water Navy claimants to ensure accuracy and compliance with court-ordered documentation requirements. VA is continuing this practice for new Agent Orange presumptive conditions. These claims are, on average, four times more complex than the average claim. This consolidation ensures appropriate care and attention by specialists trained to process these claims, while also allowing all other Veterans to be served expeditiously.

Question 3. Does VBA have specific procedures in place for handling delayed complex or special claims?

VA Response: Yes, VBA designated coordinators and claims processors for complex claims issues such as MST and homeless Veteran claims. Further, ROs maintain special coordinators and points of contact for certain matters like attorney fees. In addition, VBA centralizes some types of highly specialized workload to certain ROs, examples include cases related to Camp Lejeune contaminated water, and mustard gas exposure. Generally, VA uses an electronic “special issue” flash on a Veteran’s electronic file with claims that fall under these special categories. These flashes are added to properly route the claims electronically to the appropriate individuals or offices for processing.

Question for Elizabeth Curda, Director, Education, Workforce, and Income Security, Government Accountability Office

Military Sexual Trauma Claims

GAO has outlined continued issues with VBA’s oversight of contractors as it relates to processing specialized claims, including those related to military sexual trauma.

Question 1. In addition to your overall suggestions for improving the processing of specialized claims, are there steps VBA should be taking to ensure the integrity of the claims process in the midst of increased pressure to process backlogged claims?

GAO Response:

VBA can help ensure the integrity of its claims process through better planning and strong quality assurance processes. We reported in our March 2021 High-Risk Report that VBA could take additional steps to develop contingency plans for workload surges and potential disruptions to operations, such as it experienced during the COVID-19 pandemic. Similarly, we recommended in a March 2021 testimony to the House Committee on Veterans’ Affairs that VBA should use sound planning practices to develop plans for allocating disability medical exam workloads among VHA medical centers and VBA contractors. Employing such practices could help VBA identify potential risks stemming from its ongoing, long-term effort to shift most exam workloads to VBA contractors.

Moreover, VBA’s quality assurance processes are critical to ensuring the integrity of the claims process, including disability exams, as the agency pushes to work down its claims backlog. Accordingly, it is essential for VBA to address reported deficiencies related to various components of VBA’s quality assurance program for claims, as summarized in a May 2021 VA Office of Inspector General report (VA OIG 20-00049-122). Additionally, regarding the quality of exams, we recommended in March 2021 that VBA develop a process specifically to assess the quality of exam reports completed by contractors for complex claims. We made this recommendation, in part, because VBA data on the rates at which claims processors return exam reports to contracted medical examiners for

correction or clarification suggest that exams for certain complex claims may be more challenging to perform than more routine exams. By implementing our recommendation, VBA could identify potential training needs and better ensure that veterans receive high quality exams with fewer corrections needed. Improvements in exam report quality could also lead to more timely and accurate decisions on veterans' claims for disability benefits.

Questions for Carmen McGinnis, National Service Officer, Disabled American Veterans

Military Sexual Trauma Claims

VBA has placed special emphasis on processing claims relating to military sexual trauma during the COVID-19 pandemic.

Question 1. What recommendations would you make to VBA as they begin to work through backlog that may contain potentially sensitive MST claims?

McGinnis Response:

- a. Lower the evidentiary standard and accept the survivor's statement as fact to concede the stressor, in the absence of evidence to the contrary, then afford an examination.
- b. Consolidate MST related examinations to be conducted solely by VHA providers in VHA facilities. There simply is not enough oversight of contract examiners to ensure a safe exam space and consistency among exam conditions (ie. Cleanliness or location of facility, no dogs barking in background, etc.)
- c. Include the direct contact information for VHA and VBA MST Coordinators, along with a list of other benefits they may be entitled to (VHA) immediately upon receipt of a MST related claim.
- d. Ensure there is a way for the survivor to elect their preference for male or female examiner, in accordance with what was passed in PL 116-315

Question 2. In your opinion, are there additional/specific considerations VBA should make to ensure any delayed claims are being handled appropriately?

McGinnis Response: Review each claim independently of other claims. There are no two claims that will be the same. These claims must be processed by highly trained RVSRs, those who have extensive experience should be utilized to get through any backlog of claims.

Senator Kyrsten Sinema

Questions for Mr. Murphy

Question 1. My office has received a number of inquiries from concerned Arizona veterans who are confused about the use of Disability Benefits Questionnaires (DBQs). In some cases, veterans who submit DBQs are required to schedule Compensation and Pension (C&P) exams by the VA. In other, similar cases, the VA accepts the DBQs and does not require the exams. The veterans contacting us are frustrated and see this as the VA applying their policy inconsistently.

The VA ended the use of DBQs in April 2020, and then reinstated it in March 2021. The VA has not communicated this reinstatement to veterans. What is VA's current policy regarding the use of DBQs and how are you clearly communicating that policy to VBA staff and to veterans?

VA Response: Public-use disability benefits questionnaire (DBQ) forms are intended to be completed by the Veteran's medical provider. Veterans and those representing them can then submit the DBQs in conjunction with the claim for processing. If there is enough medical evidence within the completed DBQs, it may serve in lieu of an examination. However, there will be instances for which an in-person exam is still needed to complete the claim and will be provided at no cost to the Veteran. The Veteran should make every effort to report for the examination.

VA will not pay or reimburse any expenses or costs incurred in the process of completing and/or submitting DBQs completed by the Veteran's health care provider. VA reserves the right to confirm the authenticity of all DBQs completed by health care providers. Information submitted is subject to verification through computer matching programs with other agencies or any other means deemed appropriate by VA.

Communication regarding Public-use DBQs was provided as follows:

- DBQ messaging provided to VSO partners on March 4, 2021 informing them the public-use DBQs were published and made available on VA's internet site on March 1, 2021 as required by P.L. 116-315, Section 2006.
- DBQ briefing provided to our VHA colleagues on February 5, 2021 during the Office of Disability and Medical Assessment (DMA) monthly call.
- DBQ briefings provided to VBA field claims processors on February 10, 2021 and April 14, 2021 during the Compensation Service National Quality Calls.
- DBQ messaging placed on VA's internet site on March 1, 2021 for Veterans interested in submitting DBQs.

Question 2. Given that confusion still exists about VA's DBQ policy, what steps will the VA take to clearly outline VA's current policy on the use of DBQs for veterans and VSOs?

VA Response: Communication regarding Public-use DBQs was provided as follows:

- DBQ messaging provided to our VSO partners on March 4, 2021 informing them the public facing DBQs were published and made available on VA's internet site on March 1, 2021.
- DBQ briefing provided to our VHA colleagues on February 5, 2021 during the Office of Disability and Medical Assessment (DMA) monthly call.
- DBQ briefings provided to VBA field claims processors on February 10, 2021 and April 14, 2021 during the Compensation Service National Quality Calls.
- DBQ messaging placed on VA's internet site on March 1, 2021 for Veterans interested in submitting DBQs.

Question 3. The VA discontinued the use of DBQs because of growing concern for fraudulent practices. With the reinstatement of DBQs, is the VA still concerned about fraud and what steps has the VA taken to address these concerns?

VA Response: VA continues to have significant concerns regarding fraudulent DBQ practices and reserves the right to confirm the authenticity of DBQs completed by non-VA providers. The potential for fraud and abusive business practices against Veterans remains high. VA has limited ability to conduct reviews of such DBQs. During the limited validation process, VA refers potentially fraudulent DBQs to the VA OIG hotline. VA continues to be concerned about deceptive practices involving DBQs at the expense of Veterans by certain for-profit companies. VA continues to believe it would take significant technology resources and monetary expenditures to address these concerns.

Question 4. In Arizona, veterans are experiencing delays for C&P exams up to six months or more. With 65% of the total claims inventory awaiting an examination, what is VA's plan to ramp up the availability of exams and clear this backlog?

VA Response: VBA's exam vendors increased their capacity to complete examinations by over 20% and continue to add capacity to eliminate their excess pandemic-related examination inventory. In addition, VHA temporarily expanded their capacity to complete in-person examinations at multiple facilities in March 2021.

Question 5. During COVID-19, the VA increased the use of virtual exams through telehealth. We have heard from some veterans who are concerned about the accuracy of these exams. What quality control measures does the VA use for virtual C&P exams?

VA Response: All VBA contract examiners, including those conducting Tele-C&P exams, must hold an active state license to practice, with no pending disciplinary proceedings involving professional conduct. VBA has a contract with a third-party vendor to audit and ensure that providers have current and appropriate licenses to practice. In addition, all VBA contract examiners must complete C&P Certification Training prior to completing any type of C&P exam.

VBA conducts oversight audits on examination reports completed by vendor examiners, which includes those completed by Tele-C&P. A sample is reviewed for each contract using standardized audit criteria, resulting in approximately 1,000 quality reviews conducted each month. Feedback on quality is provided in various ways, to include Error Citation Reports for each contract each month, vendor-specific monthly quality calls, vendor-specific monthly clinician calls, and ad hoc questions and answers.

Question 6. How is the VA demonstrating to veterans that virtual C&P exams are reliable and a viable alternative to in-person exams?

VA Response: VA provides information regarding in-person, ACE and Tele C&P exams on its primary VA website. In addition, VA created a webpage (www.telehealth.va.gov) that is accessible to Veterans and describes the ways in which VA is leading the way in telehealth innovation. Contract exam vendors fully educate Veterans about the process and connectivity requirements to attend virtual exams during the scheduling process. All VBA exam vendors also provide information concerning ACE and Tele C&P exams on their webpages. To ensure information is accessible for all Veterans, VBA also has taken steps to educate Veteran Service Officers and other external partners about the feasibility and reliability of alternatives to in-person exams.

Senator Marsha Blackburn

Questions for Thomas J. Murphy, Acting Under Secretary for Benefits, Veterans Benefits Administration, Department of Veterans Affairs)

Last year, Congress added bladder cancer, hypothyroidism, and Parkinsonism, as presumptive conditions to Agent Orange exposure. VA has already received thousands of claims for these new conditions and VA will need to verify each of these Vietnam veterans' exposure to Agent Orange.

These thousands of new claims will also require C&P exams, adding more examinations to the pending backlog and increase the weight of the already growing backlog of claims.

The contract exam program has been and will be an important tool to speed up the claims process for our veterans. Yet, employee unions at VA facilities disapprove of the program, incorrectly claiming the program is another opportunity for VA to outsource work to contractors.

Question 1. Mr. Murphy, do you think the VA should pull back on the contract exam program and consolidate examinations to VA facilities with VA employees?

VA Response: No. Congress has long recognized the advantages of using the contract examination model. VA is continuing its long-term transition to using its contract examination authority as the primary source for C&P exams. This transition started in 1996 when Congress first authorized contract examinations at 10 VBA ROs, and it accelerated after Congress' 2014 expansion of the contract authority to additional ROs in FY 2015 and FY 2016, and then nationwide in 2017. In addition, VHA used multiple types of programs to augment internal C&P capacity through the Disability Exam Management contracts, or the use of "fee basis" providers contracted by individual medical centers. This transition allowed VHA to increase its focus on its core mission of providing medical care for Veterans.

Question 1a. How would consolidating examinations to VA facilities effect the nearly 200,000 claims backlog?

VA Response: Consolidating examinations to VA facilities would greatly reduce the capacity to complete examinations. In the past, VHA used multiple types of programs to augment internal C&P capacity through the Disability Exam Management (DEM) contracts, or the use of “fee basis” providers contracted by individual medical centers. VHA’s DEM contracts ended on September 30, 2016, and VHA has moved C&P medical resources to assist with health care and treatment during the COVID-19 pandemic.

VBA examination completions increased from 24% of all examination completions in FY 2016 to more than 77% of examination completions in FY 2020. During the same time, VBA claim production increased 15% and Average Days to Complete decreased from 123.2 days to 112.1 days. VBA contract vendors completed more examinations in FY 2020 than the previous year even though, for two months, no in-person examinations could be conducted.

Question 1b. Should the contract program should be continued, yes or no?

VA Response: Yes. VA is committed to continuing its long-term transition to using its contract examination authority as the primary source for C&P exams.

VBA examination completions have increased from 24% of all examination completions in FY 2016 to more than 77% of examination completions in FY 2020. During the same time, VBA claim production increased 15% and Average Days to Complete decreased from 123.2 days to 112.1 days. VBA contract vendors completed more examinations in FY 2020 than the previous year although, for two months, no in-person examinations could be conducted.

VBA is continually working to enhance the timely delivery of benefits to Veterans and overall Veteran experience through improvements to oversight capabilities, enhancements to information technology systems, and modernizing the claim process.

Question 2. Mr. Murphy, what has VBA learned in the last year and a half on ACE exams, telehealth exams, and interactions with VHA as well as contract examiners, on lessons learned and how we can continue some of these best practices to get veterans through the medical disability exam process more quickly as well as the rating and claims development process more quickly?

VA Response: As part of the response to the COVID-19 pandemic, VA conducted a review of the exam types that best lend themselves as being potentially suitable for Tele-C&P. Keeping in mind the determination for whether a Tele-C&P exam is appropriate is a clinical determination, and based on the evidence of record as well as the requirement of a telepresenter to facilitate clinician interaction, the number of exams deemed most suitable using telehealth/tele-mental health technologies was increased from 19 to 34 exams. Moreover, it was determined Mental Health exams (Mental Disorders, Eating Disorders, Initial and Review PTSD) may be conducted via telehealth video conference without a telepresenter in a location of the Veteran's choice (e.g., home). VA also removed the language limiting the ACE interview process to only a telephone call, and now incorporates video communication, which allows for an enhanced experience for Veterans. VA also has updated guidance to VHA examiners and VBA contract examiners to reflect these permanent changes to ACE and Telehealth.

The changes VA made to virtual services are enduring and intended go beyond the COVID-19 pandemic. While VA has made every effort to expand the use of alternative examination modalities, further expansion is not possible at this time based on the regulatory criteria in the VA Schedule for Rating Disabilities. As VBA assesses impairment caused by disabling conditions, which frequently requires hands on examiner/examinee

interactions, there are significant limiting factors to using Tele-C&P in conducting these disability assessments.



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

SENATE COMMITTEE ON VETERANS' AFFAIRS

HEARING ON

"SUPPORTING DISABLED VETERANS: THE STATE OF CLAIMS PROCESSING DURING AND
AFTER COVID-19"

MAY 12, 2021

Chairman Tester, Ranking Member Moran, and Members of the Committee:

The American Federation of Government Employees, AFL-CIO (AFGE) and its National Veterans Affairs Council (NVAC) appreciate the opportunity to submit a statement for the record on today's hearing titled "Supporting Disabled Veterans: The State of Claims Processing During and After COVID-19." AFGE represents more than 700,000 federal and District of Columbia government employees, 260,000 of whom are proud, dedicated Department of Veterans Affairs (VA) employees. This includes the vast majority of the Veterans Benefits Administration (VBA) workforce responsible for processing veterans' claims, 55 percent of whom are veterans themselves. With this perspective, we have observations and recommendations on many issues related to the claims process and appreciate the opportunity to raise them for this hearing. We hope you find these suggestions both constructive and reasonable, and we stand ready to work with the Members of the Committee to make necessary and positive improvements to VBA.

Implementation of Performance Standards:

There is a saying that "if you have been to one VA Medical Center, you have been to one VA Medical Center." That axiom also holds true for VBA Regional Offices (ROs). However, if you go to any one of the VA's 57 ROs and ask frontline employees what the single biggest obstacle they face to successfully performing their duties and serving veterans, the universal answer is the constantly changing performance standards. The way these standards are introduced and implemented for VBA staff are often termed haphazard, focused on metrics that prioritize quantity and not quality, and are a disservice to veterans.

The most recent example of this was the implementation of new performance standards for Veteran Service Representatives (VSR) and Rating Veteran Service Representatives (RVSR) on October 1, 2020 with a three-month acclimation period. Since the implementation of these standards, VBA has made changes to these standards in November 2020, December 2020, and announced at the end of the end of December they would make more changes leading to another three-month acclimation period. These standards were subsequently changed again in January of 2021, again in March of 2021, and were finalized on April 1, 2021. For context, these standards are incredibly complex and take time to learn, leading to necessary acclimation periods. Having six changes made in six months is severely disruptive and makes it difficult for staff to perform their duties and effectively serve veterans. Had VBA sat down with AFGE representatives from the beginning to discuss these standards and gain employee perspectives and input, many of these problems could have been avoided, and VBA could have been working more efficiently and collaboratively on behalf of veterans.

Meeting Performance Standards or VBA Employees

Beyond the turbulent rollout of performance standards, employees face critical problems in meeting them. While VBA sets ambitious goals, there are several components of employee performance standards that are counterproductive to serving veterans that VBA should immediately change. Three of the components are particularly egregious.

First, if a VSR or RVSR decides that a claim is not ready to advance and needs more time for a veteran to receive an exam, submit forms, or gather more information to make a decision, the employee making the deferral may not receive the same production credit that they would have had they advanced the claim forward. When VSRs and RVSRs start to review a claim, they

do not know yet that the claim will not be ready. An employee may spend hours trying to rectify problems on a claim and receive limited or no credit. This imperils their ability to meet their standards and may lead to discipline. This in turn cynically encourages employees to advance or deny claims prematurely, with a significant possibility of harming the veteran. These decisions should not be rushed, and employees should not be punished for taking the time to determine that a claim is not yet ready. AFGE urges VBA to change this standard and make sure employees receive equal credit regardless of whether or not a claim advances through the process.

Second, while the VA and AFGE value each veteran the same, not all claims are equal. When evaluating claims, VBA does not easily distinguish the number of issues or contentions each veteran makes in their claim, instead using a complex tier system that unnecessarily hurts the ability of VSR and RVSRs to meet their standards. This is arbitrary and punishes employees who get assigned claims with a significant number of contentions, but not enough to earn additional credit. AFGE urges VBA to weigh the number of contentions in a claim equally unless specialty claims are involved.

Third, AFGE is concerned with the VBA's measure of the timeliness or "talk time" component for Legal Administrative Specialists (LAS) who answer veterans' questions at VBA's eight national call centers. Each LAS is allotted a certain amount of time they can be on the phone with a veteran based upon the employee's GS level. This can be as little as eight minutes and thirty seconds. This is a one size fits all standard that does not consider common issues veterans often call in about including a "first notice of death call" where a veteran's spouse is calling to inform the VA that the veteran has passed away. Such a call may take 20-30 minutes. The standard also does not account for a senior citizen veteran who has difficulty communicating nor a veteran who has more than one question or issue to resolve. Additionally,

the standard effectively disincentivizes an employee for making a suggestion to a veteran a benefit or program he or she may be eligible for but does not know to ask about, because it would take more time on the phone.

An employee whose primary responsibility is to answer a veteran's questions should not have their performance measured by how quickly they can get a veteran off of the phone, and the VA should not prioritize a contrived metric over providing strong customer service to veterans.

The National Work Queue:

Another critical component of the claims process that the Senate Veterans Affairs Committee must examine is the use and implementation of the National Work Queue (NWQ), and how it has hurt veterans. AFGE agrees with the Inspector General's (IG) conclusion that eliminating specialization of claims processing has had a detrimental impact on veterans whose claims are more complex and sensitive in nature. As the IG report explains, prior to the implementation of the NWQ:

The Segmented Lanes model required VSRs and RVSRs on Special Operations teams to process all claims VBA designated as requiring special handling, which included MST-related claims. By implementing the NWQ, VBA no longer required Special Operations teams to review MST-related claims. Under the NWQ, VSRs and RVSRs are responsible for processing a wide variety of claims, including MST-related claims. However, many VSRs and RVSRs do not have the experience or expertise to process MST-related claims.¹

Because of the level of difficulty in processing these claims, AFGE strongly supports returning to a "Special Operations" model for cases including Traumatic Brain Injury (TBI), Military Sexual Trauma (MST), Post Traumatic Stress Disorder (PTSD), catastrophic injury, and both agent orange and toxic exposure cases. Much like a doctor choosing to become a pediatrician

¹ VA OIG 17-05248-241 | Page iii | August 21, 2018

and not being expected to be an expert in cardiology, not all VSRs and RVSRs should be expected to process highly specialized cases as well as others. It is both a waste of resources and a disservice to veterans filing these complex claims. The VBA is implementing a pilot program related to TBI claims by routing all of them to the ROs in San Diego, CA and Waco, TX. In doing so, the VBA must recognize the extra burden on these employees and adjust their performance standards to reflect the difficulty of the work compared to employees working on less complex cases. VBA already does this for MST claims as well as Character of Discharge claims and should do so for other highly complex claims. Additionally, while AFGE strongly encourages the re-creation of a "Special Operations" lane, it does so with the caveat that employees not only work one type of specialty claim all the time. Handling some of these claims can trigger mental health issues and burnout, particularly MST and PTSD claims. AFGE urges VBA to take care of its employees and not put undue stress on them.

AFGE also encourages the VA to modify the NWQ so that cases remain within the same RO for VSR and RVSR review. Every RO, despite uniform production standards, has their own way of conducting specific tasks, and having VSRs and RVSRs who are more familiar with each RO's standard procedures will help process cases efficiently. Additionally, by making which employee worked on a particular easily identifiable, better collaboration between VSRs and RVSRs can be achieved.

Lastly, the NWQ should be re-programmed to allow for VSRs and RVSRs to always have access to all readily available claims. Despite the constant national claims backlog, it is a common refrain from VSRs and RVSRs to say they do not have enough work to perform to meet their production standards and that they have to constantly request new work from their coaches. Although the NWQ was designed in part to maximize the VBA's claims processing capacity, it

is counterproductive to deny employees access to all available claims when the technology to do so already exists. It is beyond comprehension that workers should have to request additional work to meet their standards.

Telework and Information Technology

AFGE fully supports allowing VA employees to telework whenever possible during the COVID-19 pandemic for the safety of employees, veterans and the public. In VBA, the benefits of telework have been evident throughout the pandemic, as claims are being processed at a faster rate when employees have been required to work at home compared to processing rates before the pandemic when the VBA placed restrictions on telework. Telework at VBA should continue to be used for the duration of the COVID-19 pandemic and beyond for employees who prefer to work from home. However, to fully maximize the use of telework and better serve veterans, VBA must address its Information Technology (IT) issues.

The IT issues plaguing VBA have been thrown into sharper relief during the COVID-19 pandemic. When VBA developed its system to allow employees to perform their duties remotely, it was not built to support the entirety of the claims processing workforce performing their duties from home simultaneously. It has become a regular occurrence for VSRs and RVSRs on the east coast to log in every morning and get logged out of the system in the afternoon when their counterparts on the west coast start the workday. To prepare for the future where significant portions of the VBA workforce may continue to work remotely, VBA must address its IT infrastructure. Specifically, VBA must invest in its remote network to allow for larger numbers of its workforce to work at once. It must also provide employees equipment comparable to what they have in the office. This not only includes computers and double

monitors which are necessary to perform duties, but in rural portions of the country where broadband is less accessible, VBA must make sure all employees have the ability to use the internet from their homes. This improvement to technology addresses immediate needs during the pandemic, prepares VBA for future disruptions, and allows for the timelier processing of claims.

Conclusion:

AFGE thanks the Senate Veterans Affairs Committee for the opportunity to submit a Statement for the Record for today's hearing. As Paul Fleming, President of AFGE Local 1037 in Jackson, MS recently said, "AFGE employees want an attainable, reasonable standard, where employees each receive enough work to meet their standards." AFGE stands ready to work with the committee and VBA to address problems and better allow VBA employees to perform their duties and serve veterans.

**NATIONAL ASSOCIATION OF
COUNTY VETERAN SERVICE OFFICERS**



Senate Committee on Veterans' Affairs
The State of Claims Processing During and After COVID-19
Statement for the Record

We represent over 1600 accredited County Veteran Service Officers, Tribal Service Officers and State Service Officers across the country. The transformation of the disability claims process over the past ten years has contained many peaks and valleys for the veteran making application and for the advocate assisting them. The constant march toward automation has provided many struggles along the way, but the light can be seen at the end of the tunnel. The claim process prior to March 2020 provided challenges relative to the compensation and pension exams, primarily the challenges were in regards to inconsistent exams being provided by third party contractors, our organization still sees this as problematic, however we have identified a few other areas of concern for the advocate and their client veteran.

First, the elimination of the 48 hour review, as well as the removal of the public facing DBQ's, although we know that the Department is working now to introduce programs to supplant the ones that were removed, the timing of the removal of these processes could not have been timed more poorly, the exact moment that the veteran needed more help from the advocates than in the past, these programs rooted in a transparent claims process were removed. Secondly, the record retrieval methods whether they be stored at the National Personnel Records Center or the Joint Services Records Research Center, proved to be a process in need of replacement, the shut down

caused a backlog of claims waiting on specific records to be pulled. A process as antiquated as the manual retrieval of paper documents has no place in this procedure in 2021. It seems that this issue has been an example of the shortcomings of one federal agency demonstrating a domino effect on other federal agencies, and the crippling effect is witnessed first-hand, by the veteran that feels as though his or her claim is “kicked down the road.”

When we look at the claims processing that did take place during the Pandemic, we would be remis if we did not mention the areas that the Department made significant headway. The centralization of mail for the Department has been an evolutionary process to say the least. The introduction of the Centralized Mail Portal, was a pivotal moment in the history of VA claims processing. What may have seemed like the logical step, reduces costs for all involved from the Federal Government to State and Local Government on down to the veteran user themselves. Reducing paper and postage costs while at the same time reducing processing times could not have come at a better time than during the pandemic. The processing time pre pandemic, on the initial step we saw mailed/faxed forms would take on average 20-30 days until they were active in VA

systems, this process was cut to 24 hours, and although there are other systems at our disposal that might have quicker processing times, such as the Stakeholder Enterprise Portal, those other programs can't match the simplicity of the Centralized Mail Portal.

Another major step toward improvement was at the Board of Veterans Appeals, with the launch of Virtual Hearings, whereby the Veteran does not need to appear at a VA Office, but rather can host a hearing from a smartphone. We look at this step, as another huge advancement in the efficiency of the Department. Veterans that may have waited years for a hearing in front of a Veterans Law Judge, just saw their wait times disappear. We look forward to providing more feedback in the months and years ahead. Providing the first-hand account from the veteran end user, is a strength our organization can provide because of our reach and numbers.

**STATEMENT FOR THE RECORD
PARALYZED VETERANS OF AMERICA
FOR THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
ON
THE STATE OF CLAIMS PROCESSING DURING AND AFTER COVID-19
MAY 12, 2021**

Chairman Tester, Ranking Member Moran, and members of the Committee, Paralyzed Veterans of America (PVA) would like to thank you for the opportunity to submit our views on the state of the Department of Veterans Affairs' (VA) claims process before, during, and after the pandemic. The Veterans Benefits Administration's (VBA) Compensation and Pension (C&P) examination process often acts as the first stop for servicemembers and veterans trying to access their earned VA benefits and health care. This is particularly true for veterans who have incurred a spinal cord injury or disorder (SCI/D) and their ability to access VA benefits without delay is critical for their care and recovery.

We cannot overlook the good, often extraordinary work and efforts of so many VA employees. It is these employees, these people who most often make such a profound difference in the lives of the veterans and families we serve. In 2020, PVA assisted veterans and families with more than 28,000 claims and appeals, helping them obtain more than \$1 billion in earned VA compensation, survivors and pension benefits and hundreds of millions in ancillary benefits. Our statement reflects the opinions and experiences of our National Service Officers (NSOs) on VA's C&P examination process to include the impact of COVID-19 and reducing the claims and exams backlog generated by the pandemic.

Prior to COVID-19, our biggest challenge with the C&P examination process was with the inadequacy of the examinations themselves. Most of the veterans PVA represents require specialty exams focusing on the issues listed in the veteran's claim. With VHA exams, a veteran with multiple sclerosis (MS) would be examined by someone with a specialty in neurology. This is not the case with contract exams where the examiner could be a primary care provider or internist which results in our NSOs routinely having to file supplemental claims because either the exam was insufficient, or the examiner did a poor job of reviewing available records.

We believe the root of the problem falls within the VA Regional Offices (VAROs). Their emphasis on production over quality, results in subpar claims triage review processes and developers who are rushing to meet daily production goals. VA has a duty to assist veterans with their claims. The Department, however, has been sending veterans out in increasing numbers for unnecessary exams that were then being used to refute the Disability Benefits Questionnaires (DBQs) or other medical evidence veterans submitted to support their claims. During the pandemic, more Raters, including those who are unseasoned and inexperienced, were given single signature responsibilities even though they still require mentoring and additional training. Thus, problems with overdeveloping claims may increase.

When PVA NSOs submit Fully Developed Claims (FDC), we have provided the information required for a decision on the claim. An FDC claim requires no further development and should be processed directly to a Rater. An example of an FDC claim would be a newly diagnosed veteran with amyotrophic lateral sclerosis (ALS). If the FDC includes a certified copy of the veteran's DD-214 showing the required 90 days of continuous active duty other than training, and a letter from a doctor diagnosing the veteran with ALS, then the veteran meets the criteria established for a Rating Decision. Thus, why should VA schedule such a veteran for an exam, adding delays to the decision and wasting government funding, unless the claim includes additional residual disabilities that cannot be deferred? Some VAROs do not take the time to read the FDC or the evidence, and automatically schedule the veteran for an unnecessary exam. This is abuse of a critically ill veteran and his or her caregivers, as well as a waste of time and taxpayers' money.

An additional problem observed prior to, and continuing during the pandemic, was the scheduling of examinations when the veteran needs a special mode of transportation to reach a contracted facility for the exam. Provided transportation may or may not accommodate the veteran's mobility related needs. Coordinators are focusing on the needs of the program and not taking the time to make sure they are providing for and meeting the needs of the individual veteran.

COVID-19's impact on the claims process has been unfortunate and significant. Prior to the pandemic, there were roughly 140,000 pending VA exam requests with an average of 21 days to completion and about 70,000 claims pending over 125 days. As of May 8, 2021, there were over 350,000 pending exam requests with an average 90 days to completion and 191,647 of 526,616 pending claims over 125 days. The adverse impact of the increased exam requests and pending claims will reverberate for months unless something is done to reduce these numbers quickly.

VA took a positive step towards reducing the backlog of pending exams by putting a pause on the proposal to eliminate the Veterans Health Administration's (VHA) provision of C&P exams. However, even after the "COVID Bubble," we do not support eliminating VHA from the C&P process. PVA's NSOs have been reviewing VHA and contractor exams for over 25 years and while exams provided by contractors suffice in some instances, more often, they do not suffice at all. When a veteran with MS goes to a VHA exam they are seen by a neurologist, a doctor who specializes in treating diseases of the nervous system. From our experience, this is not usually the case with contracted exams. We recently had a veteran with MS who was examined by a contractor with a specialty in orthopedic surgery and we have many other similar examples of this happening with other disabilities. We strongly believe VHA examiners should provide C&P exams for veterans with complex claims. This would greatly reduce errors and ensure VBA obtains everything it needs during the initial examination. VA should also end the practice of using nurse practitioners and physician assistants to overrule board-certified physicians.

The claims backlog could be reduced even further by increasing the use of the informal hearing option to address some of the evidentiary claims with merits. Some of our NSOs have experienced a measure of success with this option.

The possibility of using specialty teams has been posed to handle complex claims for catastrophic disabilities, traumatic brain injury, toxic exposures, amputations, or military sexual trauma. We do not believe the use of specialty teams would significantly improve benefits delivery for veterans. From our experience, consolidating specialty claims to specific VAROs with "specialty teams" does not equate to better expertise or quality. Also, local VAROs must maintain the ability to process claims for terminally ill veterans and other urgent claims.

There are undoubtedly benefits to the Veterans Benefits Management System (VBMS), the National Work Que (NWQ) and other programs and initiatives, however, VA's computer programs, consolidations, and data cannot always address the complex issues facing those we serve. Recently, one of our NSOs received three calls from an automobile dealer complaining about not receiving payment from VA for a van sold to a veteran with ALS more than a month ago. Because these claims have been consolidated to "BEST" Teams, the NSO could not determine what was going on with the claim, payment, or who to contact to resolve the issue, and was unable to prevent the dealer from harassing the veteran with ALS regarding the overdue payment.

This final example demonstrates how the lack of the human element and over development of claims contributes to VA's claims and exams backlogs. A Vietnam War veteran had a combined disability rating of 80 percent since 2010. In December 2019, he was diagnosed with ischemic heart disease and had a stroke. In September 2020, our

NSOs submitted a claim for service connection for those conditions. They also submitted private hospital records and records from the veteran's cardiologist and primary care provider to support the claim.

On September 29, 2020, VA initiated exam requests for a medical opinion and for the veteran's heart disease. The veteran lives in Massachusetts and an exam was scheduled with a contractor in Connecticut for October 23, 2020. On December 1, 2020, VA scheduled another exam in Connecticut to examine for residuals of stroke and the exam was conducted on December 18, 2020.

On January 7, 2021, VA rendered a decision on the veteran's claim raising the veteran's combined rating to 90 percent. In the meantime, the veteran had left his employment due to his condition and PVA filed a claim for Individual Unemployability (IU) benefits on January 29, 2021. Despite having the previously submitted medical records, the two recent contractor exams, VA medical records, and the fact the veteran clearly meets the criteria for IU, VA scheduled the veteran for another exam on February 3, 2021, and sent him a letter requesting the private medical records we already submitted. Another exam was scheduled for March 3, 2021, and to our dismay, on April 22, 2021, VA requested another exam which is scheduled for later this month.

Although VA could easily have decided the original claim for heart disease and stroke based on the private medical records we submitted, we are not concerned that exams were scheduled for these conditions. But, if the Department is going to send a veteran that they know has suffered a stroke from Massachusetts to Connecticut for exams, they should have attempted to schedule both exams for the same day. Instead, our main complaint is based on the multiple, unnecessary exams which were scheduled for the IU claim. VA already has the veteran's private and VA medical records and the contract cardiology and stroke exams. We believe the veteran clearly meets the criteria for IU and the medical evidence of record overwhelmingly supports the claim.

VA needs to do a better job evaluating the available evidence of record and use that if there is enough evidence to make a decision. Recently, we had another veteran receive an award for his heart condition based on his PTSD. VA rated the veteran based on his medical records and awarded him IU because he met the criteria with the new ratings. This action provided benefits for the veteran without delaying the award for exams. This could and should be happening more frequently.

Each of the recommendations described in this statement could greatly reduce VA's current claims and exams backlogs. They will help the process become more efficient and most important, better serve the veteran represented by each claim that is received. PVA thanks you again for this opportunity to comment on the state of VA's claims process.

**STATEMENT FOR THE RECORD
MR. MARTY CALLAGHAN
DEPUTY DIRECTOR, VETERANS AFFAIRS & REHABILITATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SENATE COMMITTEE ON VETERANS' AFFAIRS
ON
"SUPPORTING DISABLED VETERANS: THE STATE OF CLAIMS PROCESSING
DURING AND AFTER COVID-19"**

MAY 12, 2021

Chairman Tester, Ranking Member Moran, and distinguished members of the committee, on behalf of our National Commander, James W. "Bill" Oxford, and our nearly 2 million members, we thank you for inviting The American Legion to comment on the state of disability claims processing during the COVID-19 pandemic.

The Rise of ACE Examinations

In April 2020, the risk of coronavirus infection forced Department of Veterans Affairs (VA) to suspend in-person Compensation and Pension (C&P) exams, which contributed to a backlog that continues to challenge the Veterans Benefits Administration (VBA). The backlog accelerated the VA's use of Acceptable Clinical Evidence (ACE) examinations, first introduced in 2013.¹ VBA ordered refresher training for its disability claims processors, focusing on the identification of medical records that would allow decisions to be made with the ACE process. VBA also provided guidance to its call center personnel that would assist them in offering telehealth appointments or an ACE review instead of traditional in-person exams. From March 2020 through March 2021, VBA conducted approximately 102,000 ACE exams.²

One major advantage of the ACE process is that it does not require in-person exams, therefore eliminating the need to schedule veterans for appointments. This also eliminates other problems that affect veterans: unreturned phone calls, missed appointments, and marking veterans as "no shows" – an action that can have a negative impact on disability claims. For VA-contracted examiners, a key benefit of ACE is less time is spent conducting in-person C&P exams, giving examiners more time to complete Disability Benefits Questionnaires (DBQs).³

An American Legion service officer in Connecticut reported that his "... *clients have seen positive results from the use of ACE, most especially two Vietnam veterans suffering from Parkinson's disease. One claim was new and the other was a disability rating increase. The first client had a diagnosis and progress notes provided by his private practitioner, which were deemed sufficient*

¹ "[ACE Eliminates Need for Some In-Person Disability Exams](#)," Vantage Point, Dept. of Veterans Affairs, March 22, 2013.

² "[VBA says it will reduce disability claims backlog by fall, but Congress isn't so sure](#)," Federal News Network, March 23, 2021.

³ "[Fact Sheet: Acceptable Clinical Evidence \(ACE\) to Support the Compensation and Pension \(C&P\) Disability Examination Process](#)," Office of Disability and Medical Assessment, December 16, 2016.

by the Regional Office. The other veteran was enrolled in VA Healthcare, and a telehealth consult with his VA clinician provided Acceptable Clinical Evidence that the VA Regional Office relied on to grant the increase. ACE has also been utilized to adjudicate claims for diabetes mellitus type II, prostate cancer, and to establish earlier effective dates in more than a few cases.

"I recommend ACE be developed and utilized proactively in all cases where appropriate, while noting the certainty and up-to-date findings and opinions obtained through the use of in-person C&P exams, with a focus on cases seeking a Supplemental Claim Review."

Despite the increasing use of ACE exams, VA's Deputy Assistant Inspector General for Audits, Brent Arronte, stated that about 763,000 in-person C&P exams were conducted between May 2020 and March 2021 – more than seven times the number of ACE exams done in the same period. Eight years ago, VA reported that its 15-month pilot program determined that 38 percent of disability claims submitted by veterans were eligible for ACE exams.⁴ Yet from March 2020 through March 2021, only about 12 percent of disability claims underwent the ACE process. This clear disparity seems to indicate that ACE exams are not being fully leveraged and that many C&P exams currently being scheduled are unnecessary.

Eliminating the Backlog with ACE

The effective use of the ACE process can help VBA eliminate the current C&P exam backlog, which creates undue hardship for veterans. VA's Office of Inspector General, in a November 2020 report, recommended increased use of ACE exams as one option for reducing the backlog.⁵ This consideration is especially urgent at a time when many veterans are in financial distress and have lost their jobs, their homes – or both – as a result of the pandemic.

On May 27, 2020, a Legion service officer participated in a VA Regional Office briefing where the issue of C&P exams was discussed, "... highlighting the inability of VA and its contractors to conduct in-person exams. At that time, approximately 30,000 exams had been conducted since March, and the backlog was building. It is important to note that the VA had made a commitment to contract C&P exams in Connecticut to LHI [Logistics Health Incorporated] and one other agency. The use of ACE enabled the backlog to be worn down and decisions rendered in cases where in-person exams would not have been possible for nearly a year. That is commendable."

Another American Legion service officer in New York reported that, "ACE exams are extremely helpful in obtaining benefits that veterans deserve and need." He had been assisting a Vietnam War veteran suffering from the symptoms of Parkinson's disease due to Agent Orange exposure. In place of ordering an in-person exam at the VA medical facility, the C&P claims adjudicator used an ACE exam to make a favorable determination based on the evidence in the veteran's medical record.

A Legion service officer in Minnesota reported that ACE exams "... can be great in certain instances" and gave the example of an 85-year-old veteran waiting for his disability claim to be

⁴ ["Disability Claims Initiative Reduces Processing Time, Adds Convenience,"](#) VA press release, Jan. 31, 2013.

⁵ ["Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams,"](#) VA Office of Inspector General, November 19, 2020.

adjudicated. With the shutdown of the National Personnel Records Center, the VBA adjudicators *"have not worked his claim. It is literally 306 days pending. The VA could have done an ACE exam on his tinnitus. Unfortunately, the veteran died a month ago with nothing being decided."*

Too many veterans wait too long for their disability claims to be decided. Increased use of ACE exams can shorten the wait for many of them. Nevertheless, we must be assured that claims adjudicators are adequately trained for the task at hand. Adjudications based on ACE must not become, as one of our service officers put it, *"an easy denial for complex issues."*

Obviously, ACE exams are not appropriate for all types of disability claims. If a VA contractor finds insufficient material to complete a DBQ, then an in-person C&P exam may be needed. The VBA has determined that some conditions are not appropriate for an ACE exam, including traumatic brain injury and mental disorders. One of our service officers in Washington state said that the use of ACE exams sometimes *"doesn't go well with our veterans, especially veterans dealing with depression and PTSD."* However, many veterans' disabilities can be evaluated successfully with ACE, and the Legion has called upon VA to make greater use of them as a means to reduce the number of backlogged C&P examinations.⁶

The Critical Role of DBQs

The Disability Benefits Questionnaire is an integral component of the ACE exam that requires careful evaluation of clinical evidence, and often calls for an interview with the veteran. These DBQs are critical components in the adjudication process, whether VA contractors or private practitioners complete them. An American Legion service officer in Missouri reported that she tries to use a DBQ *"... whenever possible. In my experience, adjudicators do not use private records to rate. They will set up a C&P exam even when they know it will cause delays. Sometimes, it seems like they are developing potential negative evidence. However, using the DBQ, VA is more inclined to rate the claims."*

The American Legion recognized the critical role of DBQs when it called upon VA to restore public access to them on its website.⁷ These standardized forms must be made available to private practitioners for the submission of medical opinions and other clinical evidence in a format that is familiar to claims adjudicators. The importance of DBQs is further elevated in ACE examination – a poorly written one, without proper analysis or a detailed rationale – may result in the unfair denial of a veteran's benefits.⁸

VBA must ensure that high-quality medical opinions and other documents are written by VA contractors. One of our Legion service officers in Wisconsin has reported that C&P examiners are *"... not always thorough with their notes, and this could impact the veteran's claims in a negative way. We try to review medical records properly to make sure we protect the veteran*

⁶ ["Resolution No. 10: Increased Use of Acceptable Clinical Evidence \(ACE\) Examinations as an Alternative to Compensation and Pension \(C&P\) Examinations,"](#) National Executive Committee of The American Legion, May 5-6, 2021.

⁷ [Resolution No. 7: Restore Disability Benefits Questionnaires \(DBQ\) to Department of Veterans Affairs \(VA\) Website,](#) National Executive Committee of The American Legion, Oct. 14-15, 2020.

⁸ See [Nieves-Rodriguez v. Peake](#), 22 Vet.App. 295 (2008).

before we submit. We have all too often had doctors who will tell veterans something but not note it in the system or enter something entirely opposite. This may be a miscommunication issue with the veteran, but it is a reality.... We also try to make sure the veteran's doctor understands how important their annotations are to make sure the claim is processed properly."

By ensuring that a highly qualified cadre of adjudicators are evaluating ACE exams with adequate DBQs, The American Legion sees no reason why such claims cannot become more prevalent in the VBA system. Nevertheless, adjudicators need to be thorough in their reviews. If the clinical evidence for a claim is not acceptable, then the veteran must receive a new examination.

Conclusion

While the ACE process is no magic elixir for curing the backlog once and for all, it is less complicated, requires less time, and allows claims adjudicators to determine whether a claim requires additional evidence from in-person C&P exams.

VA's Office of Inspector General (OIG) has seen the value of the ACE process in helping veterans during the pandemic. The OIG concluded that if ACE works so effectively in a crisis time, it should continue to have widespread use.⁹ Making benefits more readily available to veterans who have earned them is of great importance to The American Legion. The current arrangement of having in-person C&P exams done by VA contractors entails quality issues that do not apply to the ACE process. The increased use of ACE exams may possibly result in a decreased need for VA-contracted examiners.

For America's rural veterans and for many of those living overseas, ACE exams offer a far more viable option than driving hours for a C&P exam that may be unnecessary in the first place. ACE exams could also provide a better option for veterans with claims for physical disabilities, but who suffer from mental disorders that make it difficult for them to leave their homes.

However, VBA must address the critical importance of well-trained claims adjudicators who know how to evaluate medical evidence, know when that evidence is sufficient to determine a claim, and know when the veteran requires an in-person examination. ACE exams can be a powerful weapon in VBA's arsenal to defeat the exam backlog; let us work together to ensure they are not used for the easy denial of complex issues.

The American Legion sees no significant down side to the increased use of ACE exams in combating the current backlog of C&P exams – as long as claims adjudicators and VA contractors are well trained, as long as DBQs are of professional quality, and as long as claims are evaluated properly.

We respectfully ask Congress to ensure, through its oversight, that the ACE process will be strengthened by properly trained medical examiners and claims adjudicators. The quality of DBQs submitted by VA contractors must be closely monitored and well documented by VA's Medical Disability Examination Office. Likewise, VA regional offices must report to VA's Central Office

⁹ ["Enhanced Strategy Needed to Reduce Disability Exam Inventory Due to the Pandemic and Errors Related to Canceled Exams."](#) VA Office of Inspector General, November 19, 2020.

on the quality of adjudication for claims with ACE exams. These reports on the number and quality of ACE exams processed, and the outcomes of those claims, should be made available to the House and Senate Committees on Veterans' Affairs on a quarterly basis.

The American Legion evaluates the quality of ACE exam claims and their adjudication through our Regional Office Action Review (ROAR) program. Representatives travel to several VA regional offices, where they will evaluate the quality of work being performed by claims adjudicators. Particular focus is placed on claims submitted with ACE exams, the quality of DBQs that have been submitted as part of those exams, and the ratio of ACE to C&P exams. We prepare reports based on our findings and make them available to Congress, the White House, VA leadership, and the public. We owe it to our veterans community to carefully evaluate the role of ACE examinations in the disability claims process, and use them to the fullest advantage for our veterans.

Chairman Tester, Ranking Member Moran, and distinguished members of the committee, The American Legion, thank you for your leadership on this matter and for allowing us the opportunity to explain the position of our nearly two million members. For additional information regarding this testimony, please contact Mr. Advait Thampi at The American Legion's Legislative Division at (202) 861-2700 or athampi@legion.org.

**DEPARTMENT OF VETERANS AFFAIRS (VA) REPORT TO CONGRESS ON
CLAIMS FOR DISABILITIES INCURRED OR AGGRAVATED BY
MILITARY SEXUAL TRAUMA
AND
IMPLEMENTATION OF VA OFFICE OF INSPECTOR GENERAL
RECOMMENDATIONS IN CERTAIN REPORT ON DENIED POSTTRAUMATIC
STRESS DISORDER CLAIMS RELATED TO MILITARY SEXUAL TRAUMA
P.L. 114-315 § 113, P.L. 116-315 § 5501(b) and P.L. 116-315 § 5503**

Report Language:

The Committee understands the Veterans Benefits Administration (VBA) at VA is developing and implementing new training and initiatives and procedures for posttraumatic stress disorder (PTSD) claims related to military sexual trauma (MST). The Committee is pleased with the increased focus on this area and encourages VA to continue to build on strides that have been made, to include intensive training and identification of specialized claims employees for MST-related claims. It is the sense of Congress that the Secretary of Veterans Affairs should submit to Congress information on the covered claims submitted to the Secretary during each fiscal year, including the following:

- a) The number of MST-related claims submitted in the previous fiscal year;
- b) Of the submitted claims, the number and percentage of claims submitted by each gender;
- c) The number and percentage, listed by gender, of completed claims approved and denied, and the number and percentage, listed by gender, of claims assigned to each rating percentage;
- d) Of the submitted claims, the number and percentage that were developed and reviewed by a specialized team established under 38 U.S.C. § 1164(a);
- e) Of the denied claims, the three most common reasons given by the Secretary of Veterans Affairs under 38 U.S.C. § 5104(b)(1) for such denials;
- f) The number of denials that were based on the failure of the Veteran to report for a medical examination;
- g) The number of claims that are pending at the end of the fiscal year (including claims on appeal);
- h) The average days to complete MST claims;
- i) A description of the training the Secretary provides to VBA employees specifically with respect to covered claims, including the frequency, length and content of such training; and
- j) Whether all covered claims are subject to second level review until the individual rater of the Veterans Benefits Administration adjudicating such covered claims achieves an accuracy rate of 90% on decisions of such covered claims.

In accordance with P.L. 116-315 § 5503, this report provides an update on VA's progress in implementing the recommendations from the report of the VA Office of the Inspector General (OIG) entitled "Denied Posttraumatic Stress Disorder Claims Related to Military Sexual Trauma" (Report # 17-05248-241).

Discussion:

VA is committed to serving our Nation's Veterans by accurately adjudicating claims based on MST in a thoughtful and caring, yet fair and appropriate manner, and fully recognizes the unique evidentiary considerations involved in such an event. Because service records for these claims may lack corroborating evidence that a stressful event occurred, VA regulations are clear that evidence from sources other than a Veteran's service records can be used to corroborate the Veteran's account of the stressor incident.

Through enhanced training programs, updated policies and a cadre of specially-trained coordinators who are deployed throughout the country, VA has improved the way it processes MST-related disability claims.

(a) The number of MST-related claims submitted in Fiscal Year (FY) 2020:

In FY 2020, VBA received 13,868 unique MST claims from 13,856 unique Veterans. Some of these claims contained more than one MST-related disability; therefore, the total number of disabilities or issues claimed were 13,929.

(b) The number and percentage of claims submitted by gender:

Of the 13,929 MST issues received:

- Female: 9,621 issues (69.1%)
- Male: 4,218 issues (30.3%)
- Unknown Gender: 90 (0.6%)¹

(c) The number and percentage, listed by gender of completed claims approved and denied, and the number and percentage, listed by gender, of claims assigned to each rating percentage:

During this same period, VBA completed a total of 11,279 unique claims that were received, serving 11,271 unique Veterans. The total number of MST disabilities or issues that were processed were 11,443. Of the 11,443 MST issues rated in FY 2020, 9,275 (81%) were reviewed and rated by a Rating Veterans Service Representative (RVSR) on a specialized MST team.

¹ The category "Unknown Gender" refers to applicants who did not specify their gender on the application for VA benefits.

The chart below details information on these 11,443 MST-related issues.

Gender	Total Issues Decided	Issues Granted	%Granted	Issues Denied	% Denied
Female	8,309	5,782	69.6	2,527	30.4
Male	3,083	1,861	60.4	1,222	39.6
Unknown	51	32	62.7	19	37.3
Total	11,443	7,675	67.1	3,768	32.9

Analysis of the VA data showed that there are 3,685 Veterans for which 3,768 MST issues were denied (*some Veterans filed more than one issue related to MST*). Of these, 2,554 Veterans have one or more service-connected disability, and 182 Veterans are evaluated as 100% disabled. Of the 2,554 Veterans, 572 are already service-connected for a mental health disorder other than an MST-issue.

The chart below reflects the disability percentage rating assigned for issues granted service-connection for a MST-related condition.

Disability Rating	Female	Male	Unknown	Total Counts
0%	20	3	1	24
10%	39	4	0	43
20%	1	0	0	1
30%	777	199	7	983
40%	3	1	0	4
50%	1,983	546	5	2,534
60%	2	0	0	2
70%	2,587	865	17	3,469
80%	0	0	0	0
90%	0	0	0	0
100%	370	243	2	615
Total	5,782	1,861	32	7,675

(d) Of the submitted claims, the number and percentage that were developed and reviewed by a specialized team established under 38 U.S.C. 1164(a).

Of the 11,443 MST issues rated in FY 2020, 9,275 (81%) were reviewed and rated by a Rating Veterans Service Representative (RVSR) on a specialized MST team as required under 38 U.S.C. § 1164(a).

(e) The three most common reasons given by the Secretary under section 5104(b)(1) for denials in FY 2020:

Issue Denial Reason	Total MST-Related Issues Denied in FY 2020
Not Incurred in or Caused by Service	1,989
No Diagnosis	1,686
Not Aggravated by Service	47
Total	3,722

- Not Incurred in or Caused by Service: This commonly happens when there is no corroborating evidence, including markers, of the claimed in-service MST stressor.
- No Diagnosis: After examination, there is no diagnosis of a disability related to the claimed in-service stressor. This may also occur when there is a valid mental health diagnosis, but it is not associated with service (to include MST stressor).
- Not Aggravated by Service: This means a disability diagnosed prior to service did not increase in severity due to the period of service.

(f) *The number of denials that were based on the failure of the Veteran to report for a medical examination:*

Out of the 3,768 denials,² 529 denials were based upon the failure of a Veteran to report for a medical examination.

(g) *The number of claims that are pending at the end of the FY (including claims on appeal):*

At the end of FY 2020, 7,582 MST-related issues were pending, including those submitted in any year. VBA does not currently track the number of MST-related appeals pending.

(h) *The average days to complete MST claims:*

In FY 2020, the average number of days to complete MST-related claims was 169.9 days.

(i) *Description of the training the Secretary provides to employees of VBA specifically with respect to covered claims, including the frequency, length and content of such training.*

VBA has developed training curricula that utilizes video to provide a more dynamic training experience for claims processors. VBA understands the importance of timely and relevant training and is working to update training platforms to utilize a more modern approach. This form of training enables claims processors to distinguish indicators of PTSD stressors that result from MST, such

² Including 46 "All Other Denials," the total is 3,768.

as deterioration in duty performance, requests for transfer or substance abuse. All training content stresses the importance of complete evidence development for signs of an in-service MST event, and taking a comprehensive approach to identifying evidentiary markers that indicate the possibility of the MST event. Legal and policy considerations are also included as part of the curriculum.

The VBA Virtual and In Person Progression Training Program, which all newly hired claims processors are required to attend includes a module on MST within the course on PTSD claims processing. VBA continues to work closely with the Veterans Health Administration (VHA) to ensure specific training is provided to clinicians (i.e., VA and non-VA contract psychiatrists and psychologists) who conduct disability examinations for MST-related PTSD claims. Mandatory specialized MST training is completed annually for Women Veterans Coordinators and MST Coordinators in the National Training Curriculum for Outreach and Public Contact Personnel.

Specific training products include:

- A dynamic 4-hour online MST training experience:
 - Military Sexual Trauma (MST): Claims Development and Rating (4 hours, must be completed by all new MST Coordinators, specialized MST Veterans Service Representatives (VSRs) and specialized MST RVSRs prior to adjudicating MST-related cases): The course was updated and published in the VBA Learning Catalog on March 10, 2020. The course helps claims processors to recognize concepts associated with MST including its characteristics, types of unwanted sexual contact, associated misconceptions and barriers to reporting; teaches claims processors to identify the regulations and legal requirements associated with PTSD due to MST, the different types of evidence required for an MST-related claim and the behavioral changes that may relate to MST; addresses necessary actions to obtain evidence for PTSD due to MST claims; and helps claims processors to identify and complete rating procedures for service-connected claims for PTSD due to MST.
 - This course is a one-time training requirement for those assuming the role as a specialized MST claims processor. The local training manager at each regional office will assign this course to new specialized MST claims processors at the time they are assigned to the role and before they process any MST claims. The local training manager will be responsible for determining the training needs of local employees and can assign this course if there is a localized need to provide refresher training.
- MST Fiscal Year Review Training (1 hour, must be completed by all specialized MST VSRs and specialized MST RVSRs annually): Online refresher training is provided to specialized processors of MST-related claims on annual basis. The course is updated each year to include

scenario-based learning and assessment that reflects error trends noted by the course author in both the initial required coursework and in consistency review studies.

- MST VHA Sensitivity Training (1.25 hours, must be completed once during the career in the identified position for all RO personnel): This mandatory training is provided by the National Deputy Director for Military Sexual Trauma, VHA.

(j) *Whether all covered claims are subject to second level review until the individual rater of the Veterans Benefits Administration adjudicating such covered claims achieves an accuracy rate of 90 percent on decisions of such covered claims.*

All decisions made by RVSRs for MST disabilities require two signatures until a decision maker has demonstrated an accuracy rate of 90% or greater based on a review of at least 10 MST cases, to include, as proportionately as feasible, grants, denials and evaluations.

Update on the Implementation of the OIG Report Recommendations:

Recommendation 1: The Under Secretary for Benefits reviews all denied military sexual trauma-related claims since the beginning of FY 2017; determines whether all required procedures were followed; takes corrective action based on the results of the review; renders a new decision as appropriate; and reports the results back to the Office of Inspector General.

Status: In September 2019, VBA completed the review of all 9,699 previously denied claims decided between October 1, 2016, and June 30, 2018, and has initiated corrective actions as needed. On December 30, 2019, VBA requested closure of this recommendation. OIG has an open MST project and will keep this recommendation open until the report for the new project is released.

Recommendation 2: The Under Secretary for Benefits focuses processing of military sexual trauma related claims to a specialized group of Veterans Service Representatives and Rating Veterans Service Representatives.

Status: On April 2, 2019, the recommendation was closed.

Recommendation 3: The Under Secretary for Benefits requires an additional level of review for all denied military sexual trauma related claims and holds the second level reviewers accountable for accuracy.

Status: On August 19, 2020, VBA implemented new guidance regarding the second signature review process for MST-related claims. As part of the new guidance, Rating Quality Review Specialists or equivalent are required to conduct these reviews. VBA will randomly select cases for review beginning in

FY 2021, to hold second signature reviewers accountable. On October 8, 2020, the recommendation was closed.

Recommendation 4: The Under Secretary for Benefits conducts special focused quality improvement reviews of denied military sexual trauma related claims and takes corrective action as needed.

Status: VBA conducted the special focused review (SFR) and provided the detailed analysis to OIG on January 30, 2020. OIG continues to analyze the SFR results and no additional information or documentation is required from VBA. VBA requested closure on March 13, 2020. OIG has an open MST project and will keep this recommendation open until the report from the new project is released.

Recommendation 5: The Under Secretary for Benefits updates the current training for processing military sexual trauma related claims; monitors the effectiveness of the training; and takes additional actions as necessary.

Status: VBA updated the training for processing MST-related claims and assigned the training to appropriate personnel. VBA is monitoring training completions and an analysis of the SFR results are expected to be finished by March 31, 2021.

Recommendation 6: The Under Secretary for Benefits updates the development checklist for military sexual trauma-related claims to include specific steps claims processors must take in evaluating such claims in accordance with applicable regulations and requires claims processors to certify that they completed all required development action for each military sexual trauma-related claim.

Status: On January 8, 2019, the recommendation was closed.

Department of Veterans Affairs
February 2021

