

The Honorable Daniel L. Cooper, Under Secretary for Benefits, Department of Veterans Affairs ? accompanied by Mr. Ronald Garvin, Acting Chairman of the Board of Veterans' Appeals, and Mr. Robert H. Epley, Associate Deputy Under Secretary for Policy and Program Management, Veterans Benefits Administration

Statement of  
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Good morning Mr. Chairman and members of the committee.

I am pleased to appear before you today to discuss the extremely important work of the Veterans Benefits Administration. As you are aware, we administer myriad veterans' programs in VBA. Disability compensation is the one program that probably has the most visibility in the total veteran community and will be the primary focus of my testimony today. I will also briefly discuss several other important programs that directly and deeply affect individual veterans and their families.

In June 1944 President Roosevelt signed the original GI Bill. This landmark legislation gave birth to our VA Education and Home Loan Guaranty Programs. The GI Bill is proclaimed as one of the most important social actions of that century. It underpinned major economic change for the 16 million veterans returning from WWII in the European and Pacific theaters of action, most of whom had never been employed as civilians. Each of those veterans was eligible for educational benefits and loans for businesses, homes, or farm purchases. Today, our Education and Loan Guaranty Programs remain vitally important to both veterans and active duty servicemembers.

Our Vocational Rehabilitation and Employment Program is directed specifically at veterans who have an employment handicap as a result of their service-related disabilities. We assist these disabled veterans in preparing for and obtaining suitable employment, which often means establishing rehabilitation programs to help them get a better education, obtain basic skills and training, or start a business. For the most seriously injured for whom employment is not immediately feasible, we provide services to help them gain more independence in daily living.

Our Insurance Program is administered by the Philadelphia Regional Office and Insurance Center. We currently have four active insurance plans, the largest of which is the Servicemembers Group Life Insurance (SGLI) Program. The SGLI Program makes life insurance available to every servicemember entering military service. The Philadelphia

Insurance Center and the Office of Servicemembers Group Life Insurance have done an extraordinary job in serving widows and other family survivors during Operations Enduring and Iraqi Freedom. Once the Insurance Program receives the necessary paperwork from the Department of Defense, payments to the surviving beneficiaries are made in less than two days.

Finally, our Disability Pension Program is available for wartime veterans who have low income and are permanently and totally disabled.

Today I am here to discuss the largest of our programs in VBA, the Disability Compensation Program. Disability compensation is a monetary benefit paid to veterans who are disabled by injury or disease incurred or aggravated during active military service. The amount of compensation varies with degree of disability and, when appropriate, with the number of dependents. Compensation is paid monthly and is not subject to either federal or state income tax. The specific amounts paid for each ten percent step in disability are decided by congress. Today a veteran with 10 percent disability rating receives \$108 per month. Fifty percent disabled veterans receive \$663; the ninety percent rate is \$1380; and the one hundred percent rate is \$2299. Note the much larger jump from 90 percent to 100 percent versus any other ten-percent increment. Those veterans rated 30 percent and higher receive an additional allowance for a spouse and each dependent child.

The recently released report by the Department's Inspector General (IG), entitled "Review of State Variances in VA Disability Compensation Payments," stated: "The VA disability compensation program is based on a 1945 model that does not reflect modern concepts of disability. Over the past 5 decades, various commissions and studies have repeatedly reported concerns about whether the rating schedule and its governing concept of average impairment adequately reflects medical and technological advancements or changes in workplace opportunities and earning capacity for disabled veterans. Although some updates have occurred, proponents for improving the accuracy and consistency of ratings advocate that a major restructuring of the rating schedule is long overdue."

The VA Disability Compensation Program has evolved from a long series of legislative actions, spanning most of a century. Each piece of legislation was intended to address a specific need, or the needs of a special sub-population of veterans. The one constant has been Congress's desire to recognize the sacrifice of those who served in uniform.

The incremental legislative process has also had the effect of building an increasingly complicated system. Our Disability Compensation Program recognizes over 110 diseases that are considered to be presumptively related to special military service conditions. These special conditions range from prisoner of war experiences, to exposure to ionizing radiation, to service in Vietnam (with related exposure to Agent Orange).

In addition to these complicating factors, and possibly because of them, the Disability Compensation Program is growing rapidly. Almost 2.6 million veterans are receiving disability compensation today, more than at any time in U.S. history. The number on the rolls is growing at a rate of 5,000 to 7,000 per month. Entitlement to disability compensation drives eligibility to other programs, including VA medical care, vocational rehabilitation, dependents educational assistance, and some home loan and insurance benefits. In addition, recent laws provide for

concurrent receipt of VA disability compensation and military retirement benefits. So there are clear incentives for the VA Disability Compensation Program to continue to grow.

All of these laws rightfully serve to benefit our veterans and are extremely important to them. A classic example is the group of laws and rulings related to Agent Orange exposure. Any veteran stationed in Vietnam between January 9, 1962 and May 7, 1975 is presumed to have been exposed to Agent Orange, and any of several diseases they might have contracted is presumed to be a result of that exposure. The presumption of service connection for type II diabetes, in particular, resulted in over 100,000 individual claims.

In addition, a recent law dramatically changed the business of VA disability claims adjudication. This legislation was the Veterans Claims Assistance Act of 2000 (VCAA). One of its central provisions clarified and enhanced VA's duty to assist veterans with their benefit claims. In my opinion, this was a proper and well-conceived law that addressed a deficient process under which VA was previously adjudicating claims. That law clearly defined VA's responsibilities for assisting claimants. It made our adjudicators absolutely responsible for helping each individual veteran know what to do, what is needed to substantiate his/her claim, and how to respond. It also requires that we tell the veteran what we will do to assist him or her.

It was as a result of the VCAA, and the immediate and very rapid accumulation of claims, that Secretary Principi convened the Claims Processing Task Force in May 2001. His charge was to recommend specific actions that the Secretary (of Veterans Affairs) could initiate, within his own authority, without legislative or judicial relief, to attack and reduce the current veterans' claims backlog and make claims processing more efficient.

I was asked to chair that Task Force, although I had had no prior experience with VA or with claims processing. However, the Secretary appointed to the Task Force a group of individuals who were extremely knowledgeable and very motivated. In October 2001, we reported out.

There had been many such reports over the years, each with a larger scope; but ours was focused on what could be done soon and under the purview of the Secretary without asking Congress to revisit laws or opinions.

The thrust of our recommendations was to improve the efficiency and effectiveness of VBA claims processing. Accountability and integrity were to be absolute. But the engine was uniformity of organization, application, and process. The Task Force was convinced that each of the fifty-seven regional offices operated in ways unique only to that individual office. The Task Force essentially dictated the internal organization of all offices, the IT applications to be used by all, and the standard business processes to be followed in adjudicating veterans' claims. This revised, consistent operational structure is now known as the Claims Processing Improvement (CPI) Model. Additionally, we specifically increased the oversight from headquarters and in the field, and we established measurable goals for which all offices are accountable.

The Task Force also initiated one of the most important and quick-response recommendations, the establishment of a Tiger Team in Cleveland, Ohio, whose only task was to address claims which were over one year old, from veterans over 70 years of age. This specialized team has also assisted with our most difficult cases, and continues to fulfill a valuable role.

A primary goal we established, as we made major changes in VBA, was to increase productivity. We did that in somewhat dramatic fashion. In the year 2001, we had completed claims at the rate of 41,000 per month across the country. Last year we produced 63,000 per month. There were many who said we sacrificed quality. That is incorrect; quality improved about 6 percentage points. It is now 86 (plus) percent.

In February 2002, the number of pending claims in our inventory (frequently referred to as the backlog?) reached 432,000. Veterans were waiting 233 days on average for decision on their claims. Over the next nineteen months, through implementation of the CPI Model throughout the entire VBA field organization, we reduced the inventory to 253,000 by September 2003. Even more important, we reduced the time to provide veterans with decisions on their claims to 156 days.

That same month a judicial opinion (PVA v. Secretary of Veterans Affairs) was rendered which stated that we could make no negative decision on any claim issue for at least one year from the date we notify the claimant as to what evidence is needed to support the claim. Three months later, in December, the congress put corrective language into effect. By that time the inventory reached 352,000.

Another factor that has to date prevented us from reducing the inventory much further is the increasing number of disability claims received each year (674,000 in 2001; 771,000 in 2004; over 800,000 projected to be received in 2005).

A further complicating factor in our process is the number of disabilities (referred to as claims' issues?) veterans are now presenting in each of their claims. Prior to a decade or so ago, VBA estimated there were 2.5 issues per claim. Today we are seeing higher numbers of issues in many cases, over 10 issues per claim.

Appeals of claims have also measured slightly more than one would expect for the large increase in decisions. That rate too has peaked and is coming back down.

Additionally, remands from the Board of Veterans' Appeals, until just very recently, have been growing. Delays in remand processing grew as a result of the resource demands of the total growing workload.

In October 2003, we established the Appeals Management Center (AMC), which receives all BVA remands. It is responsible for completing all actions possible on these cases, sending only a small number of remanded cases in certain specific categories to the regional offices for processing. VBA and BVA also undertook joint improvement initiatives as a result of a special remand study directed by the Deputy Secretary. Through the AMC and the joint initiatives, we have reduced the number of cases being remanded by BVA, and we are slowly diminishing the inventory of pending remands.

There is also a large body of work activities which are not rating claims? but which also take our human resources to administer. Not the least of this latter group are Public Contact Teams, whose members provide information and assistance to veterans over the phone, conduct our

extensive outreach programs, and take care of the individual veterans who visit our regional offices.

Over the last 3 years of my tenure as Under Secretary for Benefits, VBA has worked hard to achieve consistency across and among all regional offices. As you are aware, consistency in disability evaluations and payments to veterans has become a very visible concern in recent months, and rightfully so.

The IG's recent investigation found that claims involving more objective decisions do, in fact, have close to zero variability. On the other hand, the much harder subjective issues, such as PTSD and other mental disorders, exhibit variability to a degree that leaves open to question the consistency of our evaluations for these conditions.

Through the implementation of the Task Force recommendations, I believe VBA has laid the basic groundwork that will also continue to bring more consistency in our claims decisions. As previously mentioned, we have made all regional offices consistent in organizational structure and work process. Specialized processing initiatives have been implemented to consolidate certain types of claims in order to provide better and more consistent decisions. VBA is now consolidating the rating aspects of our Benefits Delivery at Discharge initiative, which will bring greater consistency of decisions for newly separated veterans.

Training, both for new employees and to raise the skill levels of the more experienced staff, is obviously key to consistency in our rating decisions. VBA deployed new training tools and centralized training programs that support greater consistency. New hires receive comprehensive training and a consistent foundation in claims processing philosophy and principles through a national centralized training program called "Challenge." After the initial centralized training, employees follow a national standardized training curriculum (full lesson plans, handouts, student guides, instructor guides, and slides for classroom instruction) available to all regional offices. Standardized computer-based tools have been developed for training decisionmakers (53 modules completed and an additional 38 in development).

Training letters and satellite broadcasts on the proper approach to rating complex issues have been provided to the field stations. Regulations that contain the Schedule for Rating Disabilities are being revised to eliminate ambiguous rating criteria and replace them with objective rating criteria wherever possible.

We have stressed giving the "benefit of the doubt" to the veteran, and every regional office has improved. The average annual amount a disabled veteran receives in each state has increased above the rate of economic increases.

While we have made major improvements and laid a strong foundation, the Veterans Benefits Administration continues to face significant challenges. The payment variance issue is difficult and complex; our every effort is to be fair and consistent to all veterans, no matter their disability or state of residence. We obviously must continue to improve the consistency of disability rating decisions, and we must take immediate steps to correct any deficiencies in the adjudication system that contribute to inconsistent rating decisions. The Inspector General's report has given us a comprehensive assessment of the many factors that impact this complex issue; and there is

still much work to be done to better understand the regional variance in VA compensation payments. Our challenge is to ensure that all regional offices are generating consistently accurate and timely decisions that provide the maximum benefits to which veterans are entitled.

I believe we must also streamline the appeals process. Any assessment of the current appeals process raises serious questions about its effectiveness. As many reviews of the appeals process have concluded, it lacks finality. The policy and process for addressing appeals are provided in statute and regulations, drafted and implemented at different times in history, resulting in a complex process that consumes a large and increasing portion of finite claims processing resources. The process can be improved, and veterans and taxpayers can be better served. While VBA shares the greatest responsibility for ensuring that the process is fair and timely, streamlining the process will depend on increased coordination among the various elements within VA as well as cooperation of stakeholders.

We are continuously challenged to produce more with fewer resources. In this era of declining resources across all Federal agencies, we will be even further challenged to increase the efficiency our claims processing system. This task is made more difficult by the ever-growing complexity of the laws and regulations governing our adjudicative process and the fact that veterans today claim more disabilities than ever before. We need to continue to make changes in our processes, supporting technologies, and organizational structures that enable us to produce more and better decisions with fewer resources.

The delivery of benefits to veterans and their families is supported by legacy systems that are not interoperable and cannot be easily modified to add or enhance applications. Applying the potential of today's technologies to our business processes is also a major challenge and one we are addressing. Our most immediate technological challenge is to migrate benefits processing from the Benefits Delivery Network to the VetsNet corporate environment. However, we must also continue to work to more fully integrate IT into our daily business processes and explore the potential that technology offers for expanding the services and access provided to veterans.

VBA has dedicated and committed employees across this nation who have proven that they are up to these challenges. I am certain the changes we have made and will continue to make, the training we have done and still need to develop and carry out, as well as the oversight we conduct, are making a real difference for the veterans we serve.

Mr. Chairman, as the Secretary's representative before this Committee today, I want to also talk about the work of the Board of Veterans' Appeals.

The mission of the Board has remained unchanged since its inception in 1933 ? to hold hearings and render quality, timely, and final decisions in appeals of claims for veterans benefits. The vast majority of appeals involve claims for disability compensation benefits, such as claims for service connection, an increased rating or survivor's benefits.

The initial decision in benefits claims is made by the Agency of Original Jurisdiction or ?AOJ?, typically one of VA's Regional Offices or Medical Centers. If that decision is unfavorable, the claimant may initiate an appeal by filing a Notice of Disagreement. If the appeal is still not resolved, the AOJ will issue a Statement of the Case, explaining the rationale for its decision.

The claimant then has 60 days from the issuance of the Statement of the Case to file a Substantive Appeal or VA Form 9 to the Board of Veterans' Appeal. At this point, the claim is assigned a place on the Board's docket, although it still remains under the control of the AOJ, where further development and consideration may be required. As claimants have the right to a hearing on appeal, the Board will conduct "Travel Board" hearings at Regional Offices or videoconference hearings, with the claimant at the Regional Office and the Veteran Law Judge presiding in the Board's offices in Washington, DC. Ultimately, if the claim is not fully granted at the AOJ, and after any requested Board hearing has occurred, it is then certified and the record transmitted to the Board. At this point, the Board has jurisdiction over the appeal.

By law, the Board generally must review appeals in docket order. The vast majority of appellants are represented before the Board by veterans service organizations, many of which have appeals units co located with the Board. They provide representation at hearings at the Board's offices and submit briefs in support of the appeal.

Once the representative completes his or her presentation, the Board reviews the appeal, thoroughly considering all evidence and argument presented and all applicable laws, regulations and other legal precedents. Board review is de novo -- it is based on a fresh look at the case. The Board will then issue a written decision. The Board may allow or deny a benefit sought, or, if additional development is necessary or a procedural defect needs to be cured, it must remand the case back to the AOJ to fix the problem. If the Board denies the appeal, the claimant's remedies include filing a Notice of Appeal with the United States Court of Appeals for Veterans Claims.

Information is collected throughout the appeals process, from the filing of the Notice of Disagreement to the final resolution of an appeal, and is tracked in the Veterans Appeals Control and Locator System, or VACOLS. This database enables VA to collect statistical data on every stage of the appeals process, both at the AOJ and the Board. It enables VA to measure performance both currently and over time.

For example, using the VACOLS data, VA can determine the elapsed processing time for each segment of the appeals process at each AOJ and the Board. VA tracks appeals resolution time -- the time it takes from the filing of the Notice of Disagreement until the claimant receives a final decision on appeal. The Board measures cycle time -- the time that it actually takes the Board to issue a decision (excluding the time the case is with the service organization representative). The Board also records decisional quality and the reasons for remanding cases to the AOJ.

The Board's performance, as reflected by the VACOLS data, has improved over the years. For example, in Fiscal Year 1994, the Board issued about 22,000 decisions. The Board's pending caseload stood at 47,000, and the measure of timeliness then used--average response time--was 781 days.

By Fiscal Year 1998, the Board's timeliness markedly improved and the pending caseload was down to less than 30,000 cases. The Board issued 38,886 decisions, and held 4,875 hearings. Appeals resolution time was 686 days.

In FY 2004, the Board issued 38,371 decisions. The Board also conducted 7,259 hearings -- a substantial increase from 1998. Appeals resolution time decreased to 529 days. Cycle time was

reduced to 98 days. Cases pending at the end of FY 2004 stood at 28,815. And the Board did this with 43 fewer FTE than in 1998.

The Board made these improvements despite several significant challenges, including the impact of the Veterans Claims Assistance Act of 2000, and the initiation and termination of evidence development at the Board due to the decision of the U.S. Court of Appeals for the Federal Circuit in *Disabled American Veterans v. Principi*.

The Board did not do this alone, but had much help from:

- o The Congress, providing unqualified support for the appellate rights of veterans and their families.
- o The veterans service organizations, which represent about 85% of appellants before the Board.
- o VA leadership, that supports improvements in the appeals process to ensure that veterans receive timely and quality decisions.
- o The staff at the Board, including the Veterans Law Judges, counsel, and administrative support staff. Through their efforts, productivity increased, over historic levels, by 20% for staff counsel, and by 25% for the VLJs. The number of hearings held also increased, with videoconference hearings nearly doubling since FY 1998. Finally, the average number of decisions per employee increased from 49.9 in FY 1994 and 80.5 in FY 1998, to 87.3 in FY 2004.

Two of the most significant and persistent challenges faced by the Board are:

- o Eliminating avoidable remands, and
- o Increasing productivity to contain and reduce the appeals backlog.

In regard to remands, the Board knows that:

- o Veterans want timely and correct decisions on claims for benefits. In order to do that, the record must contain all evidence necessary to decide the appeal and show that all necessary due process has been provided. If the record does not meet these requirements, and the benefits sought cannot be granted, a remand for further development is necessary.
- o Remands significantly lengthen appeals resolution time. A remand adds about a year to the process. Remands also divert resources from processing other claims and appeals.
- o The Board is working with VBA, OGC and VHA to identify and track root causes of remands, to provide training, and, ultimately, to eliminate avoidable remands. The results are already encouraging, with the remand rate for the first part of FY 2005 dropping to 42.6%, as compared to 56.8% in FY 2004. For February and March 2005, the remand rate was even lower at 38.4%. In April, it was down to 36%.

If nothing is done, the Board's backlog is projected to grow to unacceptable levels. The backlog disposition time?the projected time it would take the Board, working at its current rate, to



eliminate the backlog?would increase from 170 days in 2004, to 391 days in 2006, and to nearly 600 days in 2008.

Through incentives and sound management, the Board has beat past projections, and will continue to do so by:

- o Eliminating avoidable remands: About 75% of cases remanded are returned to the Board, which increases the appellate workload and degrades timeliness. A 50% reduction in remands in FY 2005 could reduce appeals resolution time by as much as 25 to 30 days.
- o Strengthening intra-agency partnerships: Joint training efforts with VBA, OGC, and VHA, will improve decision quality and reduce remands and appeals.
- o Writing shorter and more concise decisions: The Board is training its Veterans Law Judges and counsel to write shorter and more concise decisions.
- o Utilizing employee incentive, mentoring and training programs: A number of new programs have been introduced to increase employee motivation and satisfaction, as well as to increase productivity and decision quality.
- o Making use of overtime: The Board will use overtime within existing resources to enhance productivity.
- o Increasing use of paralegals: The Board will increase the use of paralegals for non decisional support activities.

The Board believes these measures will work to reduce the backlog and shorten the time it takes for a veteran to receive a well-reasoned and final Board decision. Already, VA has reduced the time it takes for an appeal to be finally resolved from 686 days in FY 1998, to 529 days in FY 2004. Decision quality at the Board has improved from 88.8% in FY 1998 to 93% in FY 2004, and the Board's cycle time is a little over three months.

The Board of Veterans appeals will continue working to develop new and creative solutions to the challenges faced in order to fulfill its statutory mission to hold hearings and provide timely, high quality decisions to the Nation's veterans and their families.

Mr. Chairman, this concludes my testimony. I greatly appreciate being here today and look forward to answering your questions.