

S. HRG. 109-425

**THE RISING NUMBER OF DISABLED VETERANS
DEEMED UNEMPLOYABLE: IS THE SYSTEM FAIL-
ING? A CLOSER LOOK AT VA'S INDIVIDUAL
UNEMPLOYABILITY BENEFIT**

HEARING

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE**

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**THE RISING NUMBER OF DISABLED VET-
ERANS DEEMED UNEMPLOYABLE: IS THE
SYSTEM FAILING? A CLOSER LOOK AT VA'S
INDIVIDUAL UNEMPLOYABILITY BENEFIT**

THURSDAY, OCTOBER 27, 2005

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

The Committee met, pursuant to notice, at 2:04 p.m., in room 418, Russell Senate Office Building, Hon. Larry Craig (Chairman of the Committee) presiding.

Present: Senators Craig, Thune, Isakson, Akaka, Jeffords, Murray, Obama, and Salazar.

**OPENING STATEMENT OF HON. LARRY E. CRAIG,
U.S. SENATOR FROM IDAHO**

Chairman CRAIG. Good afternoon, ladies and gentlemen, and welcome to the Veterans' Affairs Committee.

We have entitled this hearing "The Rising Number of Disabled Veterans Deemed Unemployable: Is the System Failing?" Today the Committee will take a closer look at what I would consider a "benefit of last resort." I am, of course, speaking about VA's individual unemployability, or "IU," benefit.

With today's modern technology, individuals with disabilities have more opportunities than ever before to become productive members of society. I want to hear what VA is doing to make sure these opportunities are made available to the brave men and women who have served our country in uniform. This is not only good for the mental health and long-term financial benefit of our veterans, but for America's own socioeconomic vitality. We know that employment has salutary effects on our physical and mental health and that it improves our self-esteem. In a brochure published by the National Mental Health Association, individuals with mental illness are encouraged to pursue employment opportunities on their path to recovery. The brochure reads, and I quote, "People who have recovered say that meaningful work, including volunteer jobs, is one of the biggest aids to their getting and staying well." Even spiritual leaders recognize the virtues of employment. John Paul II wrote that, "Work is a good thing for man . . . something worthy . . . something that corresponds to man's dignity, that expresses this dignity and increases it."

With that understanding of what employment means to our health and sense of self-worth, the chart behind me represents

what I call a worrisome trend. As you can see, there has been an alarming increase in the number of veterans deemed unemployable by VA, a 107 percent increase between 1999 and the year 2004. Those veterans are in receipt of a benefit that is based, in essence, on an undesirable life circumstance, a life circumstance that has no positive effect on health of mind, body or soul. As I said at the outset, any benefit based on such a life circumstance should rightly be described as a benefit of last resort. While the benefit may certainly be appropriate for some, the presumption must be that every individual with disabilities can overcome barriers to employment. A positive, employment-oriented attitude toward veterans with disabilities must be VA's focus, and the eligibility assessment of IU should reflect that attitude.

The increase in IU beneficiaries presents the Committee with various questions: Does VA use its vast health and vocational rehabilitation resources to help veterans with disabilities obtain jobs and to avoid an unemployability label? If IU is granted, are veterans abandoned in that status, or does VA conduct appropriate follow-up? Does this benefit do a disservice to veterans by incentivizing unemployment?

Fundamental to our inquiry is to establish an understanding of what the purpose of IU is and the standard VA uses in determining eligibility for it. One of the stunning things I learned in preparation for this hearing is the age demographic of IU beneficiaries. As you can see from the charts behind me, a fair number of IU recipients are well beyond traditional retirement ages. These charts beg a question that I think is clearly obvious: Why is a benefit based on unemployability being paid to individuals who, on account of age, would likely not be looking for work anyway? In other words, they are at the retirement age by even today's modern terms. These charts are reflective of what I believe is a concern.

Fortunately, we are joined this afternoon by witnesses who can help us find some answers to all of these questions. On our first panel we are joined by the Hon. Daniel Cooper—Dan, thank you for being here—VA Under Secretary for Benefits. He is accompanied by Renée Szybala, Director of the Compensation and Pension Service; Judith Caden, Director of Vocational Rehabilitation and Employment Services; and Dr. Patrick Joyce, Chief of Occupational Health at the Washington VA Medical Center.

On our second panel we are joined by Richard Surratt, Deputy, National Legislative Director of the Disabled American Veterans; and Cynthia Bascetta, Director of Education, Workforce and Income Security at the Government Accountability Office.

So I want to welcome all of you this afternoon, and thank you for the time it has taken for you to prepare for this hearing.

Before we go to our first panel, we have been joined by several of our colleagues. Let me turn first to the Ranking Member, Senator Danny Akaka.

Senator Akaka.

**STATEMENT OF HON. DANIEL AKAKA, U.S. SENATOR
FROM HAWAII**

Senator AKAKA. Thank you very much, Mr. Chairman. I join you today in this very important hearing. As you mentioned, we certainly would like to know more about IU.

I first want to add my welcome to our panelists here, as we will examine a very important benefit granted by the Department of Veteran Affairs, individual unemployability, commonly referred to as IU.

Individual unemployability has existed since the beginning of the last century. Congress understood that the VA rating schedule cannot always capture the degree that an injury or disease impairs an individual. At the outset, let me say that I agree with this sentiment, because each person is unique. Individual unemployability is necessary to overcome the inadequacies of the rating schedule. We can all agree that VA should do everything in its power to help rehabilitate injured veterans.

Currently various programs within VA such as compensation and pension, vocational rehabilitation and employment and health care, do not work together when determining ratings for certain claims including IU. Bringing everyone to the table when making IU determinations for individual veterans would require a major increase in funding. I want to hear more about this today.

We all know about the funding shortfall VA health care had earlier this year. VA finally admitted it had a funding shortfall after months of pressure from myself and my colleagues as well. We do not want this repeated in the benefits arena. I sincerely hope that VA is provided with adequate funding if Congress decides to re-vamp IU.

I am also concerned about VA's capability to simultaneously conduct its PTSD review and possibly restructure IU. Congress has not been provided with the funding and staffing needed for a PTSD review, which will be a major burden on VA resources. It seems ill-advised for Congress to initiate another project for the VA such as restructuring IU without hard facts on the PTSD review.

Lastly, and perhaps most importantly, I am concerned about the message that changing IU would send to our veterans. The PTSD review has sent shockwaves through the veteran community. A change in IU or other veterans benefits may have a similar effect. I view this as the perfect storm. I question whether it is equitable for veterans and in the best interest of the VA to follow this path during a time of conflict abroad. I urge the VA, when discussing IU, PTSD, or any other benefit issue, to maintain an open dialog with veterans and Congress.

Mr. Chairman, again, I thank you and the panelists, and look forward to their testimony.

Chairman CRAIG. Senator, Thank you very much.

Now let me turn to our colleague, Senator Patty Murray.

Patty, thank you and thank you for being here.

**STATEMENT OF HON. PATTY MURRAY, U.S. SENATOR
FROM WASHINGTON**

Senator MURRAY. Thank you very much, Mr. Chairman, and thank you and the Ranking Member for hosting today's hearing,

and of course I want to thank both of our panels who will be here with us today.

Mr. Chairman, I am very concerned about the need to provide employment services to our veterans, but there are some veterans who, because of their injuries, are simply unable to work. We need to ensure that we are taking care of them in the most effective way possible.

I do not think the system is broken. We are providing the individual unemployability benefit we promised our severely disabled veterans. But I do think it is essential that we ensure that veterans who are receiving, or are in the process of receiving IU have access to medical and employment services.

I am very concerned, Mr. Chairman, that an effort to increase the scrutiny placed on severely disabled veterans would really increase the stigma on veterans who are trying to access the resources that they have been promised. I am very concerned that this will hurt our veterans.

I also really worry that a review will demand increasing the VA's discretionary budget by substantial amounts with little known or quantifiable benefit. I know we are here today to talk about veterans who have been granted IU benefits because their disabilities were categorized, after much scrutiny, by the way, at 70 percent or more. This means that beyond physical injuries that prevent them from participating in many activities, they could have trouble with mental health issues such as suicidal thoughts, problems with speech, near continuous panic or depression, impaired impulse control, and difficulty in adapting to stressful environments.

It seems to me to mandate new screenings and work endlessly to get veterans with a 70 percent disability rating to work seems unnecessarily burdensome for many of our disabled veterans. As much as I wish that I could sit here and say they will easily work again, I think reality has shown us it is a constant and severe struggle.

I believe in providing employment services to disabled veterans, but the States cannot provide services for these individuals, and the applicable jobs are really very few and far between. I question any effort to force more disabled veterans off IU and into the workplace when we have not worked to fund the services they need or to help create the jobs that they are fit for.

In my home State of Washington, disabled individuals have a 70 percent unemployment rate, and I suspect that is probably close to the national average. That means 14,000 people are waiting for vocational rehab. So when we talk about trying to force disabled veterans to seek employment instead of IU, we are talking about forcing them to compete with thousands of other disabled Americans.

I want to be clear. I oppose any effort to increase the scrutiny of our veterans' claims solely to save money, especially when chances are that veterans more than 70 percent disabled will likely find it extremely difficult to get and keep employment. In fact, the proposed review of 72,000 PTSD cases has already increased the stigma surrounding PTSD, and on top of the 800,000 cases the VBA needs to review this year, these cases will drain limited resources and delay benefits to thousands of our veterans. Any re-

view sets a dangerous precedent and increases the stigma against our veterans and it will drain limited VBA resources.

Mr. Chairman, one veteran in New Mexico has tragically committed suicide due to this review. I want to enter into the record an article about Greg Morris. He's a Vietnam veteran who killed himself last week. The article states, and I want to quote. It says:

On October 8th, Greg Morris, 57, was found by his wife, Ginger, in their home in Chama, New Mexico. For years Morris had been receiving monthly VA benefits in compensation for post traumatic stress disorder. Next to his gun and purple heart was a folder of information on how the VA planned to review veterans who received PTSD checks to make sure those veterans really deserved the money.

I think the scrutiny needs to stop. This Committee needs to have a clear understanding of what the VA will get out of any effort to look harder at benefits before moving forward with another effort.

Last week I hosted a hearing of the Employment and Workplace Safety Subcommittee on Enhancing Cooperation Between Employers and Guardsmen Reservists. That hearing clearly highlighted the vital need to increase resources for our Guard and Reserve to help them access employment after their service in Iraq and Afghanistan. I think instead of looking for ways to strip severely disabled veterans' benefits, this Committee ought to be examining how we can have a full hearing on USERA and TAP and Labor VETS and other programs that help our veterans get employment. I think we should analyze why the system is failing our Guard, Reserve and other veterans, and although I think efforts need to be made to provide veterans with employment assistance, I stbelieve we should direct our focus to those who are more likely to find employment.

We have talked, Mr. Chairman, you and I, about the budget with the VA many times. I have to say I am very concerned about any proposals that are put forth here today if they would demand increased funding to get veterans with 70 percent disability fully employed. I wish that could happen, but after 13 years working on many of these issues I think it is fair to say, as much as we hate to say it, that some square pegs just do not fit in a round hole no matter how hard you push.

In the meantime we need to remember that we have thousands of Iraq veterans who are trying to get help with employment. We should be asking, what we are trying to do to improve services for them? I do not understand why we are focusing on stripping benefits from disabled veterans when we have thousands of Iraqi veterans today who need our help getting jobs.

If we are concerned about the increased number of veterans who are getting IU, why are we not working harder to get those thousands of OIF and OEF veterans, who are coming back every day, jobs? Those are the questions that I will have for this Committee today, and I think our Nation's veterans deserve an answer.

Thank you, Mr. Chairman.

Chairman CRAIG. Thank you, Patty.

Senator Salazar, Ken, do you have any opening comment before we turn to our panel?

Senator Salazar. Thank you, Mr. Chairman, and Senator Akaka for holding this hearing. I have a statement, but I will just submit it for the record.

Chairman CRAIG. Thank you.

[The prepared statement of Senator Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Thank you, Chairman Craig and Senator Akaka, for bringing attention to this important issue.

I think most of us, inside and out of VA, would agree that Individual Unemployability is a vital tool in VA's benefit adjudication process. It allows VA to look at veterans individually and provide fair treatment on a case-by-case basis, where the disability ratings schedule does not.

Many of us would also agree that the way VA administers IU has also led to some significant problems. These include inconsistent application of IU across the country, disincentives for mental health treatment and for work, and in some limited cases the possibility of fraud and abuse.

However, I think there is significant disagreement about what to do about these problems.

The problems with IU are symptoms of the same disease that causes veterans to wait years for disability claim decisions and currently keeps 340,000 veterans in bureaucratic limbo as they wait for claims decisions. VBA's claims adjudication process is broken.

One symptom of this is that tens of thousands—perhaps hundreds of thousands—of veterans are not getting the benefits they deserve. The other is that VA is unable to stop some instances of fraud and abuse. These two problems come from the same source.

We cannot minimize the importance of fraud. Every dollar that goes to a fraudulent claim or is lost because of administrative inefficiencies could, in theory, be devoted to better care for veterans. If the VBA were able to crack down on legitimate IU fraud, it could save taxpayers hundreds of millions of dollars.

However, any cure that fails to address the long waiting lists, deferred benefits, and underlying problems at VBA is unfair to our Nation's veterans.

The VA's proposed plan to review 72,000 PTSD cases, including IU cases, is a perfect example of a one-sided, unfair approach. This review will only look at mistakes made in giving veterans full benefits, not at cases where veterans might be eligible for additional assistance. I am proud that the U.S. Senate passed legislation to put a check on this review. And I am proud to work with my colleagues Senators Obama, Akaka, Murray, Rockefeller, and Durbin to fight for this legislation.

We need comprehensive and fair approaches to dealing with IU's problems.

I support efforts to strengthen VA's ability to verify IU eligibility, so long as there are not undue burdens on applying veterans. I support efforts to improve the mental and physical health of our veterans so that they can re-enter the workforce and lead more fulfilling lives. However, private-sector back-to-work initiatives that include penalties and reduced benefits would be inhumane if applied to our disabled veterans. I support efforts to standardize IU ratings for PTSD, so long as the complexities of individual mental health cases are not ignored.

The IU system can be reformed, but we have to recognize that Veterans benefits are not the same as private sector disability or unemployment insurance. Veterans have earned a special status because of their service to the Nation.

Another step we need to take immediately is fixing the concurrent receipt problem for our IU veterans. They should not have to wait years for the benefits they have earned. I hope this Committee can address that issue soon.

Over the long term, we need to make sure that VBA and BVA have the manpower, and resources to do their jobs. We also need to continue improving the fairness and efficiency of the system. We need to continue adjusting the system, from gradual small administrative changes, such as improving quality-control measures, to more significant legislative reforms, such as simplifying the appeals process in a way that preserves veterans' rights.

I thank the Chair for my time and look forward to the hearing.

Chairman CRAIG. Patty, I would only say, before we turn to the panel, this is not about round pegs in square holes. This is about round pegs in round holes and square pegs in square holes, and it is the job of this Committee for thorough and responsible oversight.

This is not about reforming a program until we understand the program. And we do not understand the program until we open the door, shed in the light, and look at it. I will never step back from oversight, as critical as it may be perceived in the beginning, or even the results in the end. It is our fiduciary and responsibility to all veterans to make sure that the services we are paying for them get to them.

I would hope you would view this hearing in that context, and not as a “gotcha,” but as a “helps ya.” That is the intent of this hearing.

Senator MURRAY. I appreciate that, Mr. Chairman. I would just say, that I agree it is extremely important that we spend our money wisely, but we have to do it in a way that does not target veterans who are receiving these resources for very serious reasons and make them feel guilty—

Chairman CRAIG. Then let us find out if that is the case. Thank you.

Let us turn to our first panel. Dan, thank you very much for being here with your staff and those who are providing these services at VA. We look forward to your testimony. Please proceed.

STATEMENT OF HON. DANIEL L. COOPER, UNDER SECRETARY FOR BENEFITS, DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY RENÉE SZYBALA, DIRECTOR, COMPENSATION AND PENSION SERVICE; JUDITH CADEN, DIRECTOR, VOCATIONAL REHABILITATION AND EMPLOYMENT SERVICE; AND PATRICK JOYCE, M.D., CHIEF OF OCCUPATIONAL HEALTH, WASHINGTON VA MEDICAL CENTER

Mr. COOPER. Thank you, sir. Mr. Chairman, Members of the Committee, thank you for the opportunity to review with you this important issue of individual unemployability. I am pleased to be accompanied, as you stated, by Ms. Renée Szybala, who is Director of the Compensation and Pension Service; Ms. Judith Caden, who is Director of the VA’s Vocational Rehabilitation and Employment Service; and Dr. Patrick Joyce, who is Chief Physician of Compensation and Pension Program at the Washington, DC VA Medical Center.

Individual unemployability, or IU, is the basis upon which VA pays service-connected disability compensation at the 100-percent rate to qualified veterans with combined ratings that are less than 100 percent. The VA rating schedule provides for an award of IU benefits when the veteran is unable to secure substantially gainful employment or occupation as a result of his or her service-connected disabilities. To be eligible for IU benefits, the rating schedule requires that a veteran have either a single 60-percent disability evaluation or a combined evaluation of 2 or more disabilities at 70 percent, with one of those 2 or more being a 40-percent disability.

The 1945 rating schedule established that age was not to be considered a factor in evaluating service-connected disability, and an entitlement to IU could not be based on advancing age or additional non-service-connected disability.

The number of veterans rated totally disabled based on IU has more than doubled in the last 6 years. There are several factors

that possibly have had an impact on this increase. I cannot evaluate the degree to which each has impacted it.

Since 1999, the number of veterans receiving disability compensation on our rolls in total has increased 17 percent from 2.2 million in 1999 to 2.6 million today. There has also been an increase in the average combined evaluation over the same period. Advancing age, diabetes, various presumptive cancers, as well as a significant increase in a number of veterans awarded service connection for PTSD, account for a substantial portion of this increase. However, court decisions in 1999 and since, have also had a direct impact on our ratings. They specifically held that VA must infer a claim for IU if the veteran's claim for increased disability meets the combined evaluation criteria which I mentioned, and that there is evidence of inability to engage in substantially gainful employment due to service-connected disability.

VA has not and does not currently require an employment assessment by vocation or rehabilitation staff as part of the IU determination. A veteran's participation in a program of rehabilitation, education and training does not preclude a total disability rating based on IU. However, every veteran who receives an original claim or an increase in disability will receive the information on our VR&E program and be strongly encouraged to participate in that Vocational Rehabilitation and Employment program.

Veterans with IU ratings may receive vocation and rehabilitation benefits under the VR&E program. Our regulations allow a veteran who is receiving IU benefits to work 12 consecutive months in substantially gainful employment before any change can be made in the IU determination.

If the rating official finds that a medical examination is necessary to determine entitlement to IU, an examination or opinion request is then submitted. The medical examiner's report should describe the specific disability effect on the veteran's daily activities and his or her ability to work. Once a veteran is awarded IU benefits and until age 70, submission of an annual employment certification is required. This procedure was resumed this September after having been suspended for approximately 6 years.

Veterans receiving IU benefits are subject to VA's annual income verification match. The income verification match uses Internal Revenue Service and Social Security Administration income records to identify IU beneficiaries with earned income above the earnings threshold.

The Inspector General's recent review of compensation payment found that a disability payment variance among the various States was affected by several factors, including demographics, as well as the incidence of PTSD and the subsequent award of IU benefits based on that condition. The well-publicized findings of the IG, as well as a significant increase in the number of identified IU cases with apparent income above the poverty threshold, led us to examine our existing IU procedures and regulations to determine if changes were needed.

We have reinstated the annual employment certification. We have also reinforced existing procedural guidelines for IU determinations. We will continue to work to provide additional training for employees and to identify ways to strengthen and clarify our

procedural requirements to ensure the integrity and the consistency of this very important benefit.

The IU benefit has a long history, going back to 1934. It does fill a critical gap when the ratings schedule fails to adequately address the impact of disability in a specific veteran's circumstance. We believe that IU continues to be an essential tool in serving America's veterans, and fulfilling the country's commitment to them. We will continue to work to ensure that those who have served the Nation are properly compensated for their injuries and fully assisted in returning to participation in society to the maximum extent possible permitted by their injuries.

Thank you for this opportunity to discuss this with you, sir, and I am ready to answer any questions.

[The prepared statement of Mr. Cooper follows:]

PREPARED STATEMENT OF HON. DANIEL L. COOPER, UNDER SECRETARY FOR
BENEFITS, DEPARTMENT OF VETERANS AFFAIRS

Mr. Chairman and Members of the Committee: Thank you for the opportunity to review with you the issue of Individual Unemployability (IU). I will discuss what IU is, its history, the criteria used to determine eligibility, the number of veterans receiving IU benefits, the May 2005 study by the Inspector General (IG) of State variances in average annual compensation, and other issues. I am pleased to be accompanied by Ms. Renée Szybala, Director of VA's Compensation and Pension Service, and Ms. Judith Caden, Director of VA's Vocational Rehabilitation and Employment Service.

WHAT IS IU

Individual Unemployability or IU is the basis on which the Department of Veterans Affairs pays service-connected disability compensation at the rate payable for a 100-percent evaluation to qualified veterans with combined evaluations that are less than 100 percent. Regional office decisionmakers assign IU ratings when veterans meet minimum combined evaluation criteria and, in the judgment of the rating official(s), are unemployable due solely to their service-connected conditions. In exceptional circumstances, regional offices may refer cases that fail to meet the minimum combined evaluation criteria to the Director of the Compensation and Pension Service for consideration of an IU rating.

AUTHORITY

Section 1155 of title 38, United States Code, charges the Secretary with responsibility for developing and applying a disability rating schedule that is based, "as far as practicable," upon the average impairments of earning capacity resulting from service-connected disabilities. Recognizing that the intent of the rating schedule is to fairly compensate veterans for their disabilities to the extent to which they impair earning capacity of the average veteran, the schedule none-the-less cannot always adequately compensate an individual veteran in his or her particular circumstance. To address the inevitable situations where the schedule does not adequately address a particular fact pattern, the schedule adopted by the Secretary provides both IU and extra-schedular provisions.

BRIEF HISTORY OF IU

In 1925, the Schedule for Rating Disabilities provided the first definition of total disability. Total disability was defined as an impairment of mind or body that is sufficient to render it impossible for the average person to follow a substantially gainful occupation.

In 1934, total disability was expanded to provide that total disability ratings may be assigned without regard to the specific provisions of the rating schedule when the veteran is, in the judgment of the rating agency, unable to follow a substantially gainful occupation as a result of the veteran's disabilities. To be eligible for consideration for IU benefits, the schedule required that a veteran have a single 70-percent evaluation or, if the veteran had multiple service-connected conditions, that the minimum combined evaluation be 80 percent with at least one disability considered 60-percent disabling.

In 1941, the minimum requirements for consideration for IU entitlement were revised to today's standard of 60 percent for a single disability or a combined 70-percent evaluation with at least one 40-percent disability.

Throughout the rating schedule, a 60 percent evaluation or higher reflects significant disability. A 40-percent evaluation assigned to a condition generally reflects a serious handicap. Therefore, when multiple service-connected conditions are involved, the higher 70-percent minimum combined evaluation is reasonable to allow for the interplay of multiple disabilities.

The 1945 rating schedule established that age was not to be considered a factor in evaluating service-connected disability, and that entitlement to IU could not be based on advancing age or additional non-service-connected disability.

Under VA regulations, if a veteran's earned income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person, currently \$9,570, the veteran is only marginally employed, and marginal employment does not qualify as substantially gainful employment. Also, the U.S. Court of Appeals for Veterans Claims held in *Faust v. West* that employment that provides annual income exceeding the poverty threshold for one person, irrespective of the number of hours or days actually worked and without regard to the veteran's annual earned income prior to the award of the IU rating, constitutes "actual employability."

NUMBER OF IU BENEFICIARIES

The number of veterans rated totally disabled based on IU has more than doubled in the past 6 years from 97,275 veterans in 1999 to over 221,000 veterans today.

There is no single clear explanation for the increase in IU ratings over the last 6 years. However, the rise has occurred concurrent with other significant changes. Since September 30, 1999, the number of veterans receiving compensation has increased from 2,252,980 to 2,636,979 at the end of fiscal year 2005. This increase of 383,999 veterans represents a 17-percent rise in the number of veterans receiving compensation. There has also been an increase in the average combined disability evaluation over the same period. At the end of 1999, 57 percent of all veterans receiving compensation had combined evaluations of 30 percent or less. Today it is 46 percent. The percent of veterans with combined evaluations of 60-percent disability or more has increased from 17 percent at the end of 1999 to the current 29 percent. An interplay of advancing age, diabetes, and various presumptions of service connection for cancers associated with herbicide and radiation, as well as a significant increase in the number of veterans awarded service-connection for PTSD, account for a substantial portion of the increase.

Recent court decisions have also had an impact on IU ratings. For example, in 1999, the U.S. Court of Appeals for Veterans Claims in *Norris v. West* held that VA must infer a claim for IU if the veteran files a claim for increased disability, meets the schedular minimum combined evaluation criteria, and there is evidence of inability to engage in substantially gainful employment due to service-connected disability.

INTERPLAY WITH VOCATIONAL REHABILITATION AND EMPLOYMENT (VR&E)

In its September 1987 report, "Improving the Integrity of VA's Unemployability Compensation Program," the then General Accounting Office (GAO) recommended that VA revise its regulations to require that all veterans applying for a total disability rating based on IU be referred for a vocational rehabilitation evaluation.

VA does not currently require an employment assessment by VR&E program staff as part of the IU entitlement determination. If the Secretary decided to require an employment assessment in connection with determining a veteran's entitlement to IU, VA would first promulgate regulations defining the scope, purpose, and criteria for conducting such an assessment, and the manner in which VA would implement such assessments.

A veteran's participation in a program of rehabilitation, education, or training does not preclude a total disability rating based on IU. Veterans with compensable service-connected disabilities, including those with IU ratings, may be entitled to receive vocational rehabilitation benefits under the VR&E program (chapter 31, title 38, United States Code). VA also may not deny a veteran's IU claim on the basis that he or she is participating in a Veterans Health Administration (VHA) program of therapeutic and rehabilitative services, or consider therapeutic and rehabilitative activities as evidence of a veteran's ability to secure or follow a substantially gainful occupation. Our regulations allow a veteran receiving IU benefits to work 12 consecutive months in substantially gainful employment before any change is made in the IU determination.

ADDITIONAL BENEFITS

A total disability rating based on IU can result in eligibility for additional benefits for a veteran's dependents and survivors. Educational benefits for the veteran's spouse and eligible children are available under the Survivors' and Dependents' Educational Assistance Program (title 38, United States Code, chapter 35). The Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) provides reimbursement to eligible dependents for most medical expenses, provided that they are not also eligible for health care benefits provided by the Department of Defense. To be eligible for both of these benefits, the veteran's IU determination must be considered permanent. Permanency for eligibility to chapter 35 and CHAMPVA requires that there not be a future examination scheduled.

APPLICATION PROCESS

In most cases, to be considered for IU benefits, a veteran must apply. However, in the Norris case mentioned earlier, the court held that a veteran need not apply for IU for a claim for IU to be inferred. Thus, VA is required to consider the issue in certain circumstances, even if the veteran did not explicitly apply for an IU rating. Recent guidance to the field directed that, once an IU claim is inferred, an application must be sent to the veteran for completion in order to obtain the essential information requested on the application form. The form asks the veteran to furnish an employment history for the 5-year period preceding the date on which the veteran became unemployable, as well as from that date to the date of application.

As part of the development of IU claims, field stations are also required to solicit information from each employer during the 12-month period preceding the date the veteran last worked. The employer is asked to provide information concerning the veteran's employment history including the date of employment, the type of work performed, and if the veteran is not currently working, the reasons for termination of employment.

ROLE OF THE MEDICAL EXAMINER

If the rating official determines that a medical examination is necessary to determine whether a veteran is entitled to a total disability rating based on IU, an appropriate examination or opinion request is submitted to a VHA medical facility or our contract examination provider.

Medical examiners follow the appropriate worksheets to perform a complete and adequate examination for rating purposes, answering all questions and providing opinions as requested. A diagnosis is to be provided for every condition listed on the examination request. The medical examiner should describe the disability's effect on the veteran's daily activities and ability to work. For IU claims, the examiner should also obtain the veteran's occupational history (i.e., type of occupation, employment dates, wages for last 12 months, and detail any time that was lost from work in past 12-month period).

CONTINUED IU ELIGIBILITY

Once a veteran is awarded IU benefits and until he or she attains age 70, the veteran is required to submit an annual employment certification. This procedure was resumed in September after having been suspended for approximately 6 years. The veteran must list all employment for the preceding 12-month period. VA uses the certification to verify continued entitlement to IU benefits. Failure to return the form will cause VA to send the veteran a contemporaneous notice of reduction of the monthly benefit payment to the rate justified by the underlying rating.

VA may schedule a reexamination for any veteran when VA determines there is a need to verify the continued existence or current severity of a disability. Generally, VA requires re-examination if it is likely that a disability has improved or if evidence indicates that a disability has materially changed or that the current rating may be incorrect. Periodic future examinations are not requested if the disability is unlikely to improve, if symptoms have persisted without material improvement for a period of 5 or more years, where the disability is permanent in character, or in cases where the veteran is age 55 or older. After a veteran has received compensation at any level of disability for 20 years, to include total disability benefits based on IU, that compensation rate is protected.

Veterans receiving IU benefits are subject to VA's annual income verification match (IVM). The IVM uses Internal Revenue Service (IRS) and Social Security Administration (SSA) income records to verify that IU beneficiaries remain below the earnings threshold for entitlement to IU benefits.

REVIEWS OF VA CLAIMS PROCESSING RELATED TO IU

Former Secretary Anthony J. Principi, in response to media articles about State-to-State variance in average compensation payments to veterans, requested that the VA Inspector General (IG) study the payment variance issue. The IG found that payment variance was affected by several factors including demographic factors and representation by veterans service organizations, as well as the incidence of PTSD and the subsequent award of IU benefits for that condition.

The Government Accountability Office (GAO) also issued a report in 2004 pointing to a need for increased analysis of the consistency of decisionmaking across regional offices. GAO is currently conducting a study of IU benefit decisionmaking.

Based on the preliminary findings from these reviews, as well as a significant increase in the number of IU case referrals received in the latest IVM with IRS and SSA, we have been analyzing our existing IU procedures and regulations to determine if changes are needed. As discussed earlier, we have reinstated the annual employment certification for veterans receiving IU benefits. We have also reinforced existing procedural and evidentiary guidelines for IU determinations through conference calls with our field stations and at our recent Veterans Service Center Managers Conference. We will continue to work to provide additional training for our employees, and to identify ways to strengthen and clarify our long-standing procedural requirements and ensure the integrity of this important benefit.

The IU benefit has a long history. It fills a critical gap when the rating schedule fails to fully address the impact of disability in a specific veteran's circumstance. We believe that during this period of conflict and danger for our country, IU continues to be an essential tool in serving America's veterans and fulfilling the country's commitment to them. We at VBA are fully cognizant of this as we work to ensure those who have served this nation are fully compensated for their injuries and assisted in returning to participation in society to the maximum extent possible permitted by their injuries.

Thank you for this opportunity to discuss this important benefit. I would be pleased to address any questions you may have.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LARRY E. CRAIG
TO HON. DANIEL L. COOPER

Question 1a. Your testimony pointed out that the Government Accountability Office (GAO) recommended back in 1987 that VA revise its regulations to require all veterans applying for Individual Unemployability (IU) be referred for a vocational rehabilitation evaluation, yet nothing was done.

Doesn't it make sense to have trained vocational counselors perform IU assessments?

Answer. We believe that requiring vocational assessments may improve the adjudication of total disability ratings based on Individual Unemployability (IU) and serve as an integral part of any decision to award IU benefits. Trained vocational counselors may provide a more comprehensive picture of the veteran's current ability to engage in substantially gainful employment and the impact of training and other rehabilitation benefits on the veteran's future employment prospects. However, conducting vocational assessments will require additional Vocational Rehabilitation and Employment (VR&E) staff members and/or contract dollars to support this effort.

Question 1b. Who performs the assessments now and what are their professional qualifications for making employability determinations?

Answer. Medical examiners perform a complete and adequate examination for rating purposes according to the appropriate examination worksheet. In IU claims, the medical examiner must describe the disability's effect on the veteran's daily activities and his or her ability to work. The medical examiner must obtain the veteran's occupational history such as the type of occupation, employment dates, and wages from the previous 12 months, and details the time that was lost from work in the previous 12-month period. Examining physicians, psychologists, and other licensed health-care providers are experienced in assessing employability for various disability-determining agencies, including the Department of Veterans Affairs (VA) and the Social Security Administration.

Question 1c. Do they take into account the impact medical treatment and vocational rehabilitation services would have on a veteran's employment potential when making these determinations?

Answer. A VA rating decisions regarding entitlement to IU must be based on all the evidence of record, including medical and other relevant evidence, regarding

whether a veteran's service-connected conditions preclude him or her from obtaining and maintaining substantially gainful employment.

Once a veteran has received an IU rating, VA may require a reexamination of the veteran if: (1) It is likely that a disability has improved; (2) evidence indicates there has been a material change in a disability; or (3) evidence indicates the current rating may be incorrect. For example, if a veteran has just started a medical regimen or medications are being adjusted for better results, a future exam may also be warranted. VA also monitors a veteran's vocational rehabilitation by requiring the yearly submission of VA Form 21-4140, an employment questionnaire verifying whether or not the veteran is employed. VA also performs the Income Verification Match (IVM) yearly with the Internal Revenue Service (IRS) that reports wages earned for veterans drawing IU.

Reduction of an IU rating requires clear and convincing evidence that establishes a veteran's actual employability. VA regulations provide that, if a veteran is undergoing vocational rehabilitation, education, or training, an IU rating may not be reduced for that reason "unless there is received evidence of marked improvement or recovery in physical or mental conditions or of employment progress, income earned, and prospects of economic rehabilitation, which demonstrates affirmatively the veteran's capacity to pursue the vocation or occupation for which the training is intended to qualify him or her, or unless the physical or mental demands of the course are obviously incompatible with total disability." Evidence regarding the impact of a veteran's medical treatment and vocational rehabilitation on the veteran's employment potential would be relevant in determining whether an IU rating should be reduced.

Question 2a. Thirty-one percent of IU beneficiaries are over the age of 71. I don't understand why a benefit that is based on unemployability is granted to individuals who, because of their ages, would likely not be looking for work.

Why is age not a factor in an IU determination?

Answer. For more than 60 years, the Schedule for Rating Disabilities has stated that age may not be considered as a factor in evaluating service-connected disability, and that service-connected unemployability cannot be based on advancing age. Age may affect an individual's ability to perform activities necessary for employment and should potentially be a factor in determining whether a veteran is unable to engage in substantially gainful employment solely due to service-connected disability.

Question 2b. If Federal unemployment statistics only include in the definition of "unemployed" those who are looking for, but can't find work, why shouldn't VA apply that same standard for the IU benefit?

Response: The Bureau of Labor Statistics classifies persons as unemployed if they do not have a job, have actively looked for work in the prior 4 weeks, and are currently available for work. Persons counted as "unemployed" are unable to find work for a variety of reasons. Veterans are entitled to a total disability rating based on IU because they are "unemployable," i.e., unable to engage in substantially gainful employment because of a service-connected disability.

Question 2c. VR&E: Is age a factor when evaluating whether a veteran is eligible for VA's Vocational Rehabilitation and Employment (VR&E) program?

Answer. There are no age prohibitions associated with the eligibility and entitlement requirements for the VR&E program. However, the age of a veteran with a disability who files a claim for VR&E services may be considered if it is identified as a potential impairment to employability.

Question 3a. Forty-six percent of veterans who have disability ratings of 60 to 90 percent go on to receive IU.

What are the characteristics of those rated 60 to 90 percent who do not go on to receive IU? Please include in your assessment a breakdown of the age, underlying disability rating, and service-connected body system.

Answer. In September, 2005, of the 483,024 veterans rated 60 to 90 percent disabled, 261,932 veterans were not rated as totally disabled based on IU. The following data comparing IU beneficiaries with non-IU beneficiaries who are also rated 60 to 90 percent disabled suggests a correlation between age and the level of disability with the likelihood that a veteran will receive IU benefits. Younger veterans and veterans with lower disability ratings are less likely to receive IU benefits compared to older veterans and veterans with higher disability ratings.

The following chart contrasts the number of IU beneficiaries with non-IU beneficiaries according to their *age* category.

| Age | No IU | With IU | Total |
|-----------------|---------|---------|---------|
| Below 30 | 7,735 | 1,215 | 8,950 |
| 30–39 | 20,499 | 7,634 | 28,133 |
| 40–49 | 48,839 | 20,496 | 69,335 |
| 50–59 | 86,514 | 81,254 | 167,768 |
| 60–69 | 38,975 | 40,466 | 79,441 |
| 70–79 | 29,794 | 33,375 | 63,169 |
| 80 and up | 29,576 | 36,652 | 66,228 |
| Total | 261,932 | 221,092 | 483,024 |

The following chart compares the number of IU beneficiaries with the number of non-IU beneficiaries based on their *disability level*.

| Level of disability | Non-IU | IU |
|---------------------|---------|--------|
| 60 percent | 135,548 | 37,146 |
| 70 percent | 72,328 | 80,862 |
| 80 percent | 39,220 | 63,759 |
| 90 percent | 14,836 | 39,325 |

The following chart contrasts the number of IU beneficiaries with the number of non-IU beneficiaries based on their *primary service-connected disability*.

| Body system | Non-IU | IU |
|-----------------------|---------|---------|
| Endocrine | 10,888 | 5,933 |
| Neurological | 20,052 | 14,223 |
| Cardiovascular | 21,143 | 22,138 |
| Mental—Non-PTSD | 20,086 | 23,982 |
| Mental—PTSD | 34,492 | 61,996 |
| Musculoskeletal | 82,188 | 62,675 |
| Respiratory | 20,985 | 6,910 |
| Other | 52,098 | 23,235 |
| Total | 261,932 | 221,092 |

Question 3b. What explains the differences between how these two, similarly rated groups of disabled veterans are treated for purposes of IU?

Answer. The data above indicates that younger veterans and veterans with lower disability ratings are less likely to receive IU benefits compared to older veterans and veterans with higher disability ratings.

Question 4. Is it true that after an individual is granted IU a letter is sent to encourage participation in the VR&E program? If so, how frequently do IU participants respond to that letter by participating in the program? Of those IU recipients who do participate, what is their rehabilitation rate?

Answer. Information about the VR&E Program is provided to veterans whenever they receive a rating, get a rating increase, or receive an IU rating. The information provided includes VA Form 28–8890 (Important Information about Vocational Rehabilitation Benefits) and VA Form 28–1900 (Disabled Veterans Application for Vocational Rehabilitation).

For the 5-year period beginning in fiscal year 2001 and ending fiscal year 2005, 2,933 IU recipients completed a comprehensive Vocational Rehabilitation and Employment evaluation. In the same time period, 1,622 IU recipients were declared rehabilitated. It is important to note that many veterans receiving IU are rehabilitated as having achieved independent living goals rather than employment goals. For example, in fiscal year 2005, it is estimated that at least 23 percent of the total number of IU recipients rehabilitated were rehabilitated after completing independent living programs rather than employment programs.

Question 5. Is the VR&E program successful in helping veterans with service-connected ratings of 60 to 90 percent? Are the disabilities afflicting those who participate in the VR&E program of a fundamentally different nature than those afflicting IU beneficiaries who do not participate? If the VR&E program has a demonstrated effectiveness of assisting veterans rated 60 to 90 percent, and the disabilities afflicting non-participating IU beneficiaries and VR&E participants are similar, is there any reason that the VR&E program could not help move more veterans off the IU roles and into jobs?

Answer. The table below provides the detailed data to answer the questions asked. As shown below, during the 5-year period beginning in fiscal year 2001 through fiscal year 2005, 10,568 veterans rated 60 percent to 90 percent disabled were declared rehabilitated. The data would seem to indicate that VR&E services can assist veterans rated 60 percent to 90 percent disabled.

| Fiscal Year | Disability Rating | Program Participants | % of total Participant | Veterans Rehab | % Rehab | Employment vs. Ind. Living |
|-------------|-------------------------------|----------------------|------------------------|----------------|------------|---|
| FY 2001 | 0-50% | 72,041 | 85% | 8,638 | 85% | Employment |
| | 60% | 6,496 | 8% | 719 | 7% | 8,559 |
| | 70% | 3,455 | 4% | 453 | 5% | Ind. Living |
| | 80% | 1,815 | 2% | 221 | 2% | 1,557 |
| | 90% | 669 | 1% | 85 | 1% | |
| | Total 60%-90% | 12,435 | 15% | 1,478 | 15% | 10,116 |
| | Grand Total | 84,476 | | 10,116 | | |
| FY 2002 | 0-50% | 78,458 | 83% | 8,353 | 82% | Employment |
| | 60% | 7,802 | 8% | 773 | 8% | 7,799 |
| | 70% | 4,473 | 5% | 549 | 5% | Ind. Living |
| | 80% | 2,417 | 3% | 373 | 4% | 2,410 |
| | 90% | 921 | 1% | 161 | 1% | |
| | Total 60%-90% | 15,613 | 17% | 1,856 | 18% | 10,209 |
| | Grand Total | 94,071 | | 10,209 | | |
| FY 2003 | 0-50% | 79,361 | 81% | 7,451 | 78% | Employment |
| | 60% | 8,650 | 9% | 849 | 9% | 7,520 |
| | 70% | 5,318 | 6% | 699 | 7% | Ind. Living |
| | 80% | 3,085 | 3% | 372 | 4% | 2,029 |
| | 90% | 1,130 | 1% | 178 | 2% | |
| | Total 60%-90% | 18,183 | 19% | 2,098 | 22% | 9,549 |
| | Grand Total | 97,544 | | 9,549 | | |
| FY 2004 | 0-50% | 76,746 | 80% | 8,715 | 78% | Employment |
| | 60% | 8,976 | 9% | 902 | 8% | 8,392 |
| | 70% | 5,633 | 6% | 759 | 7% | Ind. Living |
| | 80% | 3,341 | 4% | 501 | 5% | 2,737 |
| | 90% | 1,313 | 1% | 249 | 2% | |
| | Total 60%-90% | 19,263 | 20% | 2,414 | 22% | 11,129 |
| | Grand Total | 96,009 | | 11,129 | | |
| FY 2005 | 0-50% | 73,867 | 78% | 9,288 | 77% | Employment |
| | 60% | 9,217 | 10% | 1,059 | 9% | 9,279 |
| | 70% | 5,996 | 6% | 850 | 7% | Ind. Living |
| | 80% | 3,748 | 4% | 566 | 5% | 2,734 |
| | 90% | 1,502 | 2% | 250 | 2% | |
| | Total 60%-90% | 20,463 | 22% | 2,725 | 23% | 12,013 |
| | Grand Total | 94,330 | | 12,013 | | |
| | Five Year Total 60-90% | 85,957 | 18% | 10,571 | 20% | 53,016 |
| | | | | | | Employment 41,549 Ind. Living 11,467 |

** - VR&E at this time does not collect data pertaining to the percentage of disability for the Independent Living rehabilitations.

Question 6. Your testimony pointed out that periodic future examinations are not requested if an IU recipient is over age 55. Why is age not a factor when making an IU determination, but is a factor when determining whether to reevaluate an IU recipient's disability to determine if employment is possible? Isn't there an inconsistency here?

Answer. Current 38 CFR §3.327 provides that VA will not schedule a periodic re-examination for veterans who are over 55 years old except under unusual circumstances. VA will reconsider this policy to determine whether VA should schedule periodic re-examinations for IU beneficiaries who are over 55 years old.

Question 7. Is there any interface with VHA, or any other Federal agencies, so that appropriate follow-up care can be pursued with veterans receiving IU, especially if sustained treatment could help a veteran to be gainfully employed?

Answer. VBA works with the Veterans Health Administration (VHA) and the Department of Labor (DOL) to provide appropriate follow-up care to veterans receiving IU.

VHA's Compensated Work Therapy (CWT) provides a structured environment where veteran patients participate in vocational rehabilitation activities. VHA clinicians refer eligible veterans for treatment in CWT program. Patients must have a primary psychiatric or medical diagnosis and have difficulty in obtaining or maintaining employment as a result. Pursuant to 38 U.S.C. §1718, this VHA-run program has the authority to provide work skills training and developmental services, employment support services, and job development and placement services to eligible veterans.

DOL's Veterans Employment and Training Service (VETS), offers employment and training services to eligible veterans. VETS provides intensive services to meet the employment needs of disabled veterans and other eligible veterans, with the maximum emphasis directed toward serving those who are economically or educationally disadvantaged, including veterans with barriers to employment. VETS employees are located in VA Vocational Rehabilitation and Employment offices. Local VETS representatives conduct outreach to employers and engage in advocacy efforts to increase employment opportunities for veterans, encourage the hiring of disabled veterans, and generally assist veterans to gain and retain employment.

Question 8. Please give me a profile of the individuals who were first granted IU within the past year and within the past 5 years. I am most interested in the following information:

(a) The age at which those veterans were first granted IU.

Answer:

| Age | 2001 | 2002 | 2003 | 2004 | 2005 | Total |
|-----------------|--------|--------|--------|--------|--------|---------|
| Below 30 | 222 | 318 | 373 | 383 | 453 | 1,749 |
| 30-39 | 1,111 | 1,493 | 1,756 | 1,582 | 1,554 | 7,496 |
| 40-49 | 2,503 | 3,134 | 3,914 | 3,418 | 3,224 | 16,193 |
| 50-59 | 7,236 | 11,267 | 15,929 | 14,840 | 13,265 | 62,537 |
| 60-69 | 2,401 | 3,772 | 5,565 | 5,489 | 6,257 | 23,484 |
| 70-79 | 3,618 | 5,519 | 6,487 | 5,141 | 4,107 | 24,872 |
| 80 and up | 1,889 | 3,421 | 4,618 | 4,424 | 4,297 | 18,649 |
| Total | 19,336 | 28,924 | 38,642 | 35,277 | 33,157 | 155,336 |

(b) The amount of time that elapsed between IU being granted and when the underlying service-connected disability was rated 60 to 90 percent.

Answer. VA is unable to determine this information.

(c) The amount of time that elapsed between the end of military service and the date the underlying service-connected disability was rated 60 to 90 percent.

Answer. VA is unable to determine this information.

(d) The underlying service-connected body system afflicting the IU recipients.

Answer. The chart below details the number of veterans rated totally disabled based on IU from 2001 until 2005. The data reflects an increasing number of veterans with PTSD and other mental conditions who are rated totally disabled based on IU. In 2001, VA added diabetes mellitus to the list of diseases subject to presumptive service-connection based on exposure to herbicides. Veterans are also entitled to additional compensation for complications of diabetes mellitus such as arteriosclerosis and nephropathy. The increase in the number of IU awards based on the primary service-connected conditions involving the endocrine, neurological, and cardiovascular systems may reflect this change to VA's regulations.

| Body system | 2001 | 2002 | 2003 | 2004 | 2005 | Total |
|-----------------------|---------------|---------------|---------------|---------------|---------------|----------------|
| Endocrine | 223 | 1,091 | 1,596 | 1,370 | 1,355 | 5,635 |
| Neurological | 942 | 1,415 | 1,963 | 1,861 | 1,785 | 7,966 |
| Cardiovascular | 1,780 | 2,860 | 4,370 | 3,822 | 3,737 | 16,569 |
| Mental—Non-PTSD | 2,148 | 2,870 | 3,818 | 3,573 | 3,594 | 16,003 |
| Mental—PTSD | 6,274 | 8,929 | 12,064 | 11,766 | 10,905 | 49,938 |
| Musculoskeletal | 5,373 | 7,907 | 9,364 | 7,465 | 6,652 | 36,761 |
| Other | 2,596 | 3,852 | 5,467 | 5,420 | 5,129 | 22,464 |
| Total | 18,980 | 28,924 | 38,642 | 35,277 | 33,157 | 154,980 |

(e) The total number of veterans rated 60 to 90 percent, whether IU was granted or not.

Answer:

| Combined degree of disability (percent) | Totals | | | | |
|---|----------------|----------------|----------------|----------------|----------------|
| | 2001 | 2002 | 2003 | 2004 | 2005 |
| 60 | 126,788 | 138,378 | 151,443 | 161,050 | 172,694 |
| 70 | 193,913 | 107,097 | 123,951 | 138,548 | 153,190 |
| 80 | 156,945 | 67,583 | 80,545 | 91,526 | 102,979 |
| 90 | 26,908 | 32,897 | 40,339 | 46,818 | 54,161 |
| Total | 304,554 | 345,955 | 396,278 | 437,942 | 483,024 |

(f) The number of IU recipients who participated in the VR&E program.

Answer:

| Case status | Snapshot of IU participants as of: | | | | | |
|-------------------------------|------------------------------------|--------------|--------------|--------------|--------------|--------------|
| | 9/30/00 | 9/30/01 | 9/30/02 | 9/30/03 | 9/30/04 | 9/30/05 |
| Applicant | 85 | 107 | 160 | 170 | 128 | 68 |
| Evaluation and planning | 111 | 182 | 276 | 413 | 374 | 376 |
| Extended evaluation | 16 | 25 | 52 | 42 | 50 | 72 |
| Independent living | 187 | 361 | 407 | 447 | 395 | 426 |
| Rehab. to employability | 173 | 230 | 228 | 229 | 216 | 222 |
| Employment services | 20 | 16 | 19 | 23 | 24 | 24 |
| Interrupted | 123 | 126 | 189 | 156 | 176 | 196 |
| Total | 715 | 1,047 | 1,331 | 1,480 | 1,363 | 1,384 |

Question 9. What are the total costs associated with the IU benefit? Has VA done any projection of the future financial liability associated with the IU benefit? If so, please provide the Committee with that information?

Answer. For 2005, we estimate that \$6.16 billion was paid to 213,002 IU recipients at an average of \$28,907 per year. Of this amount, we estimate that an average of \$15,901 per year was paid exclusively for the IU rating (excluding the schedular rating) for a total of \$3.39 billion in 2005. Our budget model does not forecast compensation payments specifically for IU; rather it incorporates IU payments into the average payment made for each degree of disability (along with other factors affecting average payments such as dependency, special monthly compensation, etc.). We are unable to provide a budget forecast specifically for these other categories, including IU payments.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA
TO HON. DANIEL L. COOPER

Question 1. How many additional staff will VA need to undertake the PTSD review, and for Vocational Rehabilitation and Employment staff to help to determine Individual Unemployability (IU)?

Answer. On November 10, 2005 the Department of Veterans Affairs (VA) announced that it would not conduct a review of 72,000 post-traumatic stress disorder cases. VA will complete its review of the 2,100 cases that were reviewed by the Office of Inspector General for its May 2005 report, but this will not require additional staff.

Question 2. Can Vocational Rehabilitation and Employment absorb evaluating veterans who have applied for Individual Unemployability without cutting services to those who are currently using those services?

Answer. VA does not currently require an employment assessment by VR&E program staff as part of the IU entitlement determination. If the Secretary decided to require an employment assessment in connection with determining a veteran's entitlement to IU, VA would first promulgate regulations defining the scope, purpose, and criteria for conducting such an assessment, and the manner in which VA would implement such assessments. Once such assessment guidelines were established, VR&E would be in a position to determine whether additional resources, new efficiencies, increases in workload, or a combination of the three would be required.

Question 3. What can VA do in order to force compliance from the Regional Offices in sending out the employment certification form?

Answer. The regional offices are not responsible for sending out the employment questionnaire. VA's Benefits Delivery Center at Hines automatically generates the employment questionnaire, which is sent to the veteran annually on the anniversary of the IU grant. Once released by VA's centralized computer system, appropriate controls are automatically set by the system to assure the form is returned.

Question 4. Recently the Disability Benefits Commission, a panel tasked with evaluating the appropriateness and level of veterans compensation, by a near unanimous margin, voted to remove age as a factor in evaluating the benefits' package. Do you agree with this decision?

Answer. It is our understanding that the Veterans' Disability Benefits Commission has decided to exclude age as a factor in its review of benefits provided under current Federal laws to compensate veterans and their survivors for disability or death attributable to military service. The Veterans Benefit Administration does not have a position on decisions of the Commission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. PATTY MURRAY
TO HON. DANIEL L. COOPER

Question 1. How long does the average vocational rehabilitation case take to close?

Answer. The average number of days from the point of entering the evaluation/planning phase to the determination that the veteran has achieved rehabilitation is 933 days.

Question 2. What kinds of jobs are these veterans being placed in and what are the average salary levels?

Answer. The top five categories of positions veterans are rehabilitated into are:

- Professional, Technical, Managerial
- Clerical
- Services
- Structural (Building Trades)
- Machine Trades

The average salary of a suitably employed rehabilitated veteran in fiscal year (FY) 2005 was \$39,600.

Question 3. How many full-time Vocational Rehabilitation counselors does the agency currently have?

Answer. The Vocational Rehabilitation and Employment (VR&E) Program as of September 30, 2005, have a total of 625 vocational rehabilitation counselors and counseling psychologists.

Question 4. On average, how many cases does a Vocational Rehabilitation counselor manage?

Answer. The average workload per counselor is 150 cases.

Question 5. How many new cases were brought to VA in fiscal year 2005?

Answer. In fiscal year 2005, 34,038 favorable entitlement determinations were made. Of that number, 25,400 entered a plan of rehabilitation. The remainder either decided not to pursue the program at this time or were unable to do so because the extent of their injuries or disabilities make it currently infeasible for them to achieve a vocational objective.

Question 6. Did the agency seek a budget increase for fiscal year 1906 to help reduce the backlog of cases in the Vocational Rehabilitation system? And if not, why not?

Answer. The fiscal year 2006 budget submission for VR&E requested an additional 15 positions in fiscal year 2006 above the cumulative full time employees (FTE) for fiscal year 2005.

Question 7. Does VA plan to seek additional congressional appropriations to help reduce their case backlog in its fiscal year 1907 budget request?

Answer. As of today's date, final decisions about the fiscal year 2007 budget have not been made.

Question 8. Does VA partner with Federal, State and local Vocational Rehabilitation and Workforce Investment Act programs to leverage and maximize training and re-employment resources? If so, how? If not, why not?

Answer. VA does partner with the Department of Labor's Veterans Employment and Training Service (VETS), the Rehabilitation Services Administration's network of State rehabilitation agencies, and Career One-Stop Workforce agencies (operated by State and private contractors) to leverage resources that increase employment opportunities for veterans with disabilities.

The Department of Labor currently has 71 Disabled Veterans Outreach Program Representatives (DVOPs) and Local Veterans Employment Representatives (LVERs) co-located in 35 VA Regional Offices and 26 out-based locations. Additionally, there are four VR&E employees co-located in two Department of Labor offices in Louisville, Kentucky and St. Petersburg, Florida. DVOPs and LVERs stationed or co-located with VR&E field stations have the opportunity to access the same resources available to VR&E staff. This access can help DVOPs and LVERs become more efficiently integrated into the initial vocational evaluation and the delivery of employment services. DVOPs and LVERs, working in partnership with VR&E staff, help disabled veterans reach their employment goals by:

- Using the Job Resource Labs for accessing and obtaining labor market information, job seeking/interviewing skills preparation, resume preparation, and job openings,
- Advising veterans on their Uniformed Services Employment and Reemployment Rights if they plan to return to their former employers,
- Acting as liaison and central point of contact with statewide DVOPs and local State workforce agencies, and Reviewing successful rehabilitation outcomes periodically with VR&E staff to assess best practices for State or national emulation.

VR&E and VETS signed an updated Memorandum of Agreement on October 3, 2005, that establishes three joint work groups with the goal of improving the quality of employment services and suitable job placements for veterans with disabilities. Each work group will have an established list of roles and responsibilities that will direct their efforts. The work groups are:

- Performance Measures for Assessment of Partnership Program Results
- National Veterans' Training Institute: Curriculum Design
- Joint Data Collection, Analysis, and Reports

The VR&E Service is conducting training for VR&E field staff who coordinate the provision of employment services. VETS staff and six regional Department of Labor administrators have been invited to both attend and make presentations at this training conference, scheduled for December 15 to December 18, 2005 at the National Veterans' Training Institute in Denver, Colorado.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JAMES M. JEFFORDS TO
HON. DANIEL L. COOPER

Question 1. Admiral Cooper, I understand that the Disability Benefits Commission is examining compensation ratings and considering whether adjustments should be made to these ratings. This Commission is scheduled to report its finding in September of 2007. Will the Commission be taking individual unemployability into consideration in its review? Aren't these two issues closely related?

Answer. VA regulations provide for total-disability ratings for compensation purposes based upon individual unemployability (IU). However, VA does not know if the Commission will study or report on IU as part of its review of compensation ratings.

Question 2. Admiral Cooper, can you tell me what percentage of veterans receive both IU and Social Security disability benefits? I'm curious, what are the differences between these two sets of criteria: IU and SSDI?

Answer. VA does not have the data to determine the number of veterans who are receiving both IU and Social Security disability benefits.

There are significant differences between VA's IU rating and a finding of disability for purposes of Social Security Disability Insurance (SSDI):

- Entitlement to SSDI is based on whether a claimant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. Entitlement to IU is based on whether a veteran is unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities only.

- SSDI entitlement requires that the impairment can be expected to result in death or . . . has lasted or can be expected to last for a continuous period of not less than 12 months.” There is no such requirement for entitlement to IU.

- SSDI entitlement may depend upon whether a claimant can adjust to work other than his or her past work, given the claimant’s age, education, past work experience, and any transferable skills. VA regulations require that advancing age be disregarded when determining whether a veteran is unemployable for compensation purposes.

SSDI has separate rules for entitlement based on blindness, the rules differ depending on whether the claimant is under 55 years of age, and the amounts of earnings that indicate a blind person’s ability to engage in substantial gainful activity differ from those amounts for non-blind claimants. Entitlement to IU does not depend on the nature of a disability, only on whether it is service connected and its severity.

- The monthly SSDI benefit amount is based on the Social Security earnings record of the insured worker. The amount payable for IU is the same as the amount payable for a scheduler total rating, which is set by statute.

Disability for purposes of SSDI terminates in the month in which the beneficiary demonstrates the ability to engage in substantial gainful activity (following completion of a trial work period, where applicable). If a veteran with an IU rating begins to engage in a substantially gainful occupation, the IU rating may not be reduced solely on the basis of having secured and followed such occupation unless the veteran maintains the occupation for a period of 12 consecutive months. Furthermore, for VA to reduce an IU rating, actual employability must be established by clear and convincing evidence.

SSDI can be terminated if a claimant or beneficiary unreasonably refuses to follow prescribed treatment that would be expected to restore the ability to engage in substantial gainful activity. IU entitlement does not depend on whether a veteran follows prescribed treatment; it cannot be terminated based on a veteran’s following of a prescribed treatment or rehabilitation program.

- Generally, continued entitlement to SSDI must be reviewed periodically. There is no requirement that entitlement to IU be reviewed periodically.

Chairman CRAIG. Admiral, thank you very much. We have been joined by two other of our colleagues on the Committee. I will ask them if they have any opening comments before we turn to questions of you and those who accompany you.

Senator Thune, do you have any opening comment?

**STATEMENT OF HON. JOHN THUNE, U.S. SENATOR
FROM SOUTH DAKOTA**

Senator THUNE. Mr. Chairman, thank you for holding this hearing. I appreciate the opportunity to better understand the individual unemployability benefit for our veterans, and I want to thank the panelists for being here today, and I look forward to, as we discuss this issue, learning more about things that we might be able to do to advance policies that will help to improve the quality of lives of our disabled veterans and also the employment opportunities with more and more veterans coming home from Iraq and Afghanistan, and particularly those who are disabled. We really want to make every effort possible to do that.

So I applaud you for holding this hearing, and I want to thank our panelists, and I look forward to participating in the questions and answers. Thank you.

Chairman CRAIG. John, thank you.

Senator Jeffords, Jim?

**STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR
FROM VERMONT**

Senator JEFFORDS. Thank you, Mr. Chairman. Examining compensation for veterans who have been injured in the course of their

service is a very important issue, and it is critically important that we provide compensation for those veterans who cannot work on account of their disabilities. I am pleased the Chairman is concerned about these issues. I know he is. And I welcome the opportunity to learn more from today's witnesses.

However, I must emphasize that by examining this system, veterans should not feel that we are bringing the validity of their claims into question. That is not it. This Committee must stand by the right of every veteran to receive the compensation to which he or she is entitled. I trust the VA is ever mindful of its obligation to the veterans in this regard.

Thank you, Mr. Chairman.

Chairman CRAIG. Jim, thank you very much.

We will do 5-minute rounds and stay with you all, as long as we have questions. So, again, thank you for being here.

As I stated in my opening remarks, with today's modern technologies, individuals have more opportunities than ever before to become productive members of society. The Government Accountability Office, the GAO, will later provide testimony that I think you may have seen that makes the following observation: VA's IU assessment is focused on the veterans' inabilities and providing cash benefits to those labeled as unemployable, rather than providing opportunities to help them return to work. Contrast GAO's observation with VA's Department-wide strategic goal, which is to restore the capability of veterans with disabilities to the greatest extent possible.

With that, are we failing disabled veterans by simply granting IU and then forgetting them and not returning to them on a regular basis or causing them to seek the kind of training that they may be capable of receiving to enter the workforce?

Mr. COOPER. I would answer that by saying that we take very seriously our mission, which is to help deserving disabled veterans. We were very concerned 2 or 3 years ago with our vocational rehabilitation program. We felt it was not emphasizing employment, and so as a result we have, as you may be aware, had a very strong study done, and they came up with several recommendations.

We have since strengthened our vocational rehabilitation to a great extent. We also make sure that every veteran, as I indicated in my statement, whenever they are rated for a particular claim or if they ever have an increase in their disability, they are given the information necessary and strongly encouraged to go to the vocational rehabilitation program, get an evaluation and let us try to help them. Vocational rehab has also worked very closely with the Department of Labor. It has signed some agreements with various companies around the country, and VA in general is working on employment of veterans.

So, I would say to you, we are doing a lot in that direction. Are there things we can do better? Maybe, but we are certainly looking very hard at what can be done with precisely the type of thing that you are talking about.

Chairman CRAIG. Returning to the charts behind me, does not the evidence over the past 6 years though support GAO's observation that more focus has been given to granting cash benefits than helping veterans return to a full and productive life?

Mr. COOPER. I am not sure that I can agree completely, Mr. Chairman, because as you pointed out, the graphs back there pointed—the very large majority are 55–56 years-old and above. And many of those people are in fact at the retirement age. We do give them access. We do allow them and encourage them to come in. We are interested in doing everything we can for employable young veterans, and as you know, Secretary Nicholson has very strongly emphasized that we want to do everything we can to help these young veterans not get in the position of not feeling good about themselves and having meaningful participation in society.

We feel exactly the same way, and slightly different way of going about it, but I do say that that graph gives a very peculiar picture because the large majority of people we have seen coming in the last several years have in fact been older veterans, and I believe—and I cannot give you a figure right now—many of them from Vietnam.

Chairman CRAIG. Well, I would go into another line of questions. I will return.

Danny, we will turn to you. Pursue this, please.

Senator AKAKA. Thank you very much, Mr. Chairman.

Admiral, I am concerned with the message that veterans with PTSD may be getting, as a result of the PTSD review, coupled with this inquiry into the state of VA's individual unemployability determinations. The question is: What is VA doing to send a unified message to veterans about the rationale behind the PTSD review?

Mr. COOPER. As you know, the reason that we are doing any review at all is as a result of what was found to be the variance between States as far as what the average income per veteran in that State was. I frankly do not think that was a very valid reason to have the outcome it did, but that is not germane. As they looked, they found that we had a variance in States and primarily in the PTSD arena, at least that is what they focused on in the short time they looked at it. As a result, the IG stated that we should do these reviews.

What we have done is to look at and very precisely go after the same reviews that they did, which happens to be 2,100 cases. We are doing those. We are doing those in a very meticulous fashion to find out if we in fact agree with what the IG said, and some of the things we have found we do not agree. Our intention is to look at that very carefully, and then make sure we know exactly what we are doing before we start into the next review. We are trying to do it as carefully as we can. I have specifically and personally directed my regional office directors to work carefully with VSOs to work with individual veterans. And by the way, out of the 2,100, only 700 of the claims need to be looked at.

We are trying to avoid going to the veteran themselves until we know we need some information from them, and then I have said we have got to work in a very understanding fashion with not only the veteran, but with the VSO, the person who has the POA, the power of attorney, and ensure we do it in absolutely the best way we possibly can.

Senator AKAKA. As I have mentioned several times this year, VA has great difficulty absorbing new court decisions and legislative changes. What happens if, in addition to the PTSD review, one

more event occurs that requires VA to absorb an increased workload?

Mr. COOPER. What happens is that we will continue doing everything we can, trying to go across the board. Our job has several facets. One of it is public contact. One of it is the main claims. Part of it are the appeals because X percent of all the people who do not get their claims will come back with appeals. So we have a broad range of things that we have to do.

My job is to ensure we do not focus too much on a single thing, but we do it across the board, and quite frankly, what that means is if we get tasked with more tasks, if we get more things that we have to do, then obviously the time to do each one of those will increase. But I have to ensure we do things across the board and try to do them as professionally as possible.

Senator AKAKA. Time is not the only concern, but also staffing. How many additional staff will VA need to undertake the PTSD review and for vocational rehabilitation and employment staff to help determine individual unemployability?

Mr. COOPER. There are many factors or many assumptions I have to make on that. I cannot give you an answer. I will take that question for the record if I may, sir.

Senator AKAKA. Fine.

Well, Mr. Chairman, I have questions and my time is up.

Chairman CRAIG. We will come back to another round. Thank you very much.

Now let me turn to Senator Murray.

Patty.

Senator MURRAY. How many vets currently participate in the VA's vocational rehab program, do you know?

Mr. COOPER. I would like to turn to Ms. Caden, if I may, to answer that. She is my Director for Voc Rehab.

Ms. CADEN. Thank you. Right now we have about 95,000 participating in the program in different stages.

Senator MURRAY. And what are their placement rates?

Ms. CADEN. This past year we rehabilitated a little over 12,000, and that means they either obtained suitable employment and maintained it for a period of time, or they achieved their independent living goals.

Senator MURRAY. So 12,000 out of 95,000.

Mr. COOPER. But the 95,000, let me add, that can be over a 4-year period.

Ms. CADEN. That is right. They are in different stages of the program.

Senator MURRAY. Can you describe for us what kind of physical injuries or mental health conditions some of these veterans have that you are working with?

Ms. CADEN. In the Voc Rehab program? The vast majority of the veterans in the Voc Rehab program are in the orthopedic difficulty area. We do have about 21 percent that have mental health issues. Some of that would be PTSD and other things.

Senator MURRAY. So many of them face tremendous challenges in their own personal lives, I would take it?

Ms. CADEN. Yes.

Senator MURRAY. How difficult is it for these veterans as they go out and try and find a job? I imagine they may have 20, 30, 40, 50 interviews?

Ms. CADEN. I cannot really tell you that. I mean it is very individualized. It would depend on what their goals are, what their field is and what they are looking for their training in.

Senator MURRAY. Is there a backlog of veterans trying to get into the Voc Rehab program?

Ms. CADEN. No.

Senator MURRAY. There is none.

Mr. COOPER. Could I elaborate on one thing?

Senator MURRAY. Yes.

Mr. COOPER. Each individual veteran is put on a very specific individualized program with a person overseeing what he or she is doing. Many of those people end up going to college as part of their program. I think about 55 or so percent end up going to college. But each of them—and as a result of this study that I mentioned earlier, we have set up five tracks to get the individual to employment, so it specifically depends on what that individual wants to do, what his or her qualifications are, and what we can do to help them best.

Senator MURRAY. And you mentioned many of them are older, suffering from serious effects of diabetes or orthopedic injuries or other causes, which would make it very difficult for employment, I would take it?

Mr. COOPER. I am sorry. I cannot quite answer the question because they have a variation of problems. We try to take into account the specific problems they have or the degree to which they have problems so that we can acclaim it to that. And as Ms. Caden stated, many of them we get to independent living. It is not a matter of employment, but it is a matter what can we do to help them live better in independent—

Senator MURRAY. In which case they would still qualify for the IU benefit.

Mr. COOPER. Ma'am?

Senator MURRAY. And they would still qualify for the IU benefit.

Mr. COOPER. Absolutely. One of the things—I am sorry, let me add one more thing. If they have qualified for IU and they are now in the system, and let us say they go to college or whatever and then get employment, they will continue to draw IU until they have been in employment for at least 1 year.

Senator MURRAY. Right. And as I said, the unemployment rate for disabled in my home State is 70 percent. Is that a pretty similar figure for veterans?

Mr. COOPER. I am sorry, I cannot answer that.

Senator MURRAY. I would assume it is somewhere around that.

Mr. COOPER. I would assume. I just do not know.

Senator MURRAY. Well, Mr. Chairman, I know you questioned the tone of my opening statement. I would just say to you that I take this really personally. This is an issue that touches very close to my home.

My father was a disabled veteran. He served in World War II, came home with a Purple Heart, and he was a disabled veteran. I know how difficult it was when he was in a wheelchair, and if

his Government came back and said, "You do not deserve getting these benefits any more and we want you out there looking for a job," he would face the humility of going to job interview after job interview and not being hired. I think he served his country. I think he deserved these benefits, and I do not want any veteran out there thinking that we question their ability to get this insurance at this time. That is where I'm coming from.

Chairman CRAIG. Patty, once again, I should not respond, but I will. I am not questioning the veteran. I am questioning the system. Is the system serving the veteran? In your father's case, absolutely, but is there a veteran out there who is getting the benefit today that if the system were performing as we think it should, would have the dignity of work?

Senator MURRAY. And I would say every veteran probably wants the dignity of work.

Chairman CRAIG. And we want to make sure they get it.

Senator MURRAY. I have no doubt that they do.

But I think that we have to be very careful when we pursue things, just like going after veterans who get PTSD. If they believe this is a stigma—these are our Americans, they went and fought for us. They feel strongly about this country. I know them. They care deeply about their own personal dignity, and I think we have to be careful in anything we pursue that makes them feel that they are taking advantage of their country or anything else. I think we have to be very careful how we pursue these kind of issues.

Chairman CRAIG. I hope we can be. Thank you very much.

Senator MURRAY. Thank you.

Chairman CRAIG. Let me turn to Senator Thune. Any questions, John?

Senator THUNE. Thank you, Mr. Chairman. I share the concerns both of you have voiced about, one, making sure that the message that we are sending to the veterans of this country, those who have sacrificed and served, is the correct one, and also at the same time performing the job that we have when it comes to oversight of the system that serves them, to make sure that it is doing its job in the most efficient way possible, and that we are getting the desired policy objective to support and provide benefits to our veterans, and at the same time to help them find ways to transition into the workplace.

So, again, I appreciate the very strong feelings that are being shared both by my colleagues, and I hope that we can do a better job of improving the quality of life for our veterans, and also helping find good employment opportunities for them. I think that is what we hope that the VA can assist with as well.

Question for the panel and Mr. Cooper. Do you know what in terms of the new generation of veterans that are returning home from Iraq and Afghanistan, how many of those or what percentage of those are using the IU benefit?

Mr. COOPER. I will get that for the record. I just do not know what percentage. But we certainly, as we talk particularly to the seriously wounded as they come back, as we talk to the Reserves and National Guard, and we try to talk to every one of them as groups, we put forth this benefit as being there. I cannot tell you right now what the participation is. I will take that for the record.

Senator THUNE. OK. I would be interested in knowing that. The reason I ask it is because this war, more so than any other previous conflict, we are seeing folks who are losing limbs, and part of it is the protective—

Mr. COOPER. Could I come back? Let me just say that the emphasis we have tried to have with all of them coming back is to try to find work. And I mentioned a couple agreements that we have had with specific companies, that the VA in general under the H.R. group is pushing very hard to find employment. So as an outfit we are doing a lot to help them find employment. I just cannot tell you the specific number that might be in the program.

Senator THUNE. I appreciate that. In looking at the charts, and I assume most of those are 30 and under, but my guess is that may not be reflective of what we are going to experience as we have more and more folks coming into the system.

Mr. COOPER. What you will find, if I may say, on the charts there you see the very large bar, I believe, if I am correct, is at about age 50, is that correct?

Chairman CRAIG. Fifty-one to sixty, yes.

Mr. COOPER. At 51, the very large bar, so the ones to the left are the ones that are the younger.

Senator THUNE. And I understand that, and my point simply is that both with respect to health care, which I think is going to be a continued ongoing need for our soldiers as they come back from Iraq and Afghanistan, because of the types of injuries that they are experiencing there, in the same way I would expect to see these numbers grow on the left side of the chart as a result, because you are getting more and more. I think people are coming home who are disabled.

In light of that, I guess my question would be, do you have policy changes or suggestions or tweaks or anything that you could recommend to ensure that the IU benefit is assisting our veterans in continuing to have productive civilian careers? I know that is a fairly wide open question, but are there things that we could be, as a matter of policy, doing differently?

Mr. COOPER. I think as far as the IU benefit goes, if in fact they become eligible for IU, it is sort of automatic. But what I would stress is we are also doing everything we can to help them become employed if they want to or can, and if they cannot, then get them into this vocational rehabilitation program to get them into independent living.

Along with that we work with our loan guarantee housing program to get specially adapted housing and use the money that Congress has allocated to us to help the individuals in the ILS, independent living, to also get special adapted housing. So we are trying to do a lot of things as needed by the individual, trying to treat as much as possible the individual through the various programs we have.

Senator THUNE. Again, I think it is really important that the message be sent that we appreciate and are grateful for the service that our veterans have performed for their country, and that is why the tone of things that we say and the things that we do here is really important too in reflecting that spirit. But I also, again, as a matter of—I think the chairman is trying to get at the funda-

mental issue of what can we do, if anything, to improve the job that the VA does in reaching out to these veterans and providing them opportunities at productive employment and civilian careers and that sort of thing. So we would certainly welcome your suggestions and input in that regard.

I hope that as we see more of our soldiers coming back from the current theaters of operation, that they will come home to a welcome sign and to a country that is grateful, and to a system that is working and functioning effectively and doing the things that we want to see it do to support them.

So I thank you, Mr. Chairman.

Chairman CRAIG. Thank you.

Senator Jeffords.

Senator JEFFORDS. Admiral Cooper, I am under the impression that the list of recognized disabilities has increased significantly in recent years, and am I correct in assuming that this is partly responsible for the increase in the number of veterans who receive compensation?

Mr. COOPER. I am not sure, Senator, that I understood the first part of your question. I apologize.

Senator JEFFORDS. My question is: I understand a list of recognized disabilities has increased significantly in recent years. Am I correct then in assuming that this is partly responsible for the increase in the number of veterans who are receiving compensation?

Mr. COOPER. I do not think necessarily. I think the number or the specific disabilities that have been prevalent over the years, I think the main ones are still the prevalent ones where there is musculoskeletal or whether it is joints, whether it is hearing, PTSD. We have a list of let us say 13 or so—we have many more—but 13 that sort of represent the majority, and I think from year to year it goes up or goes down. I do think, and I do not have any facts for this, but what you read in the paper, we are seeing a lot more loss of limbs due to the other types of protection, the body protection we have. But as far as the general types of disabilities, I do not think they vary a lot from time to time. I could be wrong, but that is off the top of my head.

Senator JEFFORDS. Thank you. I am under the impression that improvements in the veterans benefit claim system and the application of the quote, “duty to assist” requirement have resulted in fewer veterans falling through the cracks, and more of them receiving the benefits to which they were entitled?

Mr. COOPER. Senator, I hope that is the right answer, but every day new things crop up. We are certainly working on it. We have increased dramatically I think the number of claims we adjudicate each year, and are continuing to do that. But everybody is an individual and so everybody is different and it is a fascinating job. I am glad I have it, but there are days it is more fascinating than others.

[Laughter.]

Senator JEFFORDS. Thank you. Is age not an important factor here too, and could not the overall aging of our veterans population, particularly Vietnam veterans, count in part for the increase as well?

Mr. COOPER. Yes, I think that is the case, and again, going to this bar chart up there, I think a lot of those men and women are those who were in the Vietnam conflict, and for whatever reason, the PTSD or whatever disabilities they have, have increased, and as a result then as they get the 70 percent, as I indicated earlier, the Norris decision in 1999 said anybody who comes in with any kind of a claim and gets to 70 percent total, then you automatically infer that they have also submitted a claim for IU. And so no matter what the claim is that comes in, we have to infer, and therefore, adjudicate a claim for IU, and so all of that has worked together to increase the number that we see there.

Senator JEFFORDS. Mr. Cooper, I also am under the impression that the improvements in the veterans benefit claims system and the application of the duty to assist requirement have resulted in fewer veterans falling through the cracks and more of them receiving the benefits to which they are entitled. Does this also account for part of the rise in the numbers of veterans receiving disability ratings?

Mr. COOPER. Oh, absolutely.

Senator JEFFORDS. And also is age not an important factor here too, and could not the overall aging of our veterans population, particularly Vietnam veterans, account in part for this increase?

Mr. COOPER. I am sure it does, yes, sir.

Senator JEFFORDS. But that is an appropriate use of the system, is it not?

Mr. COOPER. Oh, yes, absolutely. It is not a matter that they are not justified in getting those. They are perfectly justified and we have to accommodate to that.

Another thing I will mention is, of all the claims we get in a given year, approximately 58.5 percent are in fact veterans coming back in because their disability has increased, so almost two-thirds of the claims that we get each year are in fact claims from veterans who have already gotten some kind of disability and because it has gotten worse or an ancillary disability has developed, which can be service connected, it will come back to us.

Senator JEFFORDS. Thank you, Mr. Chairman.

Chairman CRAIG. Jim, thank you very much.

We have been joined by Senator Obama.

Questions, Senator?

Senator OBAMA. Thank you very much, Mr. Chairman.

Thank you to the panel for taking the time to be here. I apologize. I was speaking on the floor and so I came in a little bit late. Some of the questions that I have may have already been asked. I am happy for you to let me know if that is the case, and I can always get some additional written information.

I hope that we all agree that individual unemployability or IU determinations provide veterans with an important benefit that they have earned and that they deserve. I am happy to have this panel and the commission that has been formed to figure out how we can make sure the system is more equitable and efficient, and I think that is a goal that we should strive for in all our veterans claims.

I share Senator Murray's concern that in our rush to make a system more efficient, we risk making the system more efficient sim-

ply by lopping off veterans who deserve benefits or restricting them in some way. I am not suggesting that that is what the VA is doing. I am just saying that we need to be cautious. Also, we must remember the fact that, for example, a program is being utilized more, as Senator Jeffords just indicated, does not necessarily mean that it is being abused. It may simply mean that we are now having more people who need access to these very important services.

I would just note, as I understand it at least, in information that was provided to me—and correct me Admiral Cooper, if I am wrong about this—that VA regulations list the impairments the veterans should have in order to receive a rating for PTSD, which I think has been the source of some controversy, and people think that maybe abuses in that area are also contributing to higher costs in the IU area, but I just think it is important to make sure that we understand what this means.

For a veteran to receive a 70 percent rating, which I understand you need a fairly high rating to receive IU, the veteran must have occupational and social impairments which include excessive rituals, near continuous panic or depression affecting the ability to function independently, speech that may be obscured or illogical, impaired impulse control, neglect of hygiene, difficulty in adapting to stressful situations, and so on.

For a veteran to receive a total disability rating of 100 percent the veteran must have gross impairment in thought processes or communication, persistent delusions, grossly inappropriate behavior, persistent danger of harm to others, et cetera.

I read that into the record just because I think it is important to recognize that we are not talking about people who are just feeling kind of blue as a consequence of coming back home. We are talking about veterans who must demonstrate that they suffer severe impairments that presumably would prevent gainful employment.

So I know, Under Secretary Cooper, you have been focused on this. I have been focused on it because there was some indication that the discrepancies in disability payments in my State, Illinois, were in part due to differences in IU rating practices.

So let me now turn to a question then. In the report on State variances in VA disability compensation payments, the IG recommended that the VA conduct a review of the IU rating practices. Your testimony, as I understand it, indicates that the VA has been analyzing its procedures and regulations with respect to IU. The IG recommended that, quote, “at minimum such reviews should consist of data analysis, claims filed review and onsite evaluation of rating and management practices.”

So I am curious, what exactly has the VA been reviewing in its analysis of IU processes, and what has been the cost of this analysis? Again, I apologize I came late. This may have already been answered.

Mr. COOPER. I cannot exactly talk to the cost, but what we have done so far is looked at the 2,100 cases that the IG had looked at in order to come up with their opinions. And we are looking at these. And we have looked at these one time centrally so that we have very qualified people take all of those in, look to find out to see if we agree or disagree, and on those cases where we did not

agree, we have sent them back to the regional offices, and we are carefully monitoring this and trying to learn what it is we should be doing, what it is we can do better, wherein we should be doing better training, and if in fact all of the mistakes that the IG felt had been made, if in fact they had been made as described.

Senator OBAMA. So far, just preliminarily, have you seen consistency in terms of IU determinations across the States?

Mr. COOPER. Pretty essentially, yes, consistently.

Senator OBAMA. For the most part you have?

Mr. COOPER. Correct.

Senator OBAMA. I understand that the VA has reinstated the policy requirement that a veteran receiving IU benefits must submit an annual employment certification until he or she attains the age of 70. I am wondering, No. 1, how is the policy working? Are the veterans adhering to the new requirements? And part of the original change and eliminating this requirement, if I am not mistaken, had to do with the concern that perhaps a large number of veterans were unaware of or were not accessing these benefits because of the paperwork and the complexities involved. I am just wondering whether veterans are able to abide by this new requirement. You know, obviously, a lot of the people who potentially might be qualified for this, may be in the category of homeless veterans?

Mr. COOPER. Absolutely.

Senator OBAMA. People who may have difficulty filling out forms.

Mr. COOPER. I do not think you will find that that is a problem at all. We have only been doing this for 2 months. Eight years ago, 6 years ago, sometime long before I got here, somebody decided that this form was not necessary. And what it does is makes sure that the individual who is getting IU is not also working and getting money. For instance, the cutoff when we started getting our first reports back—excuse me. When we did this Voc Rehab study we were doing, I got an indication from the chairman of that study that they had a list of people who were making \$50,000 a year and still getting IU.

And that is absolutely the wrong way to do it. And so I said, “We have got to do it so we are consistent in what we are doing and we are doing it properly.” And so therefore, I pretty much personally am the one that required that we go back to this form.

What the form does, it goes to the veteran and it says, “Tell us what wages you have gotten from employment.” It does not talk about anything else. If they are retired, does not talk about retired income. It merely talks about wages they get. Out of the 390 that we have looked at very carefully, we found about 40 that in fact were getting the money. And so we go to them and we say, “OK, we are now going to stop the payment.” If they want to appeal, then we go through that process. We try to do it as very carefully and professionally as we can.

Senator OBAMA. I substantially went over time, Mr. Chairman. I apologize for that, and I would just reiterate the point that I want standardization. I want consistency across the system, and our resources are finite, and so we must make sure that benefits are going to the people who need them most. I applaud you for anything that can be done in that regard.

I also want to make certain though that, as we are striving for these efficiencies, that there is extraordinary caution, and I think at least—and this is true with respect to PTSD evaluations and the IU system—that our starting position or our default position should be giving our veterans the benefit of the doubt as opposed to assuming fraud, abuse and so forth. I would rather see us err somewhat on a few people gaming the system, then I would a system in which people who really need it are being left behind.

Mr. COOPER. May I say that I vehemently agree.

Chairman CRAIG. Senator, thank you very much. We have just been notified that we—it has not yet started. I think we have two votes at 3, stacked. There are many more questions I would like to ask, and I will submit for this panel, submit mine in writing, and I would hope our colleagues would do the same.

We, I believe, can get through the testimony of the second panel before we go vote, and then we can come back and do some questions of that panel.

So let me thank all of you for your time and your due diligence in this area. I will follow up with a set of questions that are a bit more probative as it relates to what you are doing and the break-out that I think our colleagues are concerned about, as am I. Thank you all very much. Admiral, thank you.

Mr. COOPER. A pleasure.

Chairman CRAIG. Let me welcome our second panel. Cynthia Bascetta, Director, Education, Workforce and Income Security, the Government Accountability Office; and Rick Surratt, Deputy National Legislative Director, Disabled American Veterans. Again, let me thank you for the time that it takes to prepare and for being here today.

Cynthia, we will start with you.

STATEMENT OF CYNTHIA BASCETTA, DIRECTOR, EDUCATION, WORKFORCE AND INCOME SECURITY ISSUES, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE

Ms. BASCETTA. Thank you, Mr. Chairman, and Members of the Committee. We appreciate being here today to discuss our work as it relates to VA's IU benefit. Our work spans more than 15 years and covers both the design and administration of disability programs in the public and private sectors, as well as other countries.

As you requested, my remarks today will focus on our comparison of the IU and private insurer decisionmaking processes. Our findings have implications for modernizing VA's concept of unemployability and for strengthening program integrity by shoring up the basis for unemployability decisions.

As you know, GAO designated Federal disability programs as high risk in 2003. Our work showed that VA and the Social Security Administration programs are mired in concepts from the past, most notably that "impairment" equates with inability to work. Consequently, we believe these programs are poorly positioned to provide meaningful support to Americans with disabilities including our Nation's veterans. Our ongoing work on IU benefits illustrated some of our concerns.

To date our work shows that VA does not have procedures in place to fully assess veterans' work potential. Without these proce-

dures, VA cannot assure that its unemployability determinations are adequately supported, which is especially troubling in light of the steep increase in IU awards.

Because VA does not systematically utilize its vocational specialists to help evaluate work potential, it misses an opportunity to collaborate with veterans on return-to-work plans where they are appropriate. These plans could identify and provide needed accommodations or services, including medical treatment. Instead, the design of IU benefits is focused on providing cash benefits to veterans labeled as unemployable and provides no incentives to encourage maximizing work potential.

How can this be improved? We believe VA could look to private insurer practices to make sounder determinations of work potential and modernize its approach. First, and perhaps most important, insurers intervene early after the onset of disability and immediately set up the expectation that claimants with work potential will be supported in their efforts to do so. They stay involved with these claimants to arrange for medical care, vocational services, assistive devices, and other supports customized to the claimant's needs.

Second, insurers aim incentives at both claimants and employers to improve work outcomes. They work with employers to show the effectiveness of workplace accommodations for claimants. They mandate claimant participation in vocational rehabilitation programs. They encourage rehabilitation and return to work by allowing claimants to supplement disability benefits with earned income. Ultimately they can reduce or terminate benefits if they determine that a claimant is able but unwilling to work.

Third, insurers assess disability and manage claims by bringing expertise to bear. They have multi-disciplinary teams of claims managers, medical and vocational experts. For cost-effective results, they triage claims so that managers can concentrate their time and resources on claimants who have work potential. They spend a minimum level of resources to monitor the medical conditions of claimants who are unlikely or much less likely to be able to return to work.

In summary, insurer approaches, such as incentives and early intervention with return-to-work assistance, offer useful insights for improving IU's program design. At the same time, these approaches raise key policy issues in the domain of the Congress, the Department, veterans service organizations, and other stakeholders. For example, to what extent should or could VA require a veteran seeking IU benefits to accept vocational assistance or appropriate medical treatment? Nonetheless, we believe that including vocational expertise in the IU decisionmaking process could help VA make needed improvements in the integrity of its unemployability determinations, as well as modernize its IU benefit.

More importantly, this would enable veterans to realize their full productive potential without jeopardizing the availability of benefits for those who cannot work.

This concludes my remarks, and I would be happy to try to answer any questions you have.

[The prepared statement of Ms. Bascetta follows:]

PREPARED STATEMENT OF CYNTHIA BASCETTA, DIRECTOR, EDUCATION, WORKFORCE
AND INCOME SECURITY ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. Chairman and Members of the Committee:

Thank you for inviting me to testify on how the Department of Veterans Affairs (VA) Individual Unemployability (IU) disability assessment practices compare with those used by private sector insurers in helping people with severe disabilities realize their full potential to work. It is especially fitting, with the continuing deployment of our military forces to armed conflict, that we reaffirm our commitment to those who serve our Nation in its times of need. Therefore, ensuring the most effective and efficient management of benefits and services to those who incur disabilities because of military service is of paramount importance. At the same time, many people with disabilities have indicated that they want to work and be independent and would do so if they receive the supports they need. Fortunately, numerous technological and medical advances, combined with changes in society and the nature of work, have increased the potential for people with disabilities to work. Nevertheless, VA has seen substantial growth of unemployability benefit awards to veterans with service-connected disabilities. From fiscal years 1999 to 2004, the number of veterans receiving unemployability benefits has more than doubled, from 95,000 to 197,000.

To help people with disabilities achieve their full potential, the disability programs financed by social insurance systems in other countries focus on returning beneficiaries with disabilities to work. Also, in recent years, a growing number of private insurance companies in the United States have been focusing on developing and implementing strategies to enable people with disabilities to return to work. Today I would like to discuss how U.S. private sector disability programs facilitate return to work in three key areas: (1) The eligibility assessment process, (2) work incentives, and (3) staffing practices. I will describe these three elements for U.S. private sector disability insurers and compare these practices with those of VA's IU eligibility assessment process.

My testimony is based primarily upon our prior work, including our 2001 report assessing the disability practices of selected private insurance companies and other countries.¹ This work involved in-depth interviews and document review for three private sector disability insurers: UNUMProvident, Hartford Life, and CIGNA. In addition, we used our 1987 review of Individual Unemployability benefits² as well as preliminary observations from our ongoing review of these benefits.

In summary, the disability systems of the private insurers we reviewed integrated return-to-work considerations early after disability onset and throughout the eligibility assessment process. This involved both determining—as well as enhancing—the ability of each claimant to return to work. For example, private insurers used vocational specialists to help ensure they fully assess the work capacity of claimants, identify needed accommodations, and develop individualized plans to help those who can return to work. In addition, these insurers provided incentives for claimants to take part in vocational rehabilitation programs and to obtain appropriate medical treatment. They also provided incentives for employers to provide work opportunities for claimants. Managers of these other programs also explained to us that they have developed techniques—such as separating (or triaging) claims—to use staff with the appropriate expertise to provide return-to-work assistance to claimants in a cost-effective manner.

VA's individual unemployability decisionmaking practices lag behind those used in the private sector. As we have reported in the past, a key weakness in VA's decisionmaking process is that the agency did not routinely include a vocational specialist in the evaluation to fully evaluate an applicant's ability to work. Preliminary findings from our ongoing work indicate that VA still does not have procedures in place to fully assess veterans' work potential. In addition, the IU decisionmaking process lacks sufficient incentives to encourage return to work. In considering whether to grant IU benefits, VA does not have procedures to include vocational specialists from its Vocational Rehabilitation and Education (VR&E) services to help evaluate a veteran's work potential. By not using these specialists, VA also misses an opportunity to have the specialist develop a return-to-work plan, in collaboration with the veteran, and identify and provide needed accommodations or services for those who can work. Instead, VA's IU assessment is focused on the veterans' disabilities and providing cash benefits to those labeled as "unemployable," rather than providing opportunities to help them return to work. Incorporating return-to-work practices could help VA modernize its disability program to enable veterans to realize their full productive potential without jeopardizing the availability of benefits for people who cannot work.

BACKGROUND

VA pays basic compensation benefits to veterans incurring disabilities from injuries or diseases that were incurred or aggravated while on active military duty. VA rates the severity of all service-connected disabilities by using its Schedule for Rating Disabilities. The schedule lists types of disabilities and assigns each disability a percentage rating, which is intended to represent an average earning impairment the veteran would experience in civilian occupations because of the disability. All veterans awarded service-connected disabilities are assigned single or combined (in case of multiple disabilities) ratings ranging from 0 to 100 percent, in increments of 10 percent, based on the rating schedule; such a rating is known as a schedular rating. Diseases and injuries incurred or aggravated while on active duty are called service-connected disabilities.

VA'S INDIVIDUAL UNEMPLOYABILITY BENEFITS

Disability compensation can be increased if VA determines that the veteran is unemployable (not able to engage in substantially gainful employment) because of the service-connected disability. Under VA's unemployability regulations, the agency can assign a total disability rating of 100 percent to veterans who cannot perform substantial gainful employment because of service-connected disabilities, even though their schedular rating is less than 100 percent. To qualify for unemployability benefits, a veteran must have a single service-connected disability of 60 percent or more or multiple disabilities with a combined rating of 70 percent or more, with at least one of the disabilities rated 40 percent or more. VA can waive the minimum ratings requirement and grant unemployability benefits to a veteran with a lower rating; this is known as an extra-schedular rating.

Staff at VA's regional offices make virtually all eligibility decisions for disability compensation benefits, including IU benefits. The 57 VA regional offices use non-medical rating specialists to evaluate veterans' eligibility for these benefits. Upon receipt of an application for compensation benefits, the rating specialist would typically refer the veteran to a VA medical center or clinic for an exam. Based on the medical examination and other information available to the rater, the rater must first determine which of the veteran's conditions are or are not service-connected. For service-connected conditions, the rater compares the diagnosis with the rating schedule to assign a disability rating.

Along with medical records, raters may also obtain other records to evaluate an IU claim. VA may require veterans to furnish an employment history for the 5-year period preceding the date on which the veteran claims to have become too disabled to work and for the entire time after that date. VA guidance also requires that raters request basic employment information from each employer during the 12-month period prior to the date the veteran last worked. In addition, if the veteran has received services from VA's VR&E program or Social Security disability benefits, the rater may also request and review related information from these organizations.

Once VA grants unemployability benefits, a veteran may continue to receive the benefits while working if VA determines that the work is only marginal employment rather than substantially gainful employment. Marginal employment exists when a veteran's annual earned income does not exceed the annual poverty threshold for one person as determined by the U.S. Census Bureau—\$ 9,827 for 2004. Furthermore, if veterans are unable to maintain employment for 12 continuous months due to their service-connected disabilities, they may retain their IU benefits, regardless of the amount earned.

MODERNIZING FEDERAL DISABILITY PROGRAMS

After more than a decade of research, GAO has determined that Federal disability programs were in urgent need of attention and transformation and placed modernizing Federal disability programs on its high-risk list in January 2003. Specifically, our research showed that the disability programs administered by VA and the Social Security Administration (SSA) lagged behind the scientific advances and economic and social changes that have redefined the relationship between impairments and work. For example, advances in medicine and technology have reduced the severity of some medical conditions and have allowed individuals to live with greater independence and function in work settings. Moreover, the nature of work has changed in recent decades as the national economy has moved away from manufacturing-based jobs to service- and knowledge-based employment. Yet VA's and SSA's disability programs remain mired in concepts from the past—particularly the concept that impairment equates to an inability to work—and as such, we found that these

programs are poorly positioned to provide meaningful and timely support for Americans with disabilities.

In contrast, we found that a growing number of U.S. private insurance companies had modernized their programs to enable people with disabilities to return to work. In general, private insurer disability plans can provide short- or long-term disability insurance coverage, or both, to replace income lost by employees because of injuries and illnesses. Employers may choose to sponsor private disability insurance plans for employees either by self-insuring or by purchasing a plan through a private disability insurer. The three private disability insurers we reviewed recognized the potential for reducing disability costs through an increased focus on returning people with disabilities to productive activity. To accomplish this comprehensive shift in orientation, these insurers have begun developing and implementing strategies for helping people with disabilities return to work as soon as possible, when appropriate.

PRIVATE INSURERS INCORPORATE RETURN-TO-WORK CONSIDERATIONS FROM THE
BEGINNING OF THE ASSESSMENT PROCESS

The three private insurers we studied incorporate return-to-work considerations early in the assessment process to assist claimants in their recovery and in returning to work as soon as possible.³ With the initial reporting of a disability claim, these insurers immediately set up the expectation that claimants with the potential to do so will return to work. Identifying and providing services intended to enhance the claimants' capacity to work are central to their process of deciding eligibility for benefits. Further, the insurers continue to periodically monitor work potential and provide return-to-work assistance to claimants as needed throughout the duration of the claim. Their ongoing assessment process is closely linked to a definition of disability that shifts over time from less to more restrictive—that is, from an inability to perform one's own occupation to an inability to perform any occupation.

After a claim is received, the private insurers' assessment process begins with determining whether the claimant meets the initial definition of disability. In general, for the three private sector insurers we studied, claimants are considered disabled when, because of injury or sickness, they are limited in performing the essential duties of their own occupation and they earn less than 60 to 80 percent of their predisability earnings, depending upon the particular insurer.⁴ As part of determining whether the claimant meets this definition, the insurers compare the claimant's capabilities and limitations with the demands of his or her own occupation and identify and pursue possible opportunities for accommodation—including alternative jobs or job modifications—that would allow a quick and safe return to work. A claimant may receive benefits under this definition of disability for up to 2 years.

As part of the process of assessing eligibility according to the "own occupation" definition, insurers directly contact the claimant, the treating physician, and the employer to collect medical and vocational information and initiate return-to-work efforts, as needed. Insurers' contacts with the claimant's treating physician are aimed at ensuring that the claimant has an appropriate treatment plan focused, in many cases, on timely recovery and return to work. Similarly, insurers use early contact with employers to encourage them to provide workplace accommodations for claimants with the capacity to work.

If the insurers find the claimant initially unable to return to his or her own occupation, they provide cash benefits and continue to assess the claimant to determine if he or she has any work potential. For those with work potential, the insurers focus on return to work before the end of the 2-year period, when, for all the private insurers we studied, the definition of disability becomes more restrictive. After 2 years, the definition shifts from an inability to perform one's own occupation to an inability to perform any occupation for which the claimant is qualified by education, training, or experience. Claimants initially found eligible for benefits may be found ineligible under the more restrictive definition.

The private insurers' shift from a less to a more restrictive disability definition after 2 years reflects the changing nature of disability and allows a transitional period for insurers to provide financial and other assistance, as needed, to help claimants with work potential return to the workforce. During this 2-year period, the insurer attempts to determine the best strategy for managing the claim. Such strategies can include, for example, helping plan medical care or providing vocational services to help claimants acquire new skills, adapt to assistive devices to increase functioning, or find new positions. For those requiring vocational intervention to return to work, the insurers develop an individualized return-to-work plan, as needed. Basing the continuing receipt of benefits upon a more restrictive definition after 2 years provides the insurer with leverage to encourage the claimant to participate

in a rehabilitation and return-to-work program. Indeed, the insurers told us they find that claimants tend to increase their efforts to return to work as they near the end of the 2-year period.

If the insurer initially determines that the claimant has no work potential, it regularly monitors the claimant's condition for changes that could increase the potential to work and reassesses after 2 years the claimant's eligibility under the more restrictive definition of disability. The insurer continues to look for opportunities to assist claimants who qualify under this definition of disability in returning to work. Such opportunities may occur, for example, when changes in medical technology—such as new treatments for cancer or AIDS—may enable claimants to work, or when claimants are motivated to work.

The private insurers that we reviewed told us that throughout the duration of the claim, they tailor the assessment of work potential and development of a return-to-work plan to the specific situation of each individual claimant. To do this, disability insurers use a wide variety of tools and methods when needed. Some of these tools, as shown in tables 1 and 2, are used to help ensure that medical and vocational information is complete and as objective as possible. For example, insurers consult medical staff and other resources to evaluate whether the treating physician's diagnosis and the expected duration of the disability are in line with the claimant's reported symptoms and test results. Insurers may also use an independent medical examination or a test of basic skills, interests, and aptitudes to clarify the medical or vocational limitations and capabilities of a claimant. In addition, insurers identify transferable skills to compare the claimant's capabilities and limitations with the demands of the claimant's own occupation. This method is also used to help identify other suitable occupations and the specific skills needed for these new occupations when the claimant's limitations prevent him or her from returning to a prior occupation. Included in these tools and methods are services to help the claimant return to work, such as job placement, job modification, and retraining.

Table 1.—Medical Assessment: Tasks, Tools, and Methods

| Task | Tools and methods |
|--|--|
| Assess the diagnosis, treatment, and duration of the impairment and begin developing a treatment plan focused on returning the claimant to work promptly and safely. | Consultation of medical staff and other resources, including current medical guidelines describing symptoms, expected results from diagnostic tests, expected duration of disability, and treatment. |
| Assess the claimant's cognitive skills | Standardized mental tests. |
| Validate the treating physician's assessment of the impairment's effect on the claimant's ability to work and the most appropriate treatment and accommodation. | Review of the claimant's file, generally by a nurse or a physician who is not the claimant's treating physician. |
| Verify the diagnosis, level of functioning, and appropriateness of treatment. | Independent medical examination of the claimant by a contracted physician. |
| Evaluate the claimant's ability to function, determine needed assistance, and help the claimant develop an appropriate treatment plan with the physician. | Home visits by a field nurse or investigator or accompanied doctor visits. |
| Assess the claim's validity | Home visits and interviews with neighbors or others who have knowledge of the claimant's activities. |

Source: GAO analysis of private insurers' practices.

Table 2.—Vocational Assessment and Assistance: Tasks, Tools, and Methods

| Task | Tools and methods |
|--|---|
| Identify transferable skills, validate restrictions on and capabilities for performing an occupation, and identify other suitable occupations and retraining programs. | <ul style="list-style-type: none"> • Test basic skills, such as reading or math. • Determine interests and aptitudes. • Evaluate functional capacities associated with an occupation, such as lifting, walking, and following directions. • Compare functional capacities, work history, education, and skills with the demands of an occupation. |

Table 2.—Vocational Assessment and Assistance: Tasks, Tools, and Methods—Continued

| Task | Tools and methods |
|--|--|
| Enhance work capabilities and help develop job-seeking skills. | <ul style="list-style-type: none"> • Provide résumé preparation, help develop job-seeking skills, and help with job placement. • Assist in obtaining physical, occupational, or speech therapy and access to employee assistance, support groups, or state agency vocational rehabilitation or other community services. • Identify and fund on-the-job training or other educational courses. |
| Assess ability to perform own or any occupation, assess potential for accommodation, and determine whether sufficient salary is offered locally or nationally for a suitable occupation. | <ul style="list-style-type: none"> • Observe and analyze the essential duties of the claimant's own occupation, another occupation for the same employer, or an occupation of a prospective employer. • Determine the general availability and salary range of specified occupations. • Identify for a specified occupation the potential employers and related job descriptions, salary range, and openings. |
| Reaccustom claimant to a full work schedule and enable claimant to overcome impairment and return to work. | <ul style="list-style-type: none"> • Provide work opportunities for the claimant to gradually resume his or her job duties. • Procure devices to assist with work or otherwise help to modify the job. |

Source: GAO analysis of private insurers' practices.

PRIVATE INSURERS PROVIDE INCENTIVES FOR CLAIMANTS AND EMPLOYERS TO ENCOURAGE AND FACILITATE RETURN TO WORK

To facilitate return to work, the private insurers we studied employment incentives both for claimants to participate in vocational activities and receive appropriate medical treatment, and for employers to accommodate claimants. The insurers require claimants who could benefit from vocational rehabilitation to participate in an individualized return-to-work program. They also provide financial incentives to promote claimants' efforts to become rehabilitated and return to work. To better ensure that medical needs are met, the insurers we studied require that claimants receive appropriate medical treatment and assist them in obtaining this treatment. In addition, they provide financial incentives to employers to encourage them to provide work opportunities for claimants.

The three private insurers we reviewed require claimants who could benefit from vocational rehabilitation to participate in a customized rehabilitation program or risk loss of benefits. As part of this program, a return-to-work plan for each claimant can include, for example, adaptive equipment, modifications to the work site, or other accommodations. These private insurers mandate the participation of claimants whom they believe could benefit from rehabilitation because they believe that voluntary compliance has not encouraged sufficient claimant participation in these plans.⁵

The insurers told us that they encourage rehabilitation and return to work by allowing claimants who work to supplement their disability benefit payments with earned income.⁶ During the first 12 or 24 months of receiving benefits, depending upon the particular insurer, claimants who are able to work can do so to supplement their benefit payments and thereby receive total income of up to 100 percent of predisability earnings.⁷ After this period, if the claimant is still working, the insurers decrease the benefit amount so that the total income a claimant is allowed to retain is less than 100 percent of predisability income.

When a private insurer, however, determines that a claimant is able, but unwilling, to work, the insurer may reduce or terminate the claimant's benefits. To encourage claimants to work to the extent they can, even if only part-time, two of the insurers told us they may reduce a claimant's benefit by the amount the claimant would have earned if he or she had worked to maximum capacity. The other insurer may reduce a claimant's monthly benefit by the amount that the claimant could have earned if he or she had not refused a reasonable job offer—that is, a job that was consistent with the claimant's background, education, and training. Claimants' benefits may also be terminated if claimants refuse to accept a reasonable accommodation that would enable them to work.

Since medical improvement or recovery can also enhance claimants' ability to work, the private insurers we studied not only require, but also help, claimants to obtain appropriate medical treatment. To maximize medical improvement, these private insurers require that the claimant's physician be qualified to treat the par-

ticular impairment. Additionally, two insurers require that treatment be provided in conformance with medical standards for treatment type and frequency. Moreover, the insurers' medical staff work with the treating physician as needed to ensure that the claimant has an appropriate treatment plan. The insurers told us they may also provide funding for those who cannot otherwise afford treatment.

The three private sector insurers we studied may also provide financial incentives to employers to encourage them to provide work opportunities for claimants. By offering lower insurance premiums to employers and paying for accommodations, these private insurers encourage employers to become partners in returning disabled workers to productive employment. For example, to encourage employers to adopt a disability policy with return-to-work incentives, the three insurers offer employers a discounted insurance premium. If their disability caseload declines to the level expected for those companies that assist claimants in returning to work, the employers may continue to pay the discounted premium amount. These insurers also fund accommodations, as needed, for disabled workers at the employer's work site.⁸

PRIVATE INSURERS STRIVE TO USE APPROPRIATE STAFF TO ACHIEVE ACCURATE DISABILITY DECISIONS AND SUCCESSFUL RETURN-TO-WORK OUTCOMES

The private disability insurers we studied have developed techniques for using the right staff to assess eligibility for benefits and return those who can to work. Officials of the three private insurers told us that they have access to individuals with a range of skills and expertise, including medical experts and vocational rehabilitation experts. They also told us that they apply this expertise as appropriate to cost effectively assess and enhance claimants' capacity to work.

The three private disability insurers that we studied have access to multidisciplinary staff with a wide variety of skills and experience who can assess claimants' eligibility for benefits and provide needed return-to-work services to enhance the work capacity of claimants with severe impairments. The private insurers' core staff generally includes claims managers, medical experts, vocational rehabilitation experts, and team supervisors. The insurers explained that they set hiring standards to ensure that the multidisciplinary staff is highly qualified. Such qualifications are particularly important because assessments of benefit eligibility and work capacity can involve a significant amount of professional judgment when, for example, a disability cannot be objectively verified on the basis of medical tests or procedures or clinical examinations alone.⁹ Table 3 describes the responsibilities of this core staff of experts employed by private disability insurers, as well as its general qualifications and training.

Table 3.—Responsibilities and Qualifications of Staff Employed by Private Disability Insurers To Assess and Enhance a Claimant's Work Potential

| Type of staff | Responsibilities | Qualifications and training |
|--|---|---|
| Claims managers | <ul style="list-style-type: none"> • Determine disability benefit eligibility. • Develop, implement, and monitor an individualized claim management strategy. • Serve as primary contact for the claimant and the claimant's employer. • Focus on facilitating the claimant's timely, safe return to work. • Coordinate the use of expert resources. | <p>One insurer gives preference to those with a college degree and requires insurance claims experience and specialized training and education.</p> <p>Another requires a college degree, a passing grade on an insurer-sponsored test, and specialized training and coaching.</p> |
| Medical and related experts ¹ | <ul style="list-style-type: none"> • Collect and evaluate medical and functional information about the claimant to assist in the eligibility assessment and help to ensure that claimants receive the appropriate medical care to enable them to return to work. • At one insurer, physicians also help train company staff. | <p>Medical staff include registered nurses with case management or disability-related experience and experts in behavioral and mental issues, such as psychologists, experienced psychiatric nurses, and licensed social workers. Two insurers also employ board-certified physicians in various specialties.²</p> |
| Vocational rehabilitation experts. | <ul style="list-style-type: none"> • Help assess the claimant's ability to work. • Help overcome work limitations by identifying needed assistance, such as assistive devices and additional training, and ensuring that it is provided. | <p>Rehabilitation experts are master's-degree-level vocational rehabilitation counselors. In addition, one insurer requires board certification and 5 years of experience.</p> |

Table 3.—Responsibilities and Qualifications of Staff Employed by Private Disability Insurers To Assess and Enhance a Claimant’s Work Potential—Continued

| Type of staff | Responsibilities | Qualifications and training |
|-------------------|---|--|
| Supervisors | <ul style="list-style-type: none"> Provide oversight, mentoring, and training. | One insurer gives preference to those with a college degree and requires 3 years’ disability experience, some management experience, and specialized training. Another insurer requires a college degree, more than 12 years’ disability claims experience, and completion of courses leading to a professional designation. |

¹At one company, the medical experts are employees of a company subsidiary but are often colocated with the insurer’s employees.
²One company, for example, employs 85 part- and full-time physicians, including psychiatrists, doctors of internal medicine, orthopedists, family practice physicians, cardiologists, doctors of occupational medicine, and neurologists.
 Source: GAO analysis of private insurers’ practices.

The three disability insurers we reviewed use various strategies for organizing their staff to focus on return to work, with teams organized to manage claims associated either with a specific impairment type or with a specific employer (that is, the group disability insurance policyholder). One insurer organizes its staff by the claimant’s impairment type—for example, cardiac/respiratory, orthopedic, or general medical—to develop in-depth staff expertise in the medical treatments and accommodations targeted at overcoming the work limitations associated with a particular impairment. The other two insurers organize their staff by the claimant’s employer because they believe that this enables them to better assess a claimant’s job-specific work limitations and pursue workplace accommodations, including alternative job arrangements, to eliminate these limitations.¹⁰ Regardless of the overall type of staff organization, each of the three insurers facilitates the interaction of its core staff—claims managers, medical experts, and vocational rehabilitation experts—by pulling these experts together into small, multidisciplinary teams responsible for managing claims. Additionally, one insurer engenders team interaction by physically colocating core team members in a single working area.

To provide a wide array of needed experts, the three disability insurers expand their core staff through agreements or contracts with subsidiaries or other companies. These experts—deployed both at the insurer’s work site and in the field—provide specialized services to support the eligibility assessment process and to help return claimants to work. For instance, these insurers contract with medical experts beyond their core employee staff—such as physicians, psychologists, psychiatrists, nurses, and physical therapists—to help test and evaluate the claimant’s medical condition and level of functioning. In addition, the insurers contract with vocational rehabilitation counselors and service providers for various vocational services, such as training, employment services, and vocational testing.

The private insurers we examined told us that they strive to apply the appropriate type and intensity of staff resources to cost-effectively return to work claimants with work capacity. The insurers described various techniques that they use to route claims to the appropriate claims management staff, which include separating (or triaging) different types of claims and directing them to staff with the appropriate expertise. According to one insurer, the critical factor in increasing return-to-work rates and, at the same time, reducing overall disability costs is proper triaging of claims. In general, the private insurers separate claims by those who are likely to return to work and those who are not expected to return to work. The insurers told us that they assign the type and level of staff necessary to manage claims of people who are likely to return to work on the basis of the particular needs and complexity of the specific case (see table 4).

Table 4.—Staff Assignment for Claims Management by Triage Category

| Triage category | Staff assigned | Types of return-to-work services provided |
|---|--------------------|---|
| Likely to return to work: Condition requires medical assistance and more than 1 year to stabilize medically. | Medical specialist | <ul style="list-style-type: none"> Recommend improvements in treatment plan to treating physician. Refer claimant for more specialized or appropriate medical services. Ensure frequency of treatment meets standards for condition. |

Table 4.—Staff Assignment for Claims Management by Triage Category—Continued

| Triage category | Staff assigned | Types of return-to-work services provided |
|--|---|---|
| Condition requires less than a year to stabilize. | Claims manager | <ul style="list-style-type: none"> • Monitor medical condition. • Maintain contact with employer and physician to ensure return to work. • Obtain input from medical and vocational specialists as needed. |
| Condition is stabilized, and claimant needs rehabilitation or job accommodation to return to work. | Multidisciplinary team including— <ul style="list-style-type: none"> • Vocational expert • Medical expert • Claims specialist • Other specialists as needed | <ul style="list-style-type: none"> • Evaluate claimant's functional abilities for work. • Customize return-to-work plan. • Arrange for needed return-to-work services. • Monitor progress against expected return-to-work date. |
| Unlikely to return to work. Claimant is determined unable to return to work. | Claims manager | <ul style="list-style-type: none"> • Review medical condition and level of functioning regularly. |

Source: GAO analysis of private insurers' practices.

As shown in table 4, claimants expected to need medical assistance, such as those requiring more than a year for medical stabilization, are likely to receive an intensive medical claims management strategy. A medical strategy involves, for example, ensuring that the claimant receives appropriate medical treatment. Claimants who need less than a year to stabilize medically are managed much less intensively. For these claims, a claims manager primarily monitors the claimant's medical condition to assess whether it is stable enough to begin vocational rehabilitation, if appropriate. Alternatively, a claimant with a more stable, albeit serious, medical condition who is expected to need vocational rehabilitation, job accommodations, or both to return to work might warrant an intensive vocational strategy. The private disability insurers generally apply their most resource-intensive, and therefore most expensive, multidisciplinary team approach to these claimants. Working closely with the employer and the attending physician, the team actively pursues return-to-work opportunities for claimants with work potential.

Finally, claimants who are likely not to return to work (or "stable and mature" claims) are generally managed using a minimum level of resources, with a single claims manager responsible for regularly reviewing a claimant's medical condition and level of functioning.¹¹ The managers of these claims carry much larger caseloads than managers of claims that receive an intensive vocational strategy. For example, one insurer's average claims manager's caseload for these stable and mature claims is about 2,200 claims, compared with an average caseload of 80 claims in the same company for claims managed more actively.

VA'S INDIVIDUAL UNEMPLOYABILITY RETURN-TO-WORK EFFORTS LAG BEHIND OTHER PROGRAMS

Unlike disability compensation programs in the private sector, VA has not drawn on vocational experts for IU assessments to examine the claimant's work potential and identify the services and accommodations needed to help those who could work to realize their full potential. In our 1987 report, we found that VA had not routinely obtained all vocational information needed to determine a veteran's ability to engage in substantially gainful employment before it granted IU benefits. Without understanding how key vocational factors, such as the veteran's education, training, earnings, and prior work history, affect the veteran's work capacity, VA cannot adequately assess the veteran's ability to work. To perform this analysis, VA officials told us that the agency has vocational specialists who are specially trained to perform this difficult analysis. Skilled vocational staff can determine veterans' vocational history, their ability to perform past or other work, and their need for retraining. By not collecting sufficient information and including the expertise of vocational specialists in the assessment, VA did not have an adequate basis for awarding or denying a veteran's claim for unemployability benefits.

Preliminary findings from our ongoing work indicate that VA still does not have procedures in place to fully assess veterans' work potential. In addition, the IU decision-making process lacks sufficient incentives to encourage return to work. In considering whether to grant IU benefits, VA does not have procedures to include vocational specialists from its VR&E services to help evaluate a veteran's work potential. By not using these specialists, VA also misses an opportunity to have the spe-

cialist develop a return-to-work plan, in collaboration with the veteran, and identify and provide needed accommodations or services for those who can work. Instead, VA's IU assessment is focused on the veterans' inabilities and providing cash benefits to those labeled as "unemployable," rather than providing opportunities to help them return to work.

CONCLUDING OBSERVATIONS

Return-to-work practices used in the U.S. private sector reflect the understanding that people with disabilities can and do return to work. The continuing deployment of our military forces to armed conflict has focused national attention on ensuring that those who incur disabilities while serving in the military are provided the services needed to help them reach their full work potential. Approaches from the private sector demonstrate the importance of using the appropriate medical and vocational expertise to assess the claimant's condition and provide appropriate medical treatment, vocational services, and work incentives. Applying these approaches to VA's IU assessment process would raise a number of important policy issues. For example, to what extent should the VA require veterans seeking IU benefits to accept vocational assistance or appropriate medical treatment? Such policy questions will be answered through the national policymaking process involving the Congress, VA, veterans' organizations, and other key stakeholders. Nevertheless, we believe that including vocational expertise in the IU decision-making process could provide VA with a more adequate basis to make decisions and thereby better ensure program integrity. Moreover, incorporating return-to-work practices could help VA modernize its disability program to enable veterans to realize their full productive potential without jeopardizing the availability of benefits for people who cannot work.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or Members of the Committee may have.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LARRY E. CRAIG TO CYNTHIA A. BASCETTA

Question 1. As we discussed at the hearing, the Department of Veterans Affairs does Not consider age in making an individual unemployability determination. Should age be a factor in these determinations?

Answer. Concerns about the extensive growth of Individual Unemployability (IU) benefits have raised questions about the use of age as a factor in decisionmaking. The purpose of IU benefits is to replace veterans' average loss in earnings because service-connected impairments leave them unable to work. To determine compensation to a veteran, Department of Veterans Affairs' (VA) rating specialists use a rating schedule to assign a degree of severity to the disability (known as a schedular rating) that determines the veteran's basic compensation. However, if a veteran does not receive a 100 percent schedular rating, but is found to have service-connected disabilities that make the veteran unemployable (not able to engage in substantially gainful employment), the veteran can be awarded IU benefits that increase his or her compensation benefits to the 100 percent level. To help ensure that IU benefits are provided only to veterans who cannot work because of service-connected disabilities, VA's rating specialists are expected to identify and isolate the effects of various factors not connected to military service, such as age, nonservice injuries, and voluntary withdrawal from the labor market. VA, however, does not consider age in its decisionmaking and can grant benefits to veterans of any age, if the agency finds that their service-connected impairments make them unemployable. For example, an 80-year-old veteran who has a 60 percent or higher schedular rating and no earnings could be determined unemployable and receive IU benefits.

Although we are not taking a position on whether age should be a factor in IU decisionmaking, we believe that in evaluating its possible inclusion, Congress has several key issues to consider. These issues would require careful analysis and input from VA, veterans' organizations, and other key stakeholders. For example, Congress may want to examine the purpose of IU benefits to evaluate whether incorporating age into IU determinations would enhance or detract from their purpose. In addition, it may want to evaluate the options for including age as a criterion and the benefits and costs of those options. For example, the Social Security Administration's (SSA) disability programs consider age when evaluating an individual with a severe impairment that does not meet or equal the agency's Listing of Impairments and who cannot perform a prior job. To evaluate whether the individual can perform another job in the national economy, SSA takes into consideration the individual's age, along with prior work experience, functional limitations, and education. For ex-

ample, individuals who are age 50 or older and have very limited work experience with no transferable skills, functional capacities limited to performing only sedentary or light work, and less than a high school education are generally found eligible for disability benefits. Conversely, if these individuals had transferable skills or a high school education or better that allowed them to perform skilled work, they would generally be found ineligible. SSA incorporates age into its decision-making process because it believes that advancing age, along with other severe functional and educational limitations, restricts an individual's ability to adapt to and perform a new job.

Congress may also want to consider whether there should be an age cutoff for applying for IU benefits. Unlike VA's disability compensation program, SSA's Old-Age, Survivors and Disability Insurance program does not grant disability benefits to individuals after SSA's normal retirement age, but it may provide them with retirement benefits. According to VA, in the past 20 years the number of veterans at or beyond retirement age granted IU benefits has grown substantially. In evaluating an age cutoff for awarding IU compensation, Congress may also want to consider how disability compensation fits within the broader spectrum of disability and retirement benefits to ensure that veterans with disabilities receive adequate compensation.

GAO will be issuing a report in late spring, 2006 that will address in more detail the age of IU beneficiaries, the value of their benefits, and VA's management of initial and ongoing IU eligibility determinations.

Chairman CRAIG. Cynthia, thank you very much.
Rick.

**STATEMENT OF RICK SURRETT, DEPUTY NATIONAL
LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS**

Mr. SURRETT. Mr. Chairman, thank you for the opportunity to address the issue of whether the rising number of disabled veterans deemed unemployable is an indication that the benefit system is failing.

As you know, veterans with service-connected disabilities that prevent them from working are totally disabled for compensation purposes. Provisions for total disability ratings on the basis of individual unemployability are entirely consistent with the purpose and essential to the fulfillment of the disability compensation program, which is to provide benefits proportionate to the level of disability.

An increased number of veterans rated totally disabled on the basis of unemployability does not itself necessarily suggest systemic fault or failure because there very well may be other reasons. These reasons may indeed suggest a proper working of the system. The increase may be a proper response to and reflection of changing conditions. The increase in the number of unemployable veterans coincides with a comparable increase in the number of veterans with more severe disabilities and higher schedule ratings, from 60 to 90 percent. The increase in the number of unemployable veterans is consistent with the national trend of an increase in the number of disabled persons, particularly an increase in disabled persons on the Social Security rolls, which is attributed to an aging general population. As with the general population, we have an aging veteran population, and we know that many disabilities progress and their effects become worse with age.

Judicial review of VA decisions on unemployability has forced closer adherence to the law and better reasoned decisions, and that almost assuredly accounts for some of the increase in unemployability ratings.

Perhaps one of the most responsible factors is the increasing prevalence of mental disorders, particularly post traumatic stress disorder among veterans, along with a rating formula for mental disorders under which many unemployable veterans cannot possibly qualify for a 100 percent scheduler evaluation, and must therefore be rated individually unemployable.

Mr. Chairman, today here in Washington, in Government, we see, for example, paralyzed veterans, blind veterans and veterans with loss of both lower extremities working. So we might ask, if all those veterans who would be 100 percent under the rating schedule are working, why do we see an increase in veterans with seemingly less disability on the individual unemployability rolls?

First of all, we probably would not see the same thing in the towns and rural areas that make up much of America with their predominantly manufacturing and agricultural jobs. We can safely conclude that technology, accessibility and accommodation have made it possible for the paralyzed and blind to work in structured settings. For veterans with mental disorders, chronic pain or generalized weakness, the competitive workplace may not be as hospitable, and the inherent nature of these kinds of disabilities may be more of a hindrance in work and even rehabilitation because they interfere with the ability to reason, concentrate, interact with others, cope with the pressures of the workplace, and meet production demands, et cetera.

Nonetheless, if we reviewed a sample of VA's allowances of individual unemployability ratings for the purpose of finding fault with some of them, we probably could. At the same time, we might also find an equal or greater number of erroneous denials.

We have pointed to some reasons for the increase in individual unemployability ratings, but we certainly do not claim to know precisely all the causes. Information on the predominant kinds of disabilities affecting those with unemployability ratings would provide greater understanding. We should also have information on whether veterans with certain types of disabilities like PTSD are typically less successful in attempts at vocational rehabilitation.

Without a better understanding of factors such as these, the DAV believes we can draw no firm conclusions on the questions raised in today's hearing. At this point, we see no factual basis for concluding that faulty claims adjudication is responsible for the increase in veterans rated unemployable.

That includes my statement, Mr. Chairman. I would be happy to answer any questions the Committee may have.

[The prepared statement of Mr. Surratt follows:]

PREPARED STATEMENT OF RICK SURRETT, DEPUTY NATIONAL LEGISLATIVE DIRECTOR,
DISABLED AMERICAN VETERANS

Mr. Chairman and Members of the Committee:

In response to your invitation to testify, I am pleased to appear before the Committee to present the views of the Disabled American Veterans (DAV) on the question of how well the system of veterans benefits of the Department of Veterans Affairs (VA) is serving veterans deemed to be unemployable. In this regard, the Committee observes that VA's Departmental Strategic Goal 1 is to "[r]estore the capability of veterans with disabilities to the greatest extent possible, and improve the quality of their lives and that of their families." In view of the trend of increasing numbers of veterans deemed totally disabled by reason of unemployability, the Committee indicates it will examine this component of the compensation program as

well as address the question of whether the VA's Vocational Rehabilitation and Employment Program is being used to its optimum.

For those veterans who are in fact unable to work because of service-connected disabilities but whose disabilities do not meet the requirements for a total rating under VA's regular rating schedule criteria, VA has special provisions for awarding total disability ratings. Such ratings are said to be "extra-schedular."

Congress delegated to the Secretary of Veterans Affairs the authority to adopt and apply a schedule for rating disabilities.¹² For purposes of compensation payments, the schedule provides for gradation of disability in increments of 10 percent, ranging from 10 percent to 90 percent for partial disability, with 100 percent for total disability.¹³ The ratings are to be based, "as far as practicable, upon the average impairments of earning capacity" in civil occupations resulting from disability.¹⁴ "Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation."¹⁵ However, it is the "established policy of [VA] that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled."¹⁶ Therefore, "[t]otal disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities."¹⁷ Accordingly, total ratings are authorized "for any disability or combination of disabilities for which the Schedule for Rating Disabilities prescribes a 100 percent evaluation or, with less disability" that renders the veteran, in his or her individual circumstances, unable to follow a substantially gainful occupation.¹⁸ In short, VA may find a veteran's disability to be total either on a schedular basis or due to individual unemployability (IU or sometimes TDIU).

The distinction between total disability on a schedular basis and total disability based on IU is that total disability on a schedular basis is founded on an "average person" standard, as are all regular schedular ratings, while unemployability ratings are based on the impact of the disability in the individual's own circumstances.

Average earning capacity, or average person, is a standard or a single value used to represent a broad universe of persons. Like an average, or arithmetic mean, it is approximately the middle position in a data set or intermediate between the two ends or extremes on a scale. Thus, roughly half of workers have lower earning capacity and roughly half have higher earning capacity than the average, and earning capacity is tied primarily to educational and vocational backgrounds. Consequently, while the concept of average impairment in earning capacity is the basis underlying the various percentage evaluations provided for given levels of disability in the rating schedule, unemployability determinations are not based on average impairment and must, therefore, take into account the disability as it affects the individual's ability to follow a substantially gainful occupation¹⁹ in light of his or her attained work skills and educational background. Unemployability ratings recognize that individuals may be totally disabled for work with less disability than that which would be necessary to totally disable the average person. Sometimes, the extent of disability depends more largely upon the affected individual than upon the character of the disability. For example, the loss of both legs might totally disable a common laborer with little education while it would have relatively less effect upon the earning capacity of an accountant.

Though IU is an exception to the average person standard in that the average person would be deemed totally disabled when the 100 percent schedular criteria are met, IU is not available for unusual circumstances only. An IU rating is based upon a regular variation in the effect of disability given the veteran's educational and vocational background. Given that roughly half of all disabled veterans will be more impaired by a disability than the average veteran, it is understandable that many will be totally disabled by diseases or injuries rated less than 100 percent under schedular criteria. In addition, many disabilities that can be totally disabling for some have maximum schedular ratings of less than 100 percent.²⁰

The number of veterans rated totally disabled for IU has increased over the past several years, but that is somewhat consistent with a pattern of higher numbers of more seriously disabled veterans in the veteran population. As a prerequisite for an IU rating, a veteran generally must have disability rated 60 percent or higher under the terms of the rating schedule.²¹ During fiscal years (FYs) 2000 to 2004, the number of veterans with 60 percent ratings increased by 31 percent. The number of veterans rated 70 percent increased by 60 percent; veterans rated 80 percent increased by 75 percent; and veterans rated 90 percent increased by 91 percent. During the same period, veterans rated total due to IU increased 78 percent. In fiscal year 2004, approximately 438,000 veterans were seriously disabled enough to meet the

schedular prerequisite for an IU rating, compared with approximately 286,000 in fiscal year 2000.²²

In addition to higher numbers of veterans potentially eligible for IU, an aging veteran population also may account in part for increased numbers of veterans who are unemployable. Progressive or degenerative conditions worsen with age. Disabled Vietnam veterans, who make up our largest single group of disabled veterans by period of service and whose disabilities are on average rated higher than their counterparts from other periods of service,²³ had an estimated median age of 57.4 years at the end of fiscal year 2004.²⁴

According to a review of studies conducted under VA contract by Economic Systems, Inc., the increase in the number of veterans on the compensation rolls is consistent with a national trend of an increase in the number of disabled persons.

Most sources indicate that the number of disabled in the U.S. general population has been increasing as the U.S. population is aging. For example, the number of disabled workers and their dependents receiving [benefits from the] Social Security Administration's (SSA) Social Security Disability Insurance (SSDI) program increased significantly from 2.7 million in 1970 to 7.6 million in 2003. This is important as SSDI has a restrictive definition of disability (i.e., only those workers who are unable to perform any substantial gainful activity are eligible). Meanwhile, SSDI disability rates among the adult population (16 to 64 years old) have almost doubled from 2.2 percent in 1970 to 4.0 percent in 2003.

The total number of veterans receiving disability compensation payments from VA has increased only slightly from 2.07 million in 1955 to 2.09 million in 1970 to 2.49 million in 2003. However, the percentage of veterans receiving VA disability compensation has risen from 7.6 percent in 1970 to 10.0 percent in 2003. Compared to the percent of U.S. population 16 to 64 years of age on SSDI rolls (4 percent in 2003), [the] VA disability rate, in absolute terms, is higher, but in terms of the rate of increase in disability rate from 1970 to 2003, it is the same as SSDI.

According to the 1990 Census, there were 12.8 million individuals (aged 16–64) with work related disability (i.e., limitation in a person's ability to work due to a chronic health condition or impairment). Slightly over one-half (51.5 percent) of them reported themselves severely disabled (LaPlante, 1993). There was a significant increase in both figures in the 2000 census. Of the 21.3 million who reported to have a work related disability 65.8 percent claimed a severe disability (Census 2000).²⁵

Of course, the comparison above is between totally disabled workers and all disabled veterans.

An increasing prevalence of service-connected post-traumatic stress disorder (PTSD) and other mental disorders among veterans may also account for the increase in IU ratings. Under its "General Rating Formula for Mental Disorders," the VA rating schedule provides for 6 different evaluations: 0 percent, 10 percent, 30 percent, 50 percent, 70 percent, and 100 percent.²⁶ To be rated 100 percent on a schedular basis under this formula, a veteran must meet the pertinent criteria from among the following:

Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

Needless to say, a person who has a mental condition meeting these criteria would have impairment well beyond a level that would remove any possibility working. Such person would be profoundly disabled and nearly helpless. Few veterans will meet these criteria.

Now consider the criteria a disabled a veteran must meet to be rated 70 percent, the only rating that meets the schedular prerequisite for IU:

Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work like setting); inability to establish and maintain effective relationships.

Few veterans will be able to work with such marked symptoms. If they are to be adequately compensated, IU is their only resort. Under the general rating formula in effect prior to the total restructuring in 1996, any veteran unable to work because

of a service-connected mental disorder was deemed totally disabled under the schedular criteria. Section 4.16(c) of title 38, Code of Federal Regulations, provided that the IU provisions of § 4.16(a) did not apply to mental disorders:

The provisions of paragraph (a) of this section are not for application in cases in which the only compensable service-connected disability is a mental disorder assigned a 70 percent evaluation, and such mental disorder precludes a veteran from securing or following a substantially gainful occupation. In such cases, the mental disorder shall be assigned a 100 percent schedular evaluation under the appropriate diagnostic code.

Paragraph (c) was removed with the promulgation of the new general rating formula for mental disorders.²⁷ Because that is no longer the rule under the current rating formula, all the ratings that would have been 100 percent on a schedular basis under this special rule now are on the basis of IU, which naturally caused an increase in the number of veterans rated IU. That effect is magnified by the increasing prevalence of mental disorders among veterans.²⁸ PTSD accounts for 44.6 percent of all service-connected mental disorders.²⁹

Among all veterans, PTSD is the seventh most prevalent service-connected disability.³⁰ Among the group most affected, Vietnam veterans, it is the second most prevalent disability.³¹

The availability of judicial review of VA decisions has also probably been a factor in the number of allowances of claims for IU. The Court of Appeals for Veterans Claims, formerly the Court of Veterans Appeals, has been particularly critical of adjudication practices that led to arbitrary denials of IU. The Court has also held that VA cannot ignore the issue of entitlement to IU when it is presented in the record. The Court has rejected as arbitrary VA's practice of denying IU on the catchall unsupported conclusion that, despite severe disabilities, the veteran "can perform some kind of work."³² The Court has rejected denials based on inadequately developed records.³³ The courts have also held that, where the record in a claim for increased compensation includes evidence of unemployability due to the service-connected disability, the law requires VA to consider entitlement to IU though the veteran may not have expressly claimed a total rating on that basis.³⁴

The availability of IU ratings for the many veterans who do not fit into the "average" mold is essential to a fair and complete compensation system. The rules must be designed and the decisions must be made in a manner to result in a fair disposition of this question. As the Court stated, "[i]t is clear that the claimant need not be a total 'basket case' before the courts find that there is an inability to engage in substantial gainful activity. The question must be looked at in a practical manner, and mere theoretical ability to engage in substantial gainful employment is not a sufficient basis to deny benefits. The test is whether a particular job is realistically within the physical and mental capabilities of the claimant."³⁵ Inherently, IU determinations must necessarily rely heavily on subjective data, particularly those involving mental disorders. However, that is unavoidable in the assessment of disability as it affects the individual because, as stated, the same medical condition will affect different individuals quite differently, not only from the standpoint of physical or mental functioning, but also in light of innumerable variables relating to vocational and educational attainments.

A 60 percent or greater disability under the terms of the schedule necessarily means that, for veterans with more demanding occupations, the affected veteran is approaching that minimum level of efficiency or tolerance for the demands or stresses or strains of work which is acceptable to an employer who must confront the realities of a profit-driven, competitive economy. A veteran may struggle and be able to barely satisfy an employer's needs for years and then suddenly be unable to continue meeting those minimum needs due to a gradual progression of his or her disability. A subtle change in the veteran's physical or mental capacity may reduce work attendance or performance to a level that is unacceptable to an employer. It is to be expected that many of these veterans will become unemployable as their disabilities worsen with age. Age itself is not a factor in the determination, however.³⁶

The average impairment standard treats all veterans equally, and although IU is based on the effect of disability on the individual, it too does not discriminate on basis of age. If the total rating is based on IU, "it must be determined that the service-connected disabilities are sufficient to produce unemployability without regard to advancing age."³⁷ The adjudicator is required to determine, without regard to age, whether it is service-connected disability that renders the veteran unemployable.³⁸ Age must be ignored because compensation is paid for the effects of service-connected disability, not the effects of age.

Unlike VA pension benefits and Social Security disability insurance benefits where age is appropriately considered in determining entitlement, consideration of

age as a factor of entitlement in a veteran's compensation claim would be inappropriate. The purpose of veterans' pensions is "relieving distress from disability or destitution among the aging veteran population."³⁹ Pension is by definition a benefit paid to a veteran "because of service, age, or non-service-connected disability."⁴⁰

Insurance against disability from any cause is to be distinguished from compensation for disability from military service. Age is a factor in determining entitlement to disability insurance benefits under Social Security laws on the principle that, where a person is unable to perform his or her customary work, the effects of advancing age reduces a person's ability to adjust to other work for which the person has the necessary skills, education, and physical or mental abilities. The rule states: "we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment. . . ." ⁴¹

Because the purpose of compensation is to make up for the effects of service-connected disability, it should not be tied to factors extraneous to the character of the disability. It would be inappropriate to pay different levels of compensation based on age. It would be inappropriate to deny IU to a younger veteran on the basis of age and award it to an older veteran with the same level of disability, or vice versa.

Total compensation for IU is not a retirement benefit, however. Just as it should not be denied because of age, it should not be awarded because of age. Properly applied, the rules require a factual showing that the disability is such as to be incompatible with substantially gainful employment, irrespective of age. Today, many people work well beyond what was once considered normal retirement age. Typically, VA awards the benefit when disability forces the veteran to terminate employment.⁴² To award IU to a veteran age 64 and deny it to a veteran age 66, for example, would be unfair discrimination, disparate treatment of veterans similarly situated, and wholly unjustified from an equitable standpoint. Nonetheless, if Congress or VA chose to make a fundamental change in this compensation principle to allow for the consideration of age in IU claims, as with Social Security disability benefits, such change should make it easier for most veterans to qualify for IU because veterans of service in Vietnam and all earlier periods would be of advanced age. The Social Security Administration's rule provides with respect to a "person of advanced age," "We consider that at advanced age (age 55 or older), age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64)."⁴³

Under current rules, which do not complicate the decision by applying different rules to different age groups, if a veteran's functional limitations become such that they are incompatible with continuing performance of the veteran's job activities, a factual finding to that effect can be made with an adequately developed record. For decisions on IU, VA should look at the medical evidence, employment evidence, and any available relevant records from the Social Security Administration and VA's Vocational Rehabilitation and Employment Service. Experience has shown that, in many instances, there can be a valid purely medical conclusion that a veteran's disabilities are so severe in their effect upon "ordinary activity" as to obviously be incompatible with all work activities as generally understood and within common knowledge.⁴⁴

Though they are imperfect and have been criticized by the Court of Appeals for Veterans Claims and though VA is in the process of revising its rules on IU, we believe the current rules, for the most part, prescribe consideration of the appropriate factors. These decisions do require careful examination of the facts and the exercise of well-informed and well-reasoned judgments. We suspect that most veterans prefer to work if they are able, and experience has shown that VA adjudicators are not particularly liberal in awarding total ratings on the basis of IU. This is reflected in the many discussions of arbitrary VA denials by the courts.

For these several reasons, the increase in numbers of IU veterans does not signal a failure or fault in the compensation program.

While compensation is an age-neutral benefit, common sense suggests that age should be a factor in determining whether vocational rehabilitation is feasible, for reason that the effects of age diminish human faculties. In addition to making successful rehabilitation for a new vocation more improbable for elderly veterans, the infirmities of age, along with the effects of disabilities 60 percent or greater in degree, may very well cause the veteran to be a hazard to himself or herself and others in some training environments. In addition, unlike the evaluation of disability for compensation purposes where the effects of nonservice-connected disabilities

must be disregarded, assessment of a veteran's potential for rehabilitation must take into account the effects of all impairments.

To expect an elderly disabled veteran to embark upon a new career in his or her final years of life is unrealistic. The demands of training may only make the disability worse. To refuse IU to a veteran who uses the good judgment not to undertake such an unwise course would contradict the purpose of veterans benefits. We therefore believe that mandating or pressuring veterans of advanced age to attempt vocational rehabilitation would be ill-advised and would quite probably result in a waste of resources. The option should be left open, to a reasonable age, for those whose individual circumstances make vocational training and regained employability feasible, however.

Rehabilitation potential for younger veterans is a different matter. We suspect that most younger veterans resent the loss of independence and being forced into the role of being disabled. Current law encourages IU veterans to pursue vocational rehabilitation. The law requires VA to notify a veteran awarded total disability for IU of the availability of vocational rehabilitation; the law requires VA to offer the veteran counseling services and the opportunity for evaluation as to whether the achievement of a vocational goal is feasible.⁴⁵ Although a veteran might have the potential to perform substantially gainful employment in the future upon successful completion of vocational rehabilitation training, current law recognizes that the veteran and his or her family cannot survive on the level of compensation paid for the existing percentage rating assigned for partial disability while the veteran is training to become employable. Therefore, entry into a program of vocational rehabilitation, by itself, does not cause a termination of TDIU benefits.⁴⁶ A veteran who undertakes a program of vocational rehabilitation is not considered "rehabilitated to the point of employability" unless he or she has been "rendered employable in an occupation for which a vocational rehabilitation program has been provided under [chapter 31, of title 38, United States Code]."⁴⁷

In conjunction with its enactment of provisions requiring VA to notify an IU veteran of the availability of vocational rehabilitation, Congress included provisions for a period of "trial work," in which a TDIU rating would not be reduced where a veteran secures and follows a substantially gainful occupation unless the veteran maintains such an occupation for a period of 12 consecutive months.⁴⁸ Congress indicated that it considered "it desirable to provide every reasonable opportunity and encouragement for disabled veterans—including those with very serious handicaps and those determined to be unemployable—to return to work."⁴⁹

Under VA's Departmental Strategic Goal 1, the first "objective" of VA's Vocational Rehabilitation and Employment program is to "[p]rovide all service-disabled veterans with the opportunity to become employable and obtain and maintain suitable employment, while providing special support to veterans with serious employment handicaps."⁵⁰ VA's objective to provide "all" service-connected disabled veterans with the opportunity to become employable is laudable, but it must be viewed in light of the realities of the challenges associated with retraining veterans of advanced age to a status of "rehabilitated to the point of employability." According to VA, achieving that status is challenging even for veterans younger than those with advanced age: "Achieving suitable employment at age 40 and above is, in itself, a considerable challenge for anyone. Moreover, veterans with disabilities must typically compete for employment against young college graduates, age 22 to 25, who often have not served in the military, who have no dependents, and who have no disabilities."⁵¹ "The average age of a program participant is 41 years for male veterans and 37 years for female veterans, while the average age of disabled male and female veterans who complete a VA vocational rehabilitation program by achieving suitable employment is 45 and 39 years respectively."⁵²

VA should be able to provide the Committee more information about the numbers of older veterans who complete a course of vocational rehabilitation and achieve suitable employment. We suspect it is relatively few.

It is unfortunate that the number of unemployable veterans is rising, and perhaps more could be done to keep a portion of these veterans working as they would probably prefer, but the rising number itself does not appear to be a symptom or sign of failure. Rather, it is a reflection of the makeup of the veteran population, the nature and effect of the more prevalent service-connected disabilities, and, perhaps, the improved responsiveness of the claims adjudication system.

We appreciate the Committee's interest in ensuring the effectiveness of programs for disabled veterans, and we appreciate the opportunity to present DAV's views.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LARRY E. CRAIG
TO RICK SURRATT

Question 1a. You noted in your testimony that the individual unemployability (IU) benefit is not a retirement benefit. Yet, statistically, more than 30 percent of IU recipients are well-past any normally accepted retirement age.

Is IU really an "unemployability" benefit when it does not take into account whether the recipient would seek work in the absence of the underlying service-connected disability?

Answer. We acknowledge the difference between a person who is not working because he or she cannot work and a person who is not working because he or she chooses not to work. However, if a veteran is in fact shown to be unable to work because of service-connected disabilities, he or she is undeniably unemployable regardless of whether he or she would choose to work absent the disabilities. It is irrelevant whether the veteran would work if able. Whether the veteran would work if able is a moot point because the fact remains that the veteran is unable. Like all questions of legal entitlement to a benefit, the decision on individual unemployability rests on affirmative evidence of existing and known facts rather than speculation about what would occur in the absence of those facts or in some other alternative hypothetical scenario. It would depart from principles of valid reasoning if we were to have a sequential adjudication in which, upon finding a veteran unemployable, the adjudicator then would have to also attempt to look into the veteran's mind to determine if the veteran would work were he or she not disabled. Such a process would not meet any test of reasonableness. Yes, IU is really an unemployability benefit.

Question 1b. If this benefit is instead serving as a pension for those beyond working age, would it be preferable to call it service pension and set criteria that make sense for that type of benefit?

Answer. Under section 101(13) of title 38, United States Code, disability "compensation" means a monthly payment made to a veteran "because of service-connected disability." Individual unemployability is the basis of a benefit paid to a veteran because of service-connected disability. Age and other "criteria" are irrelevant as a matter of law. Under section 101(15), "pension," as it pertains to veterans, means a monthly or other periodic payment made to a veteran because of service, age, or nonservice-connected disability. Individual unemployability is not paid as a "service pension" or based solely on attainment of a specified age or because of nonservice-connected disability. Individual unemployability compensates a veteran for service-connected disability total in degree. It would be the ultimate insult to the men and women who have sustained such serious disabilities in service to their country to designate their compensation as a "pension." Because the compensation laws enacted by Congress rightfully exclude age and other irrelevant factors from entitlement criteria, the fact that more than 30 percent of IU recipients are well past any normally accepted retirement age has no bearing on, or reflection on the propriety of the benefit. Many veterans with amputations, blindness, paralysis, and mental disorders rated 100 percent under the rating schedule are beyond normal retirement age also, but it would be unconscionable to terminate or reduce their compensation, or convert it to pension. Just as many of these veterans with 100 percent scheduler ratings became totally disabled before they reached "any normally accepted retirement age," many of the veterans receiving an individual unemployability rating quite probably became unemployable before normal retirement age, whatever normal retirement age is. We do not suggest that a veteran should automatically be awarded individual unemployability upon "normal" retirement, but a veteran of any age should be awarded individual unemployability if forced to terminate substantially gainful employment because of service-connected disability. As a society, we should have no rule that discourages working upon attainment of a specified age. There should be no disincentive against working to whatever age an individual chooses and is able.

Question 2. As you pointed out, the IU benefit is designed to take into account an individual's particular circumstances, as opposed to VA's rating schedule which is based on "average" impairment. But, at present, IU ratings are assigned without consideration of some individual circumstances, such as age, retirement status, and non-wage income. If the TV benefit is meant to account for the specific circumstances of an individual veteran, shouldn't it take into account all of the individual's circumstances?

Answer. Compensation should pay a veteran for service-connected disability. It should neither be paid nor denied because of age. The benefit should compensate solely for the effects of service-connected disability, and veterans should not be treated differently because of differences in their socioeconomic status. To means

test compensation would reduce it to a welfare benefit, again the ultimate insult to those veterans who suffer from some of the most debilitating service-connected disabilities. A member of today's military should not fear that our government will conveniently renege on its obligation to compensate him or her for service-connected disabilities if, as a veteran, he or she inherits money or independently has holdings or assets gained through family or individual enterprise. To reduce a veterans disability compensation because of assets or non-wage income from other sources would, in effect, have the veteran individually bear the costs of war after he or she has already paid a very high price by virtue of service to the Nation. Penalizing a veteran because of income or assets that result from good fortune unrelated to the Government would be wholly unfair. It would be unfair that a veteran would lose his or her compensation, independence, and perhaps dignity, because he or she has a successful spouse whose earnings would require forfeiture of the compensation. Means testing would destroy the compensatory nature and purpose of compensation by transforming it into a mere gratuity based on need. Means testing compensation would simply offend fundamental principles of fairness.

Question 3. You note in your testimony that, "VA adjudicators are not particularly liberal in awarding total ratings on the basis of IU. Yet, the number of IU recipients compared to the number of veterans rated 60 to 90 percent suggests that nearly 1 out of every 2 veterans rated 60 to 90 percent receives IU. Can you explain how your assessment of VA's adjudication standards squares with those statistics?"

Answer. We understand that 3,339 appeals to the Board of Veterans' Appeals during fiscal years 2004–05 involved the issue of individual unemployability. Of that total, the Board allowed 270 appeals and remanded for additional action another 2,379. Inasmuch as the Board allowed or remanded 79 percent of the appeals seeking individual unemployability, we believe that reflects somewhat on the propriety of regional office decisionmaking on this issue. If regional offices had properly denied most of these cases, the percentage of allowed and remanded cases would not be so high. In our testimony, we simply noted that our experience has shown VA is not "particularly liberal" in awarding individual unemployability ratings, observing that this is also reflected in the criticism of VA decisions on this issue by the Court of Appeals for Veterans Claims. According to our calculations, the number of veterans with individual unemployability ratings in the year 2000 was 39 percent of the veterans with ratings from 60–90 percent. In 2001, that percentage was 41 percent, and it grew every year, to 46 percent in 2004. (Pursuant to section 4.16(b) of title 38, Code of Federal Regulations, some small number of veterans rated unemployable might have schedular ratings lower than 60 percent). Certainly, the numbers, standing alone, show that a substantial portion of veterans with the more severe disabilities are rated individually unemployable. The increased percentage of veterans rated unemployable also suggests that, with age, the disabilities of our largest group of veterans, i.e., Vietnam veterans, are becoming worse, as we suggested in our testimony. The median age of Vietnam veterans is 58.3; the median age of all veterans is 59.3. Though the numbers your question cites are at least suggestive, they alone provide no factual basis from which to draw inferences as to whether VA adjudicators are or are not liberal in granting individual unemployability ratings. To answer that question, we would have to know what portion are in fact unemployable, or least have a reason for assuming what portion would be expected to be unemployable. As we noted in our testimony, an increased prevalence of mental disorders, primarily posttraumatic stress disorder, among veterans, principally among the largest group, Vietnam veterans, is known to account for much of the increase in veterans rated unemployable. Consider again the requirements for a 70 percent rating for a mental disorder:

Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; new continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work like setting); inability to establish and maintain effective relationships.

Because symptoms of this magnitude are likely to make virtually any veteran unemployable, 100 percent of the veterans with mental disorders rated 70 percent arguably should be in receipt of individual unemployability benefits. According to VA data, 35 percent of the veterans rated individually unemployable have mental disorders, of which 25 percent have PTSD. Thus, while the raw numbers of veterans rated individually unemployable as a percentage of all veterans with ratings from 60 to 90 percent do not provide any basis from which to draw conclusions about the

liberality with which adjudicators grant total ratings based on individual unemployability, numbers such as those pertaining to veterans with PTSD do provide a basis from which to infer that large percentages of veterans with certain disabilities should rightfully be rated unemployable. VA certainly attributes much of the increase in individual unemployability ratings to PTSD. It also may well be that adjudicators find it more difficult to justify denials of individual unemployability for mental disorders—given the extent of disability required to meet the 70 percent rating criteria—than they do in the cases of veterans with disabilities other than mental disorders. It is just as likely that the percentage of 60 to 90 percent veterans currently in receipt of individual unemployability ratings suggests that adjudicators allow too few of these claims as it is that they suggest liberality in granting the benefit.

Question 4. It is my understanding that your organization was founded partially in response to prejudices against disabled World War I veterans that prevented them from reintegrating into the civilian workforce. In light of that history, I would be interested to know whether you agree with my assessment that employment is a positive outcome and that “totally disabled” or “unemployable” should be findings of last resort?

Answer. The DAV was founded in reaction to high unemployment and woefully inadequate programs for disabled veterans of the first World War. In his June 27, 1922, address to the DAV’s second National Convention, DAV National Commander Judge Robert S. Marx reflected on the situation:

Frequently during the past year we have had to fight for our comrades, but personally I do not mind a fight and there is no cause in the world for which I would rather fight than that of the Disabled Veterans of the World War. We have had to fight for more hospitals and better hospitals. We have had to fight for real vocational training. We have had to fight for just compensation. We have had to fight against red tape, inefficiency and indifference. . . .

It seems that some things never change. Despite his explanation of the necessity for advocacy on behalf of disabled veterans, Judge Marx later explained that veterans fought for their country and the American goal of world peace rather than to become disabled veterans and to receive veterans’ benefits:

[W]e did not fight this war in order to secure benefits for our comrades. We did not fight the war in order to obtain money from Congress nor to provide work for the builders of hospitals or the surgeons of the Nation. These things are the sad incidents that follow as the necessary aftermath of every war. . . . We have said that the war is not over for the men who gave their limbs and lungs, their eyes and their health to make a realization of these ideals possible.

Today, DAV’s “Statement of Policy” begins with the following: “The Disabled American Veterans was founded on the principle that this Nation’s first duty to veterans is the rehabilitation and welfare of its wartime disabled.” DAV National Service Director Edward R. Reese, Jr., was a member of the VA Vocational Rehabilitation and Employment Task Force that recently conducted a “top-to-bottom” review and evaluation of the program and made comprehensive recommendations for improvement. The DAV’s first priority is the well being of disabled veterans. The DAV believes in responsible, honest advocacy for them. We support effective vocational rehabilitation programs. Of course we agree that employment is a positive outcome. The DAV is a strong supporter of employment programs for veterans. However, some veterans are simply unable to work, and a veteran does not become totally disabled or unemployable at a time of his or an adjudicator’s choosing. It is not a matter that is subject to willful control or timing. It is therefore not a matter of a “finding of last resort.” In our experience, persons who possess the personal drive to serve in the Armed Forces and willingness to put aside their personal interests and make extraordinary sacrifices for their country also possess a strong work ethic. Most want to work if they are truly able. Moreover, most would probably not find the relatively modest disability compensation paid to totally disabled veterans an enticement to feign total disability. Consequently, we think our Nation’s disabled veterans will find the suggestion that they are not working out of laziness or for some other reason of personal choice offensive and insulting.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. AKAKA
TO RICK SURRATT

Question 1. Mr. Surratt, as someone working for a veterans service organization, you are in constant contact with veterans throughout this country. What message do you think veterans with PTSD may be getting as a result of the PTSD Review

coupled with this inquiry into the state of VA's Individual Unemployability determinations?

Answer. The Department of Veterans Affairs (VA) routinely conducts quality reviews of its rating decisions. The DAV believes these quality reviews should be more comprehensive. Though a reviewer might occasionally find a questionable allowance, we suspect erroneous denials are more of a problem. Also, VA conducts routine future reviews of disability ratings in those cases where improvement in the disability is likely. Of course, such reviews are entirely proper, and they are usually expected by veterans whose disabilities have not stabilized. Veterans understand the purposes and necessity for such routine reviews of decisions for quality assurance and reevaluation. Unlike the PTSD review, these routine reviews do not single out specific groups of veterans because of the nature of their disabilities or type of rating. Moreover, VA does not widely publicize these routine reviews in an attempt to appease critics or influence the court of public opinion, as it has with the PTSD review. In our view, VA needlessly caused additional anxiety among a group of veterans whose disabilities already make them anxious, insecure, and highly vulnerable to heightened worry about perceived personal threats to the disability benefits they and their families rely on for the necessities of life. Mistrust of Government among this group of veterans can only be made worse by such missteps. Because VA has authority to sever service connection only in the case where the grant was completely devoid of a factual basis, absolutely contrary to law, or obtained through fraud, VA would have had reason to contact very few of these veterans and alert them to the review in connection with an effort to substantiate the claim. Most of these veterans could have been spared the increased distress caused by the highly publicized plan of review. Veterans' suspicions that this review would be a "witch hunt" were fueled by knowledge that the Office of Inspector General review and the planned Veterans Benefits Administration review appeared one sided in that only allowed cases were to be scrutinized. State-to-State variations in average compensation payments therefore seemed only a pretext for embarking on a campaign of second-guessing earlier adjudicative judgments with a view toward reducing the compensation rolls, for, if VA had truly been interested in variations and their causes, it would need to review both allowances and denials. Fortunately, VA has wisely made a decision not to proceed with the PTSD review. Unfortunately, veterans with individual unemployability ratings, many of whom suffer from mental disabilities, are now being subjected to the same kind of worry. We do not in any way question the Committee's oversight responsibility, but an increase in the number of veterans awarded total disability ratings on the basis of unemployability does not by itself necessarily suggest that something is amiss within the system. Had the hearing not approached the issue from a perspective of that suspicion, veterans would not have become as concerned that its motives were not pure. Had we sought to learn more about the dynamics of the increase in unemployable veterans before suggesting changes, veterans may have been more trusting. Personally, I do not believe the approach of the profit-driven commercial insurance industry would be an appropriate model for veterans' programs, but the seemingly serious reception that idea received is understandably a matter of concern for disabled veterans. Suggestions of means testing compensation or discriminating in individual unemployability ratings on the basis of age no doubt causes disabled veterans to see these actions as threats to their benefits. Had the hearing merely been an inquiry into the causes for the increase in individual unemployability ratings, rather than making a statement of doubt about the propriety of the benefit, it would not have sent the negative signal it did. Now that this issue has already been given such a high profile, we feel compelled to assure our members that we are following developments and are prepared to deal with the matter appropriately, where we would have no need to accentuate awareness otherwise. As an example of how worries about these reviews burden disabled veterans and their families, I quote this statement from a message of concern we recently received:

So, here is my question, like a nightmare my husband is 100 percent service connected. If he loses his benefits, I don't know what will become of us. We will lose everything. We are both ill, of course, we live out away from people, he is your prime example of PTSD, and to know that he's honorably served his country, he has air medals, purple heart, army commendation medal, I really don't know what they all are, he won't talk about it. He says it just brings back a time he prefers to forget, as he relives some part of it everyday.

Can they really just take your only source of income away from you? We are worried, my husband is well, let's just say, he's awfully upset. Can you elaborate on just how this will effect people like us all veterans. They deserve better than this. My husband is in his late 50's, I'm lucky to still have him. I'm just sick about all this news.

Question 2. Mr. Surratt, is the ability to plan for retirement different for the average worker than for a severely injured veteran receiving VA compensation?

Answer. Working persons often have retirement plans. Workers who become disabled and receive social security disability insurance benefits do not actually lose their benefits at normal retirement age. The benefit merely changes from the disability insurance benefit to the retirement benefit. It would be expected that a disabled veteran would not have the same ability to have a retirement plan or to build an estate as a non-disabled person. In theory, partially disabled veterans would not have a capacity equal to a non-disabled person to build an estate and save for retirement. Obviously, some veterans would be totally disabled upon military discharge, while others may not become totally disabled until later years. The compensation program does not distinguish between all of these variables and nuances. Compensation has always been a lifelong benefit because paralysis, blindness, amputations, permanent injuries, and chronic diseases cause lifelong disabilities. Until recently, we had never seen anyone seriously question the principle that disability compensation is a lifelong moral obligation of the Government. Congress enacted what is now § 1318 of title 38, United States Code, to authorize dependency and indemnity compensation for survivors of veterans who died after a long period of total disability in recognition that disabled veterans do not generally have the same ability to build an estate as non-disabled persons. After discussing the effect of a veteran's death upon dependent survivors where the veteran was totally disabled, Congress observed:

In many, if not most of these situations, the surviving spouse is middle-aged or older. At such an age, it is very difficult for the surviving spouse (almost all of them widows) to become self-sufficient, and the veteran's estate is likely to be inadequate for her support.

S. Rep. No. 95-1054, at 28 (1978).

Referring to a bill similar to the one reported, this Committee stated:

Such proposed legislation is based, as is this provision in the Committee bill, on the premise that the presence of a 100-percent service-connected disability may reduce normal life expectancy and, even more importantly, so overwhelm a family as to prevent the normal accumulation of an estate sufficient to provide for the survivors.

Id. at 31.

If the cessation of income from compensation due to the veteran's death would create a hardship for a survivor, the termination of compensation during a veteran's lifetime would quite probably have a much more devastating effect upon the veteran and his or her family, as is explained in the correspondence we quote above.

Chairman CRAIG. Thank you very much. We are in the tail end of a vote. We had better get there or they may close us out. Our leader is trying to create a new discipline in the Senate, timely voting.

We are going to stand in recess for a few moments. I certainly will return, and I believe others will, to question you in some of your comments. Again, thank you for being here.

The Committee will stand in recess.

[Recess.]

Chairman CRAIG. The Committee will be back in order. Again, thank you all very much for your patience. I have a set of questions here, and I think Senator Akaka will attempt to return with some questions as we probe both of your testimonies just a little bit. And, again, thank you for being here.

Cynthia, your testimony makes it clear that the private insurer GAO analyzed makes the up-front investment necessary to help individuals with disabilities return to work; whereas, VA's approach may be best described—well, I guess the term that I am using here is pound-wise and penny-foolish.

Is that a fair characterization of VA's efforts? Am I being overly harsh?

Ms. BASCETTA. I wish I had harder data to answer the question more concretely, but my guess is that it is not overly harsh. I say that because we do not know what VA's actual costs are to adjudicate the claims, and we do not know what those costs are in relation to the benefits paid out. But what we do know is that in the private sector, insurers looking at what could be potentially a very large stream of future benefits have made the decision that it is cost-effective to make a significant up-front investment, both in assuring that their determinations of who they are going to get back to work are well supported and that they invest in that person to assure that there is a successful work outcome.

I guess another way of looking at it is that we do not think enough attention is being paid to the opportunity costs of not making that up-front investment.

Chairman CRAIG. Should the VA be well positioned to exceed the help private insurers provide because of its vast health and vocational rehabilitation resources?

Ms. BASCETTA. Yes, and, in fact, in many ways VA is very well positioned. I used to do Social Security work and was frustrated by the fact that the Social Security Administration cannot pull together the VR services because they are in the Department of Education or the Health Care Services because they are in CMS or the private sector. But VA has under its own roof not only the rating specialists, but physicians, other medical specialists, and vocational specialists who can all pull together to both assess a person and manage their return-to-work process.

They do not have the case manager piece, although under the seamless transition effort, as you know, they have a model where they would have a case manager who would be in charge of tracking that complex set of benefits that a servicemember would need to transition back to civilian life. So they have a concept that they could bring over to the IU side of the house or to the return-to-work processes.

Chairman CRAIG. Some may argue that a comparison between private disability insurance beneficiaries and VA IU beneficiaries is not valid because veterans' disabilities are of a fundamentally different nature. How would you respond to such an argument?

Ms. BASCETTA. Well, first of all, I would make the point that VA's goal is to restore the capability of veterans with disabilities to the greatest extent possible, and that is entirely consistent at the level of a goal with what we have seen in the private insurers that we have looked at. What is starkly different is the contrast between the goals that they have and the practices that they apply to achieve those goals.

Having said that, though, we know that—and as I said in my written statement and in my oral remarks, there are important differences between Government programs and the private sector, and none of these changes, should we decide that they are appropriate, would happen overnight. They would at a minimum require regulatory change, but they could require legislative change as well.

Chairman CRAIG. If the model of the private insurer industry were adopted by VA, would it work on veterans with disabilities of the type and severity seen in the IU beneficiary population?

Ms. BASCETTA. That is a good question. One of the frustrations that we have is that we do not believe that VA's data is always good enough to know exactly the conditions of those who are on the rolls, both in terms of the severity of the condition or their demographics. And in this case, clearly the comparison that we would make is that the private sector does, in fact, deal with claimants who are very seriously disabled. For example, claimants who have sustained traumatic injuries in car accidents or other kinds of accidents or who have chronic disabling diseases would be very similar to the veteran population, and they do not in any way shy away from the severely disabled.

In addition, with regard to IU in particular, we know that those claimants are coming in with a 60-percent rating, not a 100-percent rating. So this is where it becomes difficult, because of data limitations and because of the difficulty with the rating schedule to make accurate comparisons in severity of disability.

But if the thrust of your question is, are the private insurers that we looked at dealing with people who are very severely disabled, the answer is yes.

Chairman CRAIG. Your testimony states that private insurers are in close contact with a claimant's treating physician to ensure that the claimant has an appropriate treatment plan focused, in many cases, on timely recovery and return to work. Could you contrast this approach with the level of involvement the Veterans Health Administration has with individuals whom the Veterans Benefit Administration has deemed unemployable?

Ms. BASCETTA. We have not completed our work on this, but what we know, so far, is that the VHA physicians typically are compensation and pension examiners, special physicians in VHA who do the disability assessment, but not necessarily the treating physician. But I cannot say that in all cases there is not a link between VBA and the VHA treating physician if, in fact, the claimant's treating physician is in the department.

What is important to remember is that in the private sector, the reason that this link is so essential is to assure that the medical treatment that is integral to the return-to-work success actually happens, and those claims managers monitor that, in fact, the person is getting the appropriate treatment that is designated in their plan.

Chairman CRAIG. With the inclusiveness of the capability of the VA, as you expressed in another response to a question, is it fair in this instance to say that the right hand knows what the left hand is doing in the context of VA and physician tracking?

Ms. BASCETTA. We have not evaluated that yet. It would not be fair for me to make that comment at this time, although I think there probably is not enough integration between VBA and VHA on this issue.

Again, with regard to the seamless transition, they are working together there, so they have figured out in that situation that there is a model they can be using to pull together the resources of both sides of the house.

Chairman CRAIG. OK. Your testimony points out that private insurers use highly qualified staff to perform benefit assessment. Can

you contrast for us the qualifications of VA staff who make IU determinations with those of the private insurer?

Ms. BASCETTA. Yes. The VA staff, of course, have physicians who do not make the employability decision, but who are highly qualified to provide the input that is important to make that decision. And they have VR staff who would be qualified to make the vocational assessment.

We think part of the problem is the vocational specialists on the VR staff are not an integral part of the decision, and it is the claims adjudicator who is making the decision. Those folks are not well enough trained to make an employability assessment.

Chairman CRAIG. Is it a question that the skill sets needed for an effective return-to-work approach do not exist at VA or that they are simply misplaced or not effectively used?

Ms. BASCETTA. I think they do, in fact, exist at VA. They need to do a better job bringing to bear the resources and expertise that they have.

Chairman CRAIG. OK. Thank you. We appreciate your testimony.

Rick, let us turn to you. Cynthia has testified that in GAO's view, VA's IU program lags behind other unemployment and disability programs. You, on the other hand, testified that the VA system does not appear to be failing. Would you help us with that conclusion based on these other observations?

Mr. SURRETT. Well, I think I said that we cannot determine from what we have that there is a failure responsible for the increase in IU awards. The increase itself is not necessarily suggestive of some failure.

The second part of your question, I believe, is her remarks regarding private insurers versus VA?

Chairman CRAIG. Yes.

Mr. SURRETT. Well, VA is, I guess, probably the largest disability determination agency in the world, maybe, certainly in the U.S., probably larger than these private insurers. And I do not know much about private insurers' practices. And I agree with Cindy to the extent that perhaps the vocational rehabilitation people could play a greater role in the adjudication process, but beyond that, I think many of these veterans—and you have heard the criteria on mental disorders—if you have a 70-percent rating, I think most people would agree it is highly unlikely you are going to be able to function in a work setting, not even in a vocational rehabilitation setting.

So these people that assess these disabilities on a daily basis look at them from how they function in daily life, and they can determine that their remaining functional capacities are so narrow that they are simply incompatible with the regular demands of work, meeting work schedules, being there for 8 hours, interpersonal interaction with co-workers and supervisors and customers and so forth. And so I think they have a general understanding and a general knowledge of those things and probably do a pretty good job of making the decisions on those bases.

Chairman CRAIG. OK. An IU recipient currently receives about \$26,000 per year in disability compensation, which is obviously far less than the median household income in this country. Do you believe the current system may actually be suppressing disabled vet-

erans by encouraging dependency on a minimum benefit rather than empowering veterans to move out into the workplace where they might prosper at a higher level?

Mr. Surratt. I would just have to answer that based on my experience. I have represented veterans some 18 years in claims, and I think that most veterans would prefer to be working if they were truly able. You are going to find exceptions. I think most veterans would not want that \$26,000 if they were truly able to work and would be pursuing gainful employment.

Chairman CRAIG. OK. Let me turn to Senator Akaka.

Danny.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Surratt, in your testimony, you note that progressive or degenerative conditions worsen with age and that an aging veteran, one from Vietnam in particular, could account for increased numbers of veterans who are unemployable.

My question to you is: Can you tell me whether or not you think that age should be made a factor when making IU determinations?

Mr. Surratt. If, Senator, you are saying should there be a point at which we would no longer grant unemployability, I can answer that question, I think. Yes, sir.

Senator AKAKA. Yes, whether age should be made a factor in determining IU?

Mr. Surratt. I think that would be unfair and unwise. Let me give you an example. Let's say we have a veteran with a very severe disability, who struggles and despite his severe disabilities works beyond the normal retirement age, works to—let's say that we set a rule that beyond age 65 you could not claim unemployability, and let's say this veteran worked to age 68 and he was an unusual veteran and he worked despite severe disabilities. And he comes into the VA and they say, sorry, Mr. Veteran, due to your unusual determination and your perseverance and the fact that you worked despite all these obviously serious conditions you have, we are going to penalize you, and we are not going to grant unemployability. Now, had you come in at age 64, given the severity of your disabilities we would have probably granted IU. That is unfair.

Now let me get to the unwise aspect of that. Same scenario. You have a rule that says that we do not grant unemployability beyond age 65. I am this veteran and I am in the same condition. I am struggling, but I want to hang on. I take pride in work, and I want to work as many years as I can. And maybe I could work 2 or 3 more years, despite the advancement of my disability. But I realize that if I work beyond age 65, I cannot claim IU. So I may very well decide to just give it up now.

So you are thereby creating an incentive for veterans to stop working earlier and costing the Government more money than you would otherwise if they worked to later years.

So, no, I do not think an age limitation is fair or wise for those reasons.

Senator AKAKA. Mr. Chairman, I have just one more question, and I want to direct it to Ms. Bascetta of GAO. Do you believe that vocational rehabilitation and compensation and pension can absorb taking on a greater role for determining IU without sacrificing the

level of service they currently give to their clients? For example, has GAO determined the costs of vocational rehabilitation and employment taking on a greater role in determinations of individual unemployability?

Ms. BASCETTA. No, we have not done that, and we have not done it with respect to this program and we have not done it with respect to our broader concerns about all Federal disability programs and whether or not they need to be fundamentally reformed. It is a very important question. I think there are legitimate concerns that, in fact, the costs of providing return-to-work assistance could exceed the benefits that are paid out now. In other words, simply providing cash benefits may be the least expensive option. But if that is true, it probably is not the one that best serves the veterans or anybody with a disability.

Senator AKAKA. Mr. Surratt, as someone working for a veterans service organization, you are in constant contact with veterans throughout this country. Are you concerned with the message that veterans with PTSD may be getting as a result of the PTSD review, coupled with this inquiry into the state of VA's individual unemployability determinations?

Mr. Surratt. I think truly that these reviews are being well publicized and they are causing a great deal of anxiety in the veteran public. I understand the Chairman's position that we do have to monitor these programs to see that they're operating properly. I again would caution, as I did in my statement, that I do not think we should jump to any conclusions that they are operating improperly just because we have an increase in people on the disability rolls.

I think VA should be very cautious about the way they contact particularly mentally disabled veterans. We heard in a hearing last week in the House that we had a suicide, and we heard that perhaps some of the VA offices had sent veterans letters asking for information prematurely and so forth.

So, yes, there has to be a balance. You have to uphold your responsibility in running Government programs properly, but you have to be very careful, particularly with PTSD veterans and veterans on unemployability. I think they are scared and I think they do perceive that there is an effort to cut back on the rolls to save money and so forth.

Senator AKAKA. Thank you very much, Mr. Chairman.

Chairman CRAIG. Danny, thank you.

Rick, let me pursue a couple more questions. Maybe if I am hung up on an issue, maybe it is terminology. The Congressional Research Service—and it is a fairly well-known fact—will tell you that with men age 65 and older, only about 19 percent continue to pursue work in the workplace in today's figures. And you are right, you have given exceptions or you have spoken to a type or a personality with a phenomenal work ethic. And they are out there. There is no question about it. I lost a father this summer who worked up until 6 months before his death, and he died at 87. He had a work ethic that got him up every morning and moved him out, and he would have done so, almost if he had to crawl to work. That is the character of the individual.

But having said that, you know, when I hear the term “unemployability,” it is like workmen’s compensation or it is to compensate somebody who cannot work versus somebody who now is in an age who will not—I should not say “will not” work—is not working, retired. And yet that benefit continues in that terminology. Is it a terminology issue? I am not sure.

I guess my frustration, if there is one—and the reason we pursue this—is maybe said better in this statement. Your testimony suggests that in assessing unemployability, VA should focus on a veteran’s disabilities. I think that the Disabilities Act and all that we have come to be as a country, and appropriately so, would suggest something else.

For instance, your position that the loss of both legs might totally disable a common laborer with little education. To me that seems contrary to the modern model, the view that we should focus on the abilities rather than the disabilities. You were probably in the room the day we had the young Black Hawk operator here with both legs off, determined to get back in her helicopter and fly. And she is getting there.

So with many young servicemen returning from Iraq and Afghanistan with traumatic injuries, I believe it is critical that we provide them with the tools they need to live independently and to prosper if they can.

Question: Especially for those young veterans, do you agree that VA should assess a veteran’s remaining capabilities and the possibility of achieving a vocational goal before deeming a veteran unemployable?

Mr. Surratt. No. I think that if a veteran is unemployable currently, they should be so rated because they cannot live off of—let’s say they are 60 percent and they are unemployable and they have a family. And you are going to require them to go through vocational rehabilitation, the evaluation and that process, and rehabilitate before they start earning wages, I mean, there is going to be a serious shortfall in their income in the meantime.

So if they are, in fact, unemployable in their present circumstances, they should be so rated and certainly VA should aggressively pursue vocational rehabilitation. And as you have heard, they can go through the vocational rehabilitation without losing their IU rating. They could have a period of trial work up to a year without losing that IU rating.

Senator, if I may, earlier in that question, you asked what I perceived to be a separate question, and that is—

Chairman CRAIG. Process, yes.

Mr. Surratt. Why do we pay unemployability to people who are of retirement age? Well, first of all, many times the unemployability is granted while they are still at working age, and we see by the chart that that is true. And these people do not earn money like other people throughout their life and put away retirement nest eggs. Compensation is a lifelong benefit, going back to the amputee with both legs. We don’t cutoff his compensation at 65. He has that for the rest of his life.

Well, unemployability is the same thing. And you are correct. If a veteran is beyond normal working age, whatever that might be given this day and time and given your father’s experience and so

forth, then certainly VA should look harder at the case and make sure that the veteran just has not decided to stop working and coincidentally claims IU. I mean, there should be a factual basis for determining that his disability is of such a severity—again, you have to focus on disability here—to be incompatible with what we know is required in work out there in the competitive world.

Chairman CRAIG. OK. Though you and I are probably going to disagree a little bit on that, I absolutely agree with you as to the transitional time involved here and the compensation necessary during those periods of time. But in a situation you—do you believe that it would be a better outcome if VA were to provide those veterans with the educational training necessary to perform the work rather than to simply label them as veterans unemployable? I see a transition time here—and I think you speak to it well—when those determinations are being made, whereas in the private sector there is an insistence, if not a requirement, that if you are capable, you go out and seek the education and the training to get back into that workforce. While we monitor, we provide, we do not require. That is one question.

I think the other thing I have concern about in light of resources and resource management, you are right, someone who has lived at the \$26,000 level or below most of their life, was not able to establish a nest egg, I believe the only qualification we have is earned income. We have no other assessment of total capability of retirement or continuing life, if you will, even though they maybe have a substantially large inheritance and they may have a substantial income flow. We do not know that because we do not ask that question because there is no means test, in my understanding, beyond earned income.

You know, I am in the business of making sure that we cover as much as we can cover with the few dollars we have. Should there be a broader test than earned income at a certain point in time, 65 years of age and older?

Mr. SURRETT. Well, if you do that, you are changing the fundamental nature of compensation, which compensates for the disability irrespective of your fortune or misfortune otherwise. And if I happen to inherit, have a large inheritance, that should not—

Chairman CRAIG. You said disability, but the term we are using is “unemployability.”

Mr. SURRETT. Well, maybe we could find a better term. I do not know what it would be because that is the essential fact to that rating, that your disabilities are such that they keep you from working. And I would have no objection to changing the term, but I think the term represents the concept.

Chairman CRAIG. OK. Well, to both of you, thank you very much for your time and your due diligence in this area, and obviously, Rick, your service to our disabled is beyond question. And, Cynthia, you know, we all know there are differences in comparisons, but there is a basis from which we have to look to make judgments to make sure that we have this system operating as effectively and as efficiently as it can. And I tie the two together, effectiveness for our veterans, efficiency for our veterans, because I think it means the right things in both instances.

We will continue to monitor and watch this very closely as we work with the Admiral and his staff and people within the VA to make sure that we have a program that obviously benefits the veterans, but I really want this program to assess the capability while we are assessing the disability.

I see a generation of young people today coming home substantially impaired, but with high hopes that they are going to be back out into the private sector, out into their own lives again, being productive citizens. And I think that technologies today and a lot of other assets out there can allow that to happen, and we ought to be optimizing our ability to serve them to cause those goals to be reached.

To both of you, thank you very much for your time here today.

Mr. Surratt. Thank you.

Ms. Bascetta. Thank you.

Chairman Craig. The Committee will stand adjourned.

[Whereupon, at 4:04 p.m., the Committee was adjourned.]

A P P E N D I X

[From the Salon, Oct 26, 2005]

THE V.A.'S BAD REVIEW

(By Mark Benjamin)

(Early this month, a vet in New Mexico took his life. At his side was the agency's plan to question benefits for mental trauma.)

On Oct. 7, the remains of eight American Vietnam veterans were laid to rest in a single casket at Arlington National Cemetery, after lying in the jungle in Vietnam for over 35 years. Their unit was overrun by two enemy regiments on May 10, 1968.

John M. Garcia fought in Vietnam with the 4th Infantry Division in 1969 and 1970. He came all the way from New Mexico to Northern Virginia for the burial because he once knew a Marine whose body was now in that casket. Bringing those veterans home and giving them the respect they deserve was the right thing to do. "It is a beautiful story," Garcia said.

Garcia is the cabinet secretary of the New Mexico Department of Veterans Services, a state agency that aids veterans and helps them get Federal benefits from the Department of Veterans Affairs in Washington. The Federal agency provides veterans medical care after their service and sends disabled veterans monthly checks if needed, up to \$2,000 a month.

When Garcia got back to his office the following Monday, his phone rang. Another Vietnam veteran needed to be buried. But this one had died by his own hand. "I was stunned," Garcia said in a telephone interview from Santa Fe. "And I was even more stunned at why."

On Oct. 8, Greg Morris, 57, was found by his wife, Ginger, in their home in Chama, N.M., an old mining town of 1,250 in the Rocky Mountains. Lying at Morris' side were a gun and his Purple Heart medal. For years, Morris had been receiving monthly V.A. benefits in compensation for post-traumatic stress disorder. Next to his gun and Purple Heart was a folder of information on how the V.A. planned to review veterans who received PTSD checks to make sure those veterans really deserved the money.

Last spring, the V.A. began to quietly draw up plans to take another look at nearly 72,000 veterans who from 1999 to 2004 had been classified as disabled and unemployable because of mental trauma from war. The V.A. plan, about which *Salon* was the first to report on Aug. 9, would review previous decisions to grant disability benefits to veterans incapacitated by PTSD.

Veterans advocacy groups are irate, charging the department with trying to save money at the expense of the men and women traumatized by war. They say mentally troubled veterans will be shocked, hurt and afraid of losing their monthly checks.

Many veterans said the review was bound to trigger suicides. "It is my educated opinion that [the V.A.] will kill some people with this," Ron Nesler told me on Aug. 24. "They will either kill themselves or die from stroke."

Nesler served in Vietnam in 1970 and 1971 and is coincidentally from New Mexico. His traumatic memories include a Claymore mine blasting a busload of civilians near his artillery base. He has been getting disability checks for PTSD for years.

On Aug. 11, he received a letter from the V.A. saying that his file was one of those in its review. He said the letter left him shocked, angry and afraid. The letter warns that "confirmation" of his mental wounds "had not been established" and that his file at the V.A. "does not establish that the event described by you occurred nor does the evidence in the file establish that you were present when a stressful event occurred." (The V.A. recently determined, again, that Nesler's claims are legitimate.)

The letters themselves generated considerable controversy. "It was like Russian roulette," Garcia said. "You are dealing with lives. You don't do that. You don't just

send out information to people who are suffering from some sort of mental stress saying, 'We are going to take these benefits away.'

Morris was a member of AMVETS, a service organization for veterans, whose issues were close to his heart. He was also one veteran who sent a clear message back to the V.A. "The evidence indicated that he committed suicide because he was frustrated and afraid that the V.A. was going to take his benefits away," Garcia said. By all accounts, he was a troubled veteran who had attended counseling. And medical studies have shown that people with PTSD often suffer intense suicidal or homicidal rage. "People will say, 'Well, he's got problems,' Garcia said. "Well, that was just enough to push him over the edge."

Morris did not receive a review letter from the V.A., but the prospect clearly upset him. "He was greatly shaken by the announcement of the V.A. review," Rep. Tom Udall, D-N.M., said in a statement calling for a halt to the review. Udall also said Morris "frequently inquired whether he would be losing the support he did receive" before he committed suicide. "He believed, as so many veterans do, that he was being forced to prove himself yet again. It is that belief that makes veterans so angry and so frustrated with this process."

Recently, Garcia was contacted by the wife of another Vietnam veteran who did get a letter from the V.A. "As a result of this letter, I have spent the last three nights watching him walk the floor, scared his benefits are going to be cutoff," the wife wrote. "This morning, I went to work, and when I called my husband to inform him that I was safe at work, he told me he was going to 'fix everything.' I left work, and when I returned home, he had called his brother to pick [up] the two guns he owns."

Garcia said that when the wife got home, the veteran "had his rifles out and they were fully loaded. His family arrived in time to prevent him from doing it." Garcia told me the V.A. review has to be stopped. "We lost a veteran because of it," he said, adding, "I don't know how many more have tried" suicide.

The V.A. inaugurated the review after the department's inspector general issued a report last May that showed the agency had been inconsistent in granting full disability benefits to veterans with PTSD. The report found that the likelihood of a veteran getting the maximum payment varied widely in regions across the country, calling into question the evaluation procedures.

V.A. statistics show that in 2004 an average of 9 percent of vets in New Mexico, Maine, Arkansas, West Virginia, Oklahoma and Oregon received a 100 percent disability rating, entitling them to the maximum payment. In contrast, an average of 3 percent of vets received the maximum payment rating in Indiana, Michigan, Connecticut, Ohio, New Jersey and Illinois. The review will ultimately cover 72,000 veterans but has started with a group of 2,100. There is a lot of money at stake. PTSD benefits have soared from \$1.7 billion in 1999 to \$4.3 billion in 2004, as more veterans learn about the condition and the V.A. benefits for it.

"We have a responsibility to preserve the integrity of the rating system and to ensure that hard-earned taxpayer dollars are going to those who deserve and have earned them," Daniel L. Cooper, the V.A.'s undersecretary for benefits, told *Salon* in a written statement last summer. (A V.A. spokesman did not return calls seeking comment on Morris or the current state of the review.)

The original inspector general's report warned that 2.5 percent of veterans getting 100 percent disability checks for PTSD might be "potentially fraudulent." It noted "an abundance of Web sites" that were "offering ways to compile less than truthful evidence" to get monthly checks. It also said one Web site was selling a fake Purple Heart for \$19.95.

Concern about fraud may be ill-founded. According to an Oct. 19 letter from seven Senate Democrats to their colleagues, arguing in favor of an amendment to halt the V.A. review, no cases of fraud have been identified. "At a time when service members are returning from war and straining an already burdened system, this review raises serious questions of costs and efficiencies," the letter stated.

Some lawmakers have launched an all-out effort to halt the V.A. review. In September, the Senate passed an amendment to block it. Drafted by Sens. Patty Murray, D-Wash.; Barack Obama, D-Ill.; Dick Durbin, D-Ill.; and Daniel Akaka, D-Hawaii; the amendment was attached to a Senate bill that funds the V.A.

Conferees from the House and Senate must now decide if the final bill that lands on the President's desk will contain a prohibition on the review of 72,000 PTSD claims.

On Oct. 14, a bipartisan group of 54 House members led by Rep. Peter DeFazio, D-Ore., wrote to key conferees to urge them to adopt the Senate ban on the review. "It just sends a terrible message to those who are serving in the military today for the VA to attack and question whether those who served before are entitled to receive the benefits the VA itself previously approved," the letter said.

Last week, the House Committee on Veterans' Affairs held a hearing on the review. Before Garcia left for Washington to testify, he called Morris' widow. "She said she was happy" that her husband's suicide and the V.A. review would be brought up in Congress, Garcia said, "because maybe then his death would mean something."

