

**EXPEDITING CLAIMS OR EXPLOITING STATISTICS?:
AN EXAMINATION OF VA'S SPECIAL INITIATIVE
TO PROCESS RATING CLAIMS PENDING OVER
TWO YEARS**

HEARING

BEFORE THE

**COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

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EXPEDITING CLAIMS OR EXPLOITING STATISTICS?: AN EXAMINATION OF VA'S SPECIAL INITIATIVE TO PROCESS RATING CLAIMS PENDING OVER TWO YEARS

Wednesday, May 22, 2013

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [Chairman of the Committee] presiding.

Present: Representatives Miller, Bilirakis, Roe, Flores, Denham, Runyan, Benishek, Huelskamp, Amodei, Wenstrup, Cook, Walorski, Michaud, Brown, Takano, Brownley, Titus, Kirkpatrick, Ruiz, Negrete McLeod, Kuster, O'Rourke, Walz.

OPENING STATEMENT OF CHAIRMAN MILLER

The CHAIRMAN. The Committee will come to order.

Welcome to today's Full Committee hearing entitled Expediting Claims or Exploiting Statistics?: An Examination of VA's Special Initiative to Process Rating Claims Pending Over Two Years.

As I initially stated when this initiative was first announced and as I will reiterate throughout the hearing today, although this new approach sounds promising, I think it is critical that this Committee work closely to ensure that it is good policy and not just good public relations.

I will admit and people probably already know that I was very frustrated by the fact that both Secretary Shinseki and the VA benefits officials had testified before this Committee several times in the weeks just before this initiative was announced, yet there was no mention of this initiative to this Committee as a means to address the backlog.

I would like to take this opportunity to emphasize that an open dialogue between VA and this Committee about the backlog and other issues affecting the department is more than critical.

So I hope VA will take this into consideration as it continues to address new strategies about how to address the backlog in the disabilities claims process.

And turning back to the initiative that we are here today to focus on, I would like to emphasize that VA must not shift resources and manpower away from processing new claims as they seek ways to clear out older claims. Every veteran deserves a thorough, fair, and timely evaluation of their claims regardless of when that claim might have been filed.

This policy should not interfere with that concept and I hope that it is not a practice that will continue for a long period of time.

However, the Committee has heard several concerns from stakeholders in the process, namely that regional office employees lack guidance on how to carry out some aspects of the initiative.

For example, it is currently unclear to many in the field how claims processors will follow-up on provisional ratings that have been issued one year from now.

Concerns have also been raised that VHA cannot schedule required VA examinations within the required timeframe to have these oldest claims adjudicated by the June deadline.

Further, there are some concerns that this initiative involves some statistical manipulation.

For example, when a provisional rating is issued, the controlling end product is cleared. If a veteran submits additional evidence within the one-year provisional period, this evidence is assigned a new end product with the date of claim being the date the new evidence was received, not the date that the underlying claim it is associated with was first filed.

Although clearing and entering end products in this manner will ultimately make the statistics on the backlog look better, they do not get to the heart of the matter which is how VA plans to improve its workload management processes in the future.

Finally, VA has stated that of the claims it has completed as part of the initiative thus far, many were able to be finally adjudicated rather than issued provisional rating decisions. And this begs the simple question, why these claims were not adjudicated prior to the initiative and, again, what VA is doing to better address its workload management practices to prevent situations like this from arising in the future?

Now, despite these concerns, I applaud VA for acknowledging that waiting a year, two years, or even longer is too long for our Nation's veterans to receive their earned disability benefits.

VA has stated that to date, they have processed approximately 22,000 of the nearly 42,000 claims identified for the initiative and that they believe they are on track to meet their deadline of next month for adjudicating these claims.

VA meeting one of its self-proclaimed deadlines would be a welcome change in our continued oversight of the backlog of disability claims. I look forward to hearing more about this initiative at our hearing today.

I would like to thank Under Secretary Hickey for being here, Deputy Under Secretary Rubens for appearing with us today, and I want to thank all those who submitted written statements for the record.

And I want to yield to our Ranking Member, Mr. Michaud, for his opening statement.

[THE PREPARED STATEMENT OF CHAIRMAN MILLER APPEARS IN THE APPENDIX]

OPENING STATEMENT OF HON. MICHAEL MICHAUD

Mr. MICHAUD. Thank you very much, Mr. Chairman, for holding this hearing today.

And I want to thank the panelists as well.

While the VA continues to process more claims than at any other time in its history, demand continues to outpace production.

Today's VA total inventory is about 878,000 claims. More than two-thirds or 593,000 of these claims remain as part of the backlog. And I am happy to note since our hearing in March, there has been a reduction in the total inventory by about 18,000 claims.

There are about 37,000 fewer claims that are considered backlog. I am hopeful that VA can hold the line and continue that downward slope in these numbers.

However, at the current rate, I think we can all agree that the Secretary's goal of having no veteran wait for longer than 125 days with an accuracy rate of 98 percent by 2015 seems to be unlikely. Hopefully they can, but right now it seems to be unlikely.

There are many initiatives I know the VA has put in place such as a fully developed claims, segmented lanes, e-benefits, stakeholder enterprise, veterans' relation management, provisional payments, mandatory overtime, and the VBMS system. The list goes on.

But all of these initiatives have been applied by the VA with the suggestion that the rise in efficiency will come when they have all been deployed fully.

I would like to hear from this panel today how we know that the individual initiatives are working. The transformation with all of its individual initiatives has been deployed in some places for as long as five months at the high performing stations. The time has come to evaluate and share with Congress the initial results of this transformation rollout.

With that said, I applaud the VA for taking big steps in moving quickly to transition into an entirely new processing system. I know that it has not been easy and you all have been working very hard. And as such, my staff has worked with your team and within your framework to find solutions that will further assist you.

Our Members have introduced legislation that addresses issues raised by the VSOs, VA, and VA's Advisory Committee on Disability Compensation and I urge you to work with the Committee and my staff to incorporate these ideas as you move forward.

We also need to know from VA what policies which may have been well intended to help veterans are not, in fact, hurting them as a whole by resulting in delays that cannot be overcome with more people, technology, or processes.

In regards to provisional payments, we have spoken with the VSOs and others. They seem to be generally okay with the idea, but have asked that you work very closely with them and provide them regular updates on the efforts in the form of clear and convincing metrics that the initiative is working as intended. And I ask that you also keep this Committee informed of your progress in that regard also.

Far too many veterans are waiting far too many days to receive the benefits they have earned. We are all working towards the same goal, the timely and accurate completion of claims. We must continue to work together to achieve a claims system that lives up to the service and sacrifices of our veterans.

With that, you know, General Hickey, I look forward to your testimony today.

And I want to thank you once again, Mr. Chairman, for your continued effort to make sure that the backlog issue does not fall behind and that you continue to have oversight hearings in that regard. So thank you very much, and I yield back.

The CHAIRMAN. Thank you very much to my good friend.

I want to welcome the first and only panel that is going to be here with us today. We appreciate the Under Secretary, Allison Hickey, for being with us today.

General, we appreciate the effort that you and your staff are putting in to trying to eliminate the backlog.

Accompanying General Hickey today is Deputy Under Secretary for Field Operations, Diana Rubens.

And we appreciate you being here today.

General Hickey and Ms. Rubens, we look forward to a free flow of information not only at this hearing today, but afterwards as well.

And, Ms. Hickey, you are recognized for five minutes.

STATEMENT OF ALLISON A. HICKEY

General HICKEY. Thank you, Chairman Miller, Ranking Member Michaud, and Committee Members. Thank you for the opportunity to discuss the Department of Veterans Affairs' special initiative to address the oldest compensation claims in our inventory.

On April 19th, I directed all regional offices to prioritize disability compensation claims that have been pending in our inventory for more than two years. Our goal is simple, give those veterans who have been waiting the longest a quality decision on their claim and if granted, start the flow of compensation benefits as quickly as possible.

I gave our regional offices 60 days to process this category of claims which included those claims that were within 60 days of the two-year mark when the directive was issued. At that time, that equated to 67,718 claims.

Now that we are halfway through the 60-day period, I am pleased to report that VA's regional offices have completed 34,834 of those claims or 51.4 percent of the total and we are on track to complete this two-year category of claims on schedule.

And as we announced on 19 April, upon completion of the two-year claims, we will shift our focus after examining the lessons learned to completing all claims that have been pending over one year and do so over the next five months.

In order to expedite claims decisions for veterans who have waited the longest, we made an important policy decision that allows for a provisional rating based on the current evidence that VA has obtained provided it meets the minimum legal requirement.

The goal of the provisional rating is to provide veterans applicable benefits more quickly, but at the same time it provides them with a safety net.

If a provisional decision is used, veterans have up to one year to submit additional evidence or request that VA obtain additional evidence to change the provisional rating.

If the minimum required evidence to decide a claim is not present like service treatment records or VA medical examinations, VA will not make a provisional decision until it is obtained.

If a medical examination is needed to decide a claim, it will be ordered and expedited by VA's Health Administration.

If a veteran submits additional evidence within a year of this provisional decision, their case will be fast tracked.

Should any rating increase be substantiated over the year, additional benefits will be retroactive to the date the claim was initially filed.

If no additional action is requested by the veteran within that year, the provisional decision becomes final.

As with all VA compensation claims decisions, the veteran then still has an additional year to appeal the final decision and VA will provide instructions on how to do so.

So far, I am encouraged that this initiative along with our transformation components is working. For veterans who have waited the longest, they are getting decisions on their claims.

The grant rate for this two-year category of claims to date is 70 percent and is on par with our historic averages. These are quality decisions for our veterans.

Our national claim level quality for April was 90.57 percent, an all time high for VBA. And medical issue quality within that claim averaged 95.9 percent.

This initiative is also helping impact the backlog. The current backlog of claims which had reached a high of 611,000 in March is now 561,000, meaning we have reduced the backlog by 50,000 claims in less than two months. And as of today, we have completed over 29,000 more claims than we did at this same point last year.

While working the oldest claims, VA will continue to prioritize veterans who require expedited processing such as those who are homeless, facing extreme financial hardship, are terminally ill, former prisoners of war, Medal of Honor recipients.

Those servicemembers being discharged from the military due to combat wounds or injuries will continue to be processed separately in the integrated disability evaluation system and then on average receive their rating decision two months after leaving the military.

We will also continue to prioritize fully developed claims, a critical part of eliminating the backlog. With the help of our great partners and the veteran service organizations, many here today, we have grown fully developed claims from three percent of our inventory in January to nearly ten percent today.

In conclusion, our oldest claims first initiative is a good example of the continuous effort to find ways to improve on our processes.

And I appreciate, Chairman, your leadership and the supporting Members of your Committee here who played a key role in hosting the national roundtable with private industry last week to promote ongoing innovative thinking for us.

This initiative fully complements the ongoing implementation of our long-range strategic plan and help to eliminate the backlog in 2015.

Mr. Chairman, that concludes my statement. I am pleased to answer any questions you or the Members of this Committee have.

[THE PREPARED STATEMENT OF HON. HICKEY APPEARS IN THE APPENDIX]

The CHAIRMAN. General, what do you say to the veteran who has a claim that has been pending for two, three years that all of a sudden within 30 days you have been able to give a permanent decision after they have waited three years, two years? How does that happen that a file can sit that long without a permanent decision being done?

General HICKEY. So, Chairman, thank you for the question.

So the very first thing I say is that we just do not find that acceptable either. I know nobody on this Committee finds it acceptable and I know this Nation's veterans, their family members, and survivors deserve better.

I will tell them that while we were doing other claims that waited for more than 50 years, we took 37 percent of our workforce out of the main body of claims, leaving 63 percent to do the rest of those claims while the 37 percent focused on those 260,000 Agent Orange claims for our Vietnam veterans over the last two and a half years.

Yes, claims got old. They did. We are sorry about that. We are working hard to get answers for those veterans. And as I said, we have now for those veterans who have been waiting longer than two years have now completed 51.4 percent of those claims and we expect to be on target in the next 60 days.

We took that manpower, that FTE that had been pointed at those Agent Orange claims. They required a little additional training because they have only been doing three presumptive conditions for two and a half years. Once we got them kind of back up to speed and could go ahead and surge on that, that is why we focused on getting these old claims done.

The CHAIRMAN. So you tell the veteran that has waited for three years to get an answer that the excuse is the Nehmer claims were the cause of that?

General HICKEY. No, Chairman, it is not an excuse. It is not an excuse at all. And we do not ever want it to be in that situation again which is why we are working very hard at the same time to transform the way we have in 1950s vintage paper process system in VBA.

The CHAIRMAN. Who made the decision to open up the presumptives for Agent Orange?

General HICKEY. Chairman, the presumptive process, I believe, is a system process that starts with a series of studies and analysis and recommendations.

The CHAIRMAN. Who made the decision?

General HICKEY. At the end of the day, after the recommendations through the IOM process, the secretary makes that decision.

The CHAIRMAN. Why did the secretary not make any preparations for the immediate influx of claims that would be coming into the system?

You know, I have heard the excuse of the Nehmer claims over and over. You and I both know that not every regional office handled Nehmer claims. They were brokered and they were sent to targeted areas. But that is not an acceptable reason for the backlog being over 600,000 claims right now over 125 days.

General HICKEY. So, Chairman, I will say that what did happen during that timeframe is that we took all of the 13 day-one brokering centers, that is our complete VBA surge capacity, out of the system and they were very engaged almost exclusively on those Nehmer Agent Orange claims.

So the capacity that we used to have in the system to help us when we had a surge became focused on doing those claims. I think the good news is that we have reduced that 600,000 now down to 560,000 by 50,000 claims in the last month.

The CHAIRMAN. And we are at a point now where the secretary had said back in 2010 that we would be at a point that we would be processing claims at 160 days.

General HICKEY. So, Chairman, I cannot address that data point, so I do not negate it for you. I will certainly go look and see what that number is.

But what I can say is that we have not only increased our quality in what we are doing which is a key part of what our focus has been for the last 18 months to two years. It is up now. In April, our quality numbers went over 90 percent for our claim level of quality and 95 percent for our medical issue level quality. So we have been focused on getting a better answer to our veterans.

And so I think that the fact that we are, you know, turning the curve, we have had now, you know, almost a month worth of data points that show that we are producing more claims.

In fact, we are, I think I said in my testimony up front, you know, some 30,000 plus claims ahead of where we were this time last year. So we are seeing some productivity improvements.

I can also tell you that associated with some of our transformation efforts, we are seeing improvements in the number of claims that our raters are doing by a full 13 percent and that number is growing.

And in terms of their productivity by being in a segmented lane and by utilization of the rules-based calculators and the evaluation builders built into VBMS, if they are on it, and also to some of the other training that we have done through challenge training which this Committee has so wonderfully supported us in budgets to allow us to do.

The CHAIRMAN. All right. Thank you very much.

You know, there is a great fear that VA is going to use this initiative to improve your numbers in the long run by getting rid of the oldest claims in one fell swoop. And, you know, everybody hears that and they think that that is a great result.

I think that VA's numbers will show a markedly high average days to complete in the short term due to the mass clearing out of these claims. But the figures that everyone has been tracking has been the numbers of claims pending and the average days pending, which will improve greatly by cutting these old claims out of the pile.

So the end products of these claims that are being cleared, this eliminates the accurate tracking of the actual time it takes to get the veteran his or her rightful benefit.

There are additional serious concerns on end product designations at large and the entire work credit system, but that is not the

focus of our hearing today and, instead, maybe the focus of future discussions.

So the purpose of this hearing, how will VBA track the two-year claims?

General HICKEY. So, Chairman Miller, thank you for the question.

I will start and then I will ask the person who does that every single day all day long from up here in the directorate of Field Operations, Diana Rubens, to further elaborate.

But essentially we have identified every single claim. We know where it is. We know how old it is and we know where the veteran is. And we are managing that at a case management level, very high case management level to complete every one of them.

We are partnered and are in multiple daily calls with our VHA leaders for compensation and pension health exams where—

The CHAIRMAN. I apologize. My time is very limited. How are you going to track those claims after the fact?

General HICKEY. So, Chairman, when we complete these claims, and most of them are in paper as you might imagine, these are not the new claims that we are bringing in now into an electronic environment and scanning and getting them into a paperless environment, these are ones that existed in paper, but when we complete them, we are scanning them in.

The CHAIRMAN. I am sorry. Do the new ones and the old ones have the same end product number?

General HICKEY. I am going to have to defer that, Chairman Miller, to Secretary Rubens.

Ms. RUBENS. Thank you, General Hickey.

Chairman Miller, there are two things that we are actually able to use to track—

The CHAIRMAN. End product number.

Ms. RUBENS. So there is a—

The CHAIRMAN. Okay? So if it is a paper claim and it is a new fully developed electronic claim, same end product number?

Ms. RUBENS. Same end product code, but within our system today, there are claim labels and flashes that we are able to use to identify whether it is a VBMS claim or a paper claim.

To your first question of how are we going to track the claims that we are doing during this two-year effort, we will be able to look at those completed during this time and anything that may have needed a provisional rating, we will identify through a code that we will have input into the system when we made that decision as well as the ability to search within the rating decision itself the language that says, hey, this was a provisional decision.

So we will be able to maintain a list of which were those claims done during this period in the two-year effort as well as any that may have required a provisional decision.

General HICKEY. Chairman, there is one more thing I would, if I can, just add to that equation. Thus far, we have actually completed 95 percent of those claims that I have described to you, that 51.4 percent we have completed, without having to use a provisional decision, but using a regular process.

And I acknowledge your comment, well, if you could do it then, why can't you do it now. And I think I tried to address that. It is demand capacity for some elements of us there.

But the bottom line is that there is five percent that are in this provisional status. And so we are managing those by name, by veteran, by claim number now. As we move them through the process, we have that original list and we will continue to manage them as necessary by name, by veteran, by claim number.

The CHAIRMAN. Mr. Michaud.

Mr. MICHAUD. Thank you very much, Mr. Chairman.

So 95 percent of the 51.4 percent are final. They are complete?

General HICKEY. Yes. Yes, they are, Congressman.

Mr. MICHAUD. At those stations that have been in the transformational process since January such as Milwaukee. What up-ticks have been seen in quality and effectiveness in processing the claims?

General HICKEY. So, Congressman, thank you for your question.

I do not have the specific information on each of those regional offices. I can get it for you. I am happy to provide it to you.

But what I can tell you in general is that we see, because of the segmented lanes, we see an increase of about 13 percent for our raters being able to rate cases. In their productivity, we see claims volume going through the express lane at about that same level of increase.

Going through the one or two medical issue claims that get through faster, and I think I have equated that a little to, you know, your grocery store experience, not being behind a cart full of groceries, but going through the express lane with your couple of little bit of items, you can get through faster. That is what our express lane has done. We have been able to process more claims through that lane as a result.

We are also, by the way, putting our fully developed claims through that lane now, too, and I appreciate again our VSOs who are so actively and state directors, county service officers so actively engaged in helping us with that effort.

Mr. MICHAUD. What information could you provide the Committee that can clearly articulate the transformation initiatives that are leading to the quality and effectiveness and when can we expect to see that information?

General HICKEY. So, Congressman, I can clearly provide you that information. I know we report our quality statistics to you all in a number of different reports. But if you want it very specifically, I am happy to provide it very specifically.

The things that we have put in the transformation strategic plan that are directly impacting quality are first and foremost under our people initiative is our challenge training. And this Committee has been very supportive of funding us for the budgets for which we are now doing and seeing great results associated with a national training program, a national curriculum, pre-test, post-test, checks at the three, six, nine, and twelfth month process to make sure that the training stuck and it is good.

We have also, due to the generosity of this Committee, is, we will have extended that into what we call station enhancement training which is where we go to a complete regional office and we retrain

everybody top to bottom to make sure that they have had a reset in terms of what they have done.

We have done that in Oakland. When we did, their quality rose by eight percent. Their productivity rose by 27 percent. We did it in LA. We are seeing the quality raise as well. Their productivity is raising as well. We have just completed it in Baltimore. We have already seen Baltimore's quality increase a couple of percentage points as well.

Mr. MICHAUD. Okay. One of the primary concerns of the VSOs with regards to the provisional payments is that the VA keeps them, the VSOs informed and updated on the outcomes of that initiative.

What will be included in those communications and how often will you communicate that to the VSOs? And will you agree to provide the same information to the Committee?

General HICKEY. So thank you, Congressman, for the question.

In fact, Friday morning, I have a meeting, my standing monthly meeting with all the VSOs and I know this will be a topic of a conversation where I will brief them on some of the things that I have talked to you already before on where we are in terms of the production of those claims, where we are in terms of the quality of those claims, where we are in terms of the—I am sorry. There is one more and I am missing it, but I will grab it in the rest of the conversation.

But, oh, in terms of our grant denial rates. I know they are particularly interested that we do not end up in a bad situation on that and I can confirm for you that we are on par with the way we normally and typically grant and deny these rates. It is in the 70 percent range.

And they also have access inside the regional office to individuals by name for helping them to know what the status of a particular claim is.

Mr. MICHAUD. Great. My last question, if you had to pick one policy requirement that you believe may be, in fact, negatively affecting veterans due to the challenges it presents in providing a timely decision, what would that one policy be?

General HICKEY. If I could pick two, Congressman, the first I would pick is something we have discussed before and that is a complete, absolutely complete service treatment record at the departure of a servicemember from service.

And when I mean absolutely complete, I mean not just what happened to be in the paper record when the member left, but I mean every bit of their—if they had medical services, inpatient treatment, outpatient treatment, contract medical, TRICARE, on ship, onboard, guard, reserve, their complete service treatment record, 100 percent of it, that DoD certifies to me that they have done the exhaustive search.

That is, one, DoD has agreed to do that with me. I have given them until 1 June. They needed a little time to get it all set up and I have given them to 1 June. We have agreed on the 1 June date, so I should be seeing those complete records coming across. That will make a big difference for people moving forward.

I still have, as you well know, a number of veterans of different eras where nobody did get their TRICARE record or their inpatient

hospital record or all those things before they came to me which puts us in a bit of the hunt and search mode trying to make sure we can say yes instead of having to deny because there is nothing in a service treatment record. That is one.

The second one is, I know is in some legislative concept packages we sent forward and it has to do with closing claims in the appeals process and allowing us to move forward with decisions rather than continue to add new claims into the appeals process.

Mr. MICHAUD. Thank you, Mr. Chairman.

Mr. RUNYAN. [Presiding] I thank the gentleman.

The chair will now recognize himself for five minutes for questions.

And thank you both for being here.

Under Secretary Hickey, obviously this plan has been in the works for some while. You have kind of alluded to retraining some people.

How long has it been in the pipeline because I know personally it was kind of sprung on me by Secretary Shinseki one afternoon?

General HICKEY. So, Chairman Runyan, thank you for the question.

And I will just tell you as we finished off those 260,000 Agent Orange claims and took that 37 percent of the workforce and recycled them into the full body of medical diagnostic codes that they had been trained on, we were thinking then, okay, where do we need to go tackle this in a big way.

I would tell you that we started thinking about it, this and many other different kinds of ways of how do we point at those environments, started thinking about it in a strategic way maybe January of this year, not early, January, February of this year, and then started trying to make sure there were not any second, third order effects, negative effects.

It takes a lot of deep dive into a lot of data and moving it around. So there was no intention whatsoever. We just wanted to make sure we were on solid good ground to do this kind of an effort and to make a difference in a really specific group of veterans who have been waiting the longest.

So literally it was working it and figuring it out, so that is where we were.

Mr. RUNYAN. So the 37 percent that you say were working Nehmer claims is the only part of the workforce that you are really using? You are not taking from anywhere else?

General HICKEY. Oh, no, not at all, Chairman. It is the complete. We are leaning in, all in, all onboard. This is a full, full, huge effort for us to go take care of those veterans and their family members and survivors who have been waiting the longest for a decision from us.

And now 51.4 percent of those old claims as of today have an answer they have long deserved from us. So I will be real clear about that.

And, by the way, the employees that are doing this right now are leaning forward in a productivity and quality way to make this happen because they care about getting those answers done as well. They are very committed to this. You know, I am asking a lot of them. They know that 52 percent of them are veterans and

probably 98 percent of them are a direct family member of a veteran and they want us to make sure we are answering these old claims as well.

Mr. RUNYAN. Now, what happens to a veteran's claim, obviously you give a provisional, if he falls outside of your window for another medical exam? What happens to that claim after that point?

General HICKEY. So thank you, Chairman.

The way the process works is we give that provisional if required to do a provisional. We may be able to do as we have now done with 95 percent of the ones we have already done in that big bucket, we may be able to get, you know, all the data we need and get it completed.

But in the provisional bucket, if they have in that provisional environment, we will keep asking if they want us to for different places to get data like DoD medical records or DoD DD-214s or different fields on that or private medical records. We will keep asking or they can get them and bring it to us as well, anything else they might need that they, you know, found later on.

We will consider that all the way up for that whole next year. If at that next year point in time they have not found the evidence and it falls outside of that, they are still entitled to another complete year of an appeals process as well. So they actually get a bigger safety net than we have actually had in the system before.

Mr. RUNYAN. And I think Chairman Miller was kind of alluding to this, too, because there is obviously going to be a huge impact on your metrics and/or statistical analysis.

As Members of Congress, we have to be very careful we are not allowing you to play games with the numbers to make it look better than it seems.

What do you intend to do with these numbers because obviously they are going to shine well on you. We want to be very careful on how we present this to our veterans.

General HICKEY. So, Chairman Runyan, thank you for your comment.

And, you know, I can understand some of your skepticism, so I will acknowledge that. But I want to just, if I can, say none of this for us, none of this for us is about making our numbers look better.

Every bit of this for us is about taking care of a veteran, their family member, and their survivor. And none of us are pleased if there is anybody we have to be doing this for today that has been waiting longer than two years. None of us are.

So this for us is about our care core values. This for us is about the mission that we need to drive all the way home to make sure that we care for our veterans, their family members, their survivors.

And this for us also is about putting in ways in which and continuing the transformation so we do not get there again. We do not want to get there again. Not every single employee that is working head down right now in every one of those regional offices out there. They want to be helpful to those heroes of this Nation who have served so proudly.

Mr. RUNYAN. Thank you.

With that, I will recognize Mr. Takano for his questions.

Mr. TAKANO. Thank you, Mr. Runyan.

Under Secretary Hickey, the California Department of Veterans Affairs is beginning a new initiative to help clear the disability claims backlog. They are negotiating a memorandum of understanding with our three regional offices to place 12 employees supplied by the State of California, the California VA. They are calling them strike forces and they will be dedicated to helping to clear the claims backlog. This is the first time that in our state that State employees will be able to integrate and help with these claims.

As you know, Texas has employed a similar model which has been very successful. It was based on that success that California developed this plan.

Are you familiar with this model and do you think it will be effective? Do you think other states should be looking to do the same?

General HICKEY. So, Congressman, I am familiar with both models. Your leadership from the State of California came to see me last week, in fact, and laid it out. And I think if I could have jumped up from the table and hugged them, I would have. Just a phenomenal offer of support from the State of California and from the State of Texas.

And, frankly, we are all hands on deck and we just think that is a great partnership and a demonstration of how every capability, every resource can be brought to bear.

So I am extraordinarily appreciative of what California is considering doing just as I am with the Texas commission, just as I am, frankly, with every veteran service organization out there that does claims right alongside of us who is every single day increasing the amount of fully developed claims that they are producing for us and helping us to go gather all that evidence which you can see it in our data. It is clearly the long pole in the tent for us.

So I think it is an extraordinarily good idea. We will make whatever provisions we need to make to accommodate that.

Mr. TAKANO. Well, along that last comment, I seem to recall it is not just the 12 new employees, but they are also proposing to do more outreach. They have developed, you know, a more extensive plan. And California has asked the VA to match some of the funds that California is putting up.

Is that something the VA would consider doing and do you have perhaps some funding already that you already control that could be possibly put forward for this purpose?

General HICKEY. So, Congressman, thank you for your question.

One of the things that we are looking at in VBA that we have not done before, so I will tell you it is brand new territory for us, but we are looking at the idea of, is there a way to consider doing things in the grant world that partners with folks out there to help in this regard.

We have not gotten very far on it. I will tell you that. I have people researching it right now. We do not even, frankly, have grant people in VBA, so I am having to go into larger VA to gain some knowledge and understanding of that.

So as we do that, I am happy to sit down and talk to you all and to this Committee about our thoughts on that as we move forward.

Mr. TAKANO. Well, I am certainly glad to hear that. You know, I really want to applaud the people in Texas for what they have

taken initiative on. And certainly in California, we are interested in expediting these claims and want to be part of the solution.

And so I am very proud that our state legislators and the state VA have taken an aggressive role here. And so I also myself take a look at how the Texas model has worked.

General HICKEY. Great. And, Congressman, I will also acknowledge as well, they briefed me that you are also standing up a state academy to make sure that you have really well-trained people in the state, your county service officers, your national service officers. You get a force development opportunity for them as well. I think that is an exciting new idea.

Mr. TAKANO. That is what I was referring to, the state academy. It is in addition to the strike forces of 12 for each regional offices, there was an additional academy and I think that is what they were asking the matching funds for.

And so if there is any way in which the VA can help us with that funding. We are not asking for an augmentation but what you already have in terms of your funding. And perhaps other states could follow suit or consortia states where there are, you know, regional offices that many belong to. This might be a way forward.

General HICKEY. And, Congressman, I know we have already committed people who do our training on a regular basis, our training curriculum as necessary and other things just to get a head start on it. But I am happy to look and talk to you about other possibilities.

Mr. TAKANO. My time is expired. Thank you so much.

Mr. RUNYAN. I thank the gentleman.

The chair now recognizes the gentleman from Tennessee, Dr. Roe.

Mr. ROE. Thank you.

And I want to start by saying hallelujah and all God's people said amen after four and a half years. Can we have an amen from everybody. You finally got these two-year plus claims.

And I guess just a couple things and I will not even take all of my time. But when the Chairman first started, he asked about, I guess, why we were able to adjudicate these two-year-old claims so quickly when they had been waiting so long.

And I think that begs the question. For four years, I have been sitting here and these claims got bigger and bigger. But I am very happy that they are. But how did that happen so quickly? I mean, I am sure if a veteran, they do not care. They got their claim adjudicated. They are happy. I am happy for them. But the question is, how can we look at them and say that after all this time?

General HICKEY. So, Congressman, I appreciate what you are saying and amen from me as well. And let me tell you in general how claims can get old in our system.

First, you know, let's be honest. We touch 5,000 pieces of paper in a single year with little rubber fingertips on our fingers going through them with mail room people bringing them in trying to get them into the millions, 4.4 million paper records in regional offices across the country.

Mr. ROE. And I have been to Detroit and seen where they are deposited. I mean, I have seen all that.

General HICKEY. It is really easy sometimes to lose one claim in there or multiple claims or even in 4.4 million records, it is easy to lose pieces of paper. That is why it is so imperative we get into a paperless environment first.

Second, one thing that does happen, and, frankly, it is the case of our oldest claims in the inventory, we will—20 years ago, the oldest case in the inventory, 20 years ago, long before most people who are in VBA even were in VBA, someone rated a case and missed something in the case.

Then that veteran comes back 20 years later and as a new rater is going through the case, they go, uh-oh, there is something in here we should have done 20 years ago for that veteran. That is what the oldest case is about in our system.

Rather than just kind of hide it and move away, we do the right thing, the integritous thing, and we say, no, let's do it. They should have had it 20 years ago and, by the way, they should get all the back pay for that 20 years as well. And we are doing those today on a regular basis and the checks that we cut for that back pay are fairly substantial.

Mr. ROE. There was some interesting information in our packet that I was able to read. And one is, I do not think you will ever hit the 120-day number if this continues. If it takes 112 days to develop a claim, it is impossible.

So, you know, I guess first, why were the claims not being processed under the normal workload within the ROs and these were old claims sitting ready to be adjudicated because you clearly showed they were because you cleared them out in a month? How many are sitting there right now ready to be adjudicated?

And I know my time is short, but, second, the nationwide average for waiting development is 112.6 days. So you will never get to the 120 days if it takes almost 120 days to develop before it even starts the process. You follow me?

General HICKEY. Congressman, the way we have done business in the past, I would absolutely unequivocally agree with you.

What I will tell you, though, is under our new transformation effort when a veteran goes online, files online through e-benefits like you all did your taxes here this last month, uploads their own evidence or uses, which I would highly recommend, a veteran service organization officer to file their claim online and upload that evidence directly into the system right there in the stakeholder enterprise portal, you cut all of that waiting development time down substantially.

And then it goes directly into VBMS where somebody works it paperlessly from the beginning. We are also building in right now, building the requirements and getting ready to code automatic capability that helps to order some of the stuff we have got to order so we do not have to wait to develop that case. It starts right away as soon as somebody submits a claim.

Mr. ROE. So we should see that go down with the electronic—

General HICKEY. When we get all of this automation in place, in solid, in lock, we will. Right now, today we have the baseline VBMS. We have actually portal to decision built right now. It is all integrated. It comes through. In fact, I have 650 claims a week without even advertising it except to talking to great people and

great Americans like you in forums like this. We have 650 veterans a week that are coming in that way, in a paperless way from e-benefits, through VDC or the stakeholder enterprise portal uploading their evidence and going directly into VBMS.

Mr. ROE. My time has expired.

Mr. Chairman, on behalf of the thousands of veterans that have waited two years, I want to thank the VA for finally getting this done.

Mr. RUNYAN. I thank the gentleman.

The chair recognizes the gentle lady from Arizona, Ms. Kirkpatrick.

Mrs. KIRKPATRICK. Thank you, Mr. Chairman.

General Hickey, I applaud the efforts the VA has made to address the backlog issue and I appreciate that you understand that more needs to be done because delayed care is denied care for our veterans. It seems we need to build a better system and we need to have better benchmarks and metrics in this system.

After you made that announcement on April 19th, did you establish new metrics in the claims processing system for these backlogged cases?

General HICKEY. So thank you, Congresswoman, for the question.

Let me tell you what we did. We went out and we collected up every single claim down to the eaches, the wand eaches that fell into this category. We can identify those in our system.

We made a list of all of those claims including those claims that would roll into the two-year category in the two months while we were doing this. So it is not even just the two years. It is those that would roll in.

And we have managed that list at the highest level. Literally, I break into her conference room and there are people sitting around a table every day constantly working that list down by regional office and making sure it is coming down by claim.

Every single morning we know how many we produced the day before, how many are now in the list today, what has that done in terms of the overall big number, and we literally are watching it tick down by the eaches.

And then so, therefore, we know at what point we have hit the halfway point. So we are doing that every single day with every single RO managing the workload literally from a national perspective which is the first time we have really ever done that in that kind of a massive lift.

Mrs. KIRKPATRICK. And what about have you established metrics with the Department of Defense in terms of transferring their records to the VA?

General HICKEY. I am working that right now. We are in discussions with DoD on transferring different parts of information. And in some cases, they transfer things relatively quickly.

Part of my issue is it is not complete and part of my requirement is to make the very best decision for that veteran, that family member, or that survivor with all the evidence there is in the DoD system and not to have to recycle back in for a piece of data that may not seem important in the grand scheme of everything the DoD gives us. And they partner and give us a lot of data.

But in the grand scheme of the decision and ability to say yes to that veteran or no to that veteran, it makes all the difference in the world to us.

Working closely, partnership closely with DoD to get that 100 percent, all the service treatment records, get every field we need on the personnel, DD-214s, or in the personnel system, all of that. We are working on a day-by-day. I mean, it is literally we are active engaged with DoD every day on these kinds of issues.

They have committed to me on 1 June they will give me the full and complete service treatment record where they will go do the exhaustive search on their side to get not only what is in their record, but to get all of the inpatient, outpatient, all of the TRICARE, all the contract medical records, everything related to that person's medical health, and bring it to the table so we do not keep having to cycle and look for it.

Still today, I have about 187,000 pieces of loose late-flowing medical evidence. It could be a piece of paper that comes to us long after we have already made a decision on a veteran, so we then have to go cycle back through and open the case and see if we can make a different decision.

Mrs. KIRKPATRICK. And I appreciate that June 1st deadline. My concern in terms of metrics is what if they are not able to do it on June 1st? Is there a consequence? What are they required to do then?

General HICKEY. So my consequence in a discussion or my accountability partner discussion with DoD is that when I get one that is not full and complete, I will send it back.

Mrs. KIRKPATRICK. Okay. And, again—

General HICKEY. And I will manage the time associated with getting it back and attributing that time to our partners so that they have a way of sensing and knowing where they have their problems and how they can solve for that.

Mrs. KIRKPATRICK. One last question on this. Does it make sense to have a certain time period, say 125 days, for the DoD to transfer records to you, a timeframe, an exact timeframe on every single case so you can expect that?

General HICKEY. So, Congresswoman, if they take 125 days to give me that, then I have already not met the 125 days that we have committed—

Mrs. KIRKPATRICK. Exactly.

General HICKEY. —to by the secretary. I need to have those records almost, you know, immediately upon separation for a servicemember. In fact, if they can give them to me before separation, that is even better.

Mrs. KIRKPATRICK. Okay. Thank you.

Mr. RUNYAN. I thank the gentle lady for that.

And with that, I will recognize the gentleman from California, Mr. Denham.

Mr. DENHAM. Thank you, Mr. Chair.

I have a strong belief that our biggest issue continues to be electronic records and having one system, an issue that goes back to the 1980s when I was a young airman, still is not resolved yet today.

Even after the Department of Defense secretary has made it a mandate, the VA secretary has made it a mandate, the President has made it a big issue and, yet, we still do not have one system to be able to expedite these claims quickly.

But we have talked about that ad nauseam. For this, Committee Members here, I think we will focus on this in the appropriations process as well as through legislation. We are making that a priority here.

But I have one question as it relates to the claims specifically and I want to concentrate on the claim development process and the extraordinary length of time it takes for the Veterans Benefits Administration to develop the initial claims.

[Chart]

Mr. DENHAM. And I have got a chart here that states that the average number of days a veteran spends waiting initial development for a claim is 112.6 days and that the claim will spend on average 221.8 days in evidence collection.

I am concerned that the Veterans Benefits Administration is not taking full advantage of the tools it has to cut down on the evidence collection period specifically in regard to the use of private medical evidence through disability benefits questionnaires.

With a questionnaire completed by a private physician, a claim could be developed without waiting to schedule oftentimes unnecessary VA medical exam in a district like mine, a rural district. Not only does it cost VA a great deal of money, but people in my district have to drive a couple of hours at a great deal of expense to themselves for a medical exam that could be done in Modesto.

And so Congressman Walz and I recently introduced H.R. 1980, The Quicker Benefits Delivery Act, that will require the VBA to accept private medical evidence unless the veteran service representatives and the rating service representatives document why that information is not adequate.

So what steps will you take to ensure that the VBA makes full use of private medical evidence to speed the claim development process?

General HICKEY. Congressman, I appreciate your question. Actually gives us an opportunity to talk about the value to our veterans, to our process, to speed our process of private medical evidence, and the use of disability benefit questionnaires. I have been pushing hard on it to be perfectly honest.

I know that right now today we have, you know, VHA, the Health Administration partners are doing, you know, one and a half million disability benefit questionnaires last year alone and they are on target to hit the same number this year. But I only have about 15,000 of them coming in from private medical physicians.

Two things—

Mr. DENHAM. Why?

General HICKEY. One, I think, and we are doing something about this and we will have an answer, we will have a better fix for this in the summertime, I think, frankly, it is a little easier for me to ask my VHA colleague to ask his people to do a disability benefit questionnaire that we put out there that we are trying to simplify and put it on a Web portal so that it is easier to do.

And we are getting there. That is coming this summer where it does a nice job of, if you do not say yes here, you do not have to see the next 30 questions. You go directly to the ones you do have to answer.

The second thing is we need to do, so I appreciate what you all are thinking, we need to do a better job of educating our private physicians. We have reached out to people like the American Medical Association, to some of the other private organizations to ask them how can we reach a broader portfolio of physicians in the country.

So I would ask for your help in that regard. I would ask for, you know, in your states and in your communities that you, if you could, if you could help me get that word out.

I think—

Mr. DENHAM. Have you looked at this legislation yet that we have introduced?

General HICKEY. I have heard of the legislation. I am happy to look at it and look at it and provide technical assistance to it.

Mr. DENHAM. We would ask you to look at that.

General HICKEY. Absolutely.

Mr. DENHAM. And we would ask what we can do to be helpful for our providers in our area. Somebody from Modesto ought to be able to go into one of our hospitals and expedite this for you.

General HICKEY. I agree with you, Congressman. We want to minimize the amount of burden it puts on our veteran to get an exam.

We have also done two other initiatives. We have a dozen regional offices out there right now. We just extended it to Waco in that pilot test where we have contract providers who are calling private physicians and asking them for records and information from private physicians when the veteran tells us about a private physician. That has helped to reduce the days to collect evidence significantly in those places we are testing it. So we are looking at whether or not we can expand that to all.

We are also doing something else called ACE, which is acceptable clinical evidence, which means if you are already seeing a clinical physician at VHA, let's say you are seeing a cardiologist and you get the unfortunate news that your heart has degraded and it is not going to get better, I do not have to wait to do a compensation pension exam for you. You can ask your clinical doctor in VHA to do a DBQ and give it to me directly and I can rate off of that and not even have to ask you to come in for another C&P exam.

Mr. RUNYAN. I thank the gentleman.

With that, I recognize the gentleman from Texas, Mr. O'Rourke.

Mr. O'ROURKE. Thank you, Mr. Chairman.

I first want to say to General Hickey and Under Secretary Rubens that I really appreciate your efforts and I commend the seriousness and tenacity with which you are pursuing these very ambitious goals.

And I think all of us on this Committee have done a good job of reflecting the frustration and sometimes outrage that we are hearing in our district from the veterans that we represent. And I feel that you and General Shinseki, Secretary Shinseki have heard that and are responding to it and I really appreciate it.

And I want to follow-up on some of the questions and comments made by Mr. Denham in terms of fully developed claims. It is obviously the way to go and it is going to help everyone involved to see better outcomes in the process.

We also have a bill that we have filed, The Faster Filing Act, that will require the VA to publish the resolution times for different methods of filing a claim and obviously with an incentive to get the VSOs and the veterans to file fully developed claims online.

And so I hope that we can work with you on that and hope that that bill becomes law. And even if it does not, these are things that the VA could choose to do on its own.

Do you have a sense of the trajectory that these fully developed claims filed online are on? And you mentioned it earlier and I did not catch it. What are the percentage now that are filed fully developed online?

General HICKEY. I can get you the explicit numbers. What I can tell you there is about 650 per week that are coming in the door and that has been a steady tick up, but that is without us having—and we are about to go do a full, you know, marketing effort to help our veterans understand the benefits to them in that regard.

But what I can do is, I will try to give you a bit of a visual here, you know, if I can talk with my hands like a former pilot for a moment. If I go and look at how we do a paper claim today and I look at the overall amount of time it takes to do it, it looks something like this, a stack this big on a chart I have in my office. If I looked at what it takes for a fully developed claim, it is 112 days.

And to the points about the 112 days just to develop it in the other place, it is 112 days fully developed to completion. And if I look at it online, it is down in the 80-day range if it comes in and all the evidence is there and we can push it through the system online. That is where we are shooting for. That is why we are driving to this model.

I cannot get there until I get everybody on the system, all the paper out of the system, which we will do this year, we will get all the paper out of the system this year, until I get into a full paperless environment.

But I will tell you we are driving that way even including our transitioning servicemembers in the current TAP program are going to be coming in line, learning how to file online, learning the benefit of the VDC process, being asked to bring their medical records, their personnel records with them.

We will have scanners and VSOs there and state directors and county service officers, whoever they need to help assist them with that. And they can be working with them, you know, with coffee in hand in the morning, at lunchtime, after work, in breaks, whatever it takes to help them file online at that point, so they come into that best model, that least day model right up front.

Mr. O'ROURKE. Do you have a target you want X percent of claims filed fully developed online by this date and these are the steps we are going to take to ensure that we get there which will reduce our backlog by, you know, this amount?

It seems like that is the best bang for the buck, the greatest value. You do not have to hire additional people to process those if you can get those filed fully developed.

General HICKEY. So the fully developed claim target for this year is 20 percent of everything and that is what we have asked, you know, our partners to help us with. And they are doing in many, many places some extraordinary jobs doing that.

We have some who are doing 43 percent of their claims they are bringing in the door, our fully developed claims with our VSO partners doing it. That will be a huge benefit for those veterans that they represent. So that is 20 percent this year. Next year we are shooting for 30 percent and the year after, we are shooting for 40 percent.

Mr. O'ROURKE. And a question that I asked Under Secretary Rubens earlier this week, do you have a means by which you can measure productivity within your workforce? You know, we measure it in the economy, within industries, companies measure it themselves. How do you know the productivity value of the workforce and individual workers within the VA and how are you measuring that?

General HICKEY. So, I think, I would like, since she is hands on it most ways, I will tell you we do have productivity measures we look at, but I think I would like to ask Secretary Rubens to answer that question.

Ms. RUBENS. Thank you, ma'am. Congressman, thank you for taking time to talk with us. As we discussed earlier, it is about looking at individual employees at individual regional offices. Against the number of claims that are coming out the door, there are two things that we're, obviously, looking at is that overall and then our ability to attribute that to the individual employee and the work that they're doing.

As we move into the digital environment we're looking forward to, I'm going to tell you even better, granularity is what I would call it, in terms of the level of effort they put into whether that's getting a claim developed or completing a rating decision or that last piece of it, if you will, notifying the veteran that we've done those things.

So, we are continuing to build on what we've got today and looking forward to opportunity that VBMS will allow us to get deeper into that look.

Mr. O'ROURKE. And my time is expired, but I would love to follow up with you after this to find out, specifically, what those measures and numbers are for Waco. And I appreciate yours and General Hickey's responsiveness on our concerns about Waco. Thank you, Mr. Chair.

Mr. RUNYAN. Thank you. And chair now recognizes gentle lady from Indiana Ms. Walorski.

Ms. WALORSKI. Thank you, Mr. Chairman. Under Secretary, it's good to see you. Thank you for being here. I have a question. There was a new report out this week by the Associated Press that 85,000 veterans are currently being treated for issues involving sexual violence and sexual abuse in the military, 4,000 of those are receiving disability claims right now while receiving PTSD treatment. My question is, how many of those claims are over two years old?

General HICKEY. Congresswoman, I don't know. I don't want to explicitly say none because I don't know the answer to that, so I

will find out that answer and take it and get it right back to you so that you know.

I will tell you that we handle those claims in our special operations lane with very specifically trained people. They're the only ones allowed to touch them. I will tell you since I arrived, I have cleaned up a problem that existed before my arrival, which we were not going far enough with those claims to get exams done for those victims of military sexual trauma.

We have cleaned that up as of June of '12. We are now on par for how we grant those cases, those PTSD due to military sexual trauma cases with other PTSD claims. I am especially sensitive to this community of men and women who have endured things they should never have to endure in the service to their country.

Ms. WALORSKI. And what evidence is required, at this point, today after you cleaned up the issue? What evidence is required to prove disability due to sexual violence?

General HICKEY. It is singularly, singularly the lowest threshold of evidence that we have on the books today.

Ms. WALORSKI. What is the evidence?

General HICKEY. You can tell somebody, your friend, your roommate, you can have had missed—gone to sick call the next day, that can look like—and even if you didn't go for that, even if you didn't tell a soul, you could have missed three days of work, you could have your performance degraded over time, you could have, I mean, just about anything you can think of that you can give us any, literally we are accepting just about anything that shows there was some impact that gives us at least a subtle marker of some kind.

Ms. WALORSKI. And how many veterans are receiving disability now today due to sexual violence?

General HICKEY. Somewhere around 4,000.

Ms. WALORSKI. And do you have an idea of when you can get back to me on the number of claims that are two years old? Do we have a timeline?

General HICKEY. We will do that within the next two days.

Ms. WALORSKI. Great. Thank you very much. I yield back my time.

Mr. RUNYAN. Thank you. With that I'll recognize gentle lady from California, Ms. Brownley.

Ms. BROWNLEY. Thank you, Mr. Chair. And I wanted to second Mr. Takano's questioning about California and its desire to move to a more successful model with these strike teams and the academy and so forth and so on.

I had a similar discussion with our secretary there and it sounds like it's certainly a good pathway for us to make some much needed improvements, which, you know, brings me to, certainly, the Monday Morning Workload Report that we received and, certainly, that report highlights some of the problems I believe that exist in California with both Los Angeles and Oakland, the regional centers there having some of the worst, I think, performance in the country vis-a-vis wait times, et cetera.

So, I wanted to know, you know, what the VA is doing relative to looking at allocating of staffing resources among the VA offices. And, you know, with Los Angeles and Oakland both being poor per-

formers, is there adequate and equitable staffing there to deal with a backlog because their numbers are so much greater than say, for example, Sioux Falls? Which, you know, the average days pending there are 84 where Los Angeles is 374 and Oakland is 424 days.

General HICKEY. So, Congresswoman, thank you for your question and thank you for the support, as well, of the California initiative. That will be very helpful to us, and I look forward to that relationship and that partnership together to meet the needs of California State veterans and their family members to survivors better.

Let me first start, I think you had about three or four in there so I'm going to try tick down and if I miss one please let me know.

First of all, we wanted everyone to know that as we do these oldest claims you will absolutely, unequivocally see our average days to complete go up in those Monday Morning Workload Reports. It has to happen mathematically and statistically. As soon as you do an old claim it hits that number because it's a historical look, not a perspective look, not a future look.

That said, ADP is coming down across the Nation as we get these old claims done and we can get to a younger population of inventory.

Next, you had asked about the allocation model. I think it was actually almost now coming up on a year—well, October of last year that we actually put more people into both Oakland and into L.A., more allocations into both sites. Why? Because I looked at how, you know, generations ago VBA's allocation model was not necessarily built on demand or demand has shifted to where veterans have gone to live.

And so we need to do something to rewind, re, you know, look at those levers, look at that allocation model and we are in the middle of doing that right now. But, in the meantime, I said we needed to get more capability into both L.A. and into Oakland, as well, and we have done that.

The other thing we have done is, we did do that station enhancement training in both sites and in both sites we have definitely seen an increase in their quality and in their productivity.

So, we will keep monitoring, keep tracking that as well and I know that we are moving forward in that regard.

I think I got to all of your questions, but if I did not, Congresswoman, please let me know.

Ms. BROWNLEY. I think you did and I would just like to actually follow up again on that Monday Morning Workload Report, which I find helpful, but it is still unclear to me, for example, how many claims Los Angeles office received this year and how many claims it has completed. I think this information would be helpful in that report so we can really track the progress in greater detail.

General HICKEY. Congresswoman, we're happy to provide you that information.

Ms. BROWNLEY. Thank you very much. And—I'm finished.

Mr. RUNYAN. Thank you, gentle lady. With that the chair recognizes the gentleman from Ohio, Mr. Wenstrup.

Mr. WENSTRUP. Thank you, Mr. Chairman. Thank you both for being here today. Ms. Rubens, you mentioned productivity measures and you may be able to get better productivity measures as things become more electronic, which would certainly make sense.

Will pay be based on productivity for the employees processing claims?

Ms. RUBENS. Sir, the pay system within the Federal Government is based on our general schedule. We, obviously, if there's an interest in having us look at that, we can talk about it. But we are a part of the overall Federal Government and so, as we look at the grade structure of the duties performed by our veterans service representatives, by our rating veterans service representatives, that's driven by the Office of Personnel Management Personnel System.

Mr. WENSTRUP. Well, I'd be curious to know your opinion on that because sometimes it seems to me, you know, I'm impressed that we have had this increase in claims processed, but I wonder where the motivation comes from for the individual employees and so that's why I question, you know, is it pay based or can it be? Because I think it's hard to motivate people sometimes if there's not some reward for outstanding work as opposed to others that may be falling behind.

General Hickey, you mentioned, obviously, that the old claims are being taken care of, so of course with that, immediately, my office was hit with a question, well what about the new claims? Are those being forgotten? Could you comment on where we are with new claims?

General HICKEY. So, thank you, Congressman, for your question and let me just tell you where we are doing new claims. If you fall into one of those priority groups, I don't care whether you're a minute old in our system, you are considered a priority, which is any veteran who is seriously injured, ill and injured, or very seriously ill and injured. Immediately in the priority bucket, any Medal of Honor recipient, former prisoner of war, any veteran who is facing extreme financial hardship, they're about to lose their home or their ability to eat, you know, things like that. Any veteran who is terminal, terminally ill, we want to know that so we can expedite that claim right away.

And we're also doing fully developed claims, yes. It's an incentive. So, you were talking about incentives before, we want to incentivize new behavior that drives us to that faster process, so we are prioritizing fully developed claims and they can be brand new ones that just came in the door.

The other thing I will tell you is we continue to do, and we have not taken away any capability for that, our benefits delivery at discharge, our BDD and our quick start claims. And I will tell you the good news about those, we have cut the inventory of those nearly in half. We have gotten many days off of veterans who are waiting, specifically, quick start, for mostly our National Guard and Reserve folks that use that one, cut our waiting days in half. So, we're doing much better in those two environments, those continue.

Those veterans who are coming through the wounded, ill and injured process called IDES or the Integrated Disability Evaluation System, that's a very specific process, we're not touching any capability in that process. That is being fenced and cared for, as well. So, all of those ways are ways for us to do new claims in the system today.

Mr. WENSTRUP. Thank you very much. What about those that have VA loans and maybe are about to foreclose because they're waiting on their claim?

General HICKEY. So, there are no VA home loan waiting—that's a different claim process. These that I've been talking about are one of the other six business lines, our compensation claims. We actually have a really good new story to tell on our VA Home Loan Program. In fact, I will tell you over the last five years we have kept more than 290,000 families, not even individuals, families of servicemembers, because we do VA loans for servicemembers as well, veterans, their family members and survivors, in their homes by the way in which we do VA home loans and we have avoided about a 9 billion dollar hit to the treasury during one of this country's biggest foreclosure environments.

So, we actually do our VA home loans very quickly and in that very quickly part of the reason we can, we're paperless. We've built a paperless IT system that looks a little bit like the early versions of—the new early versions of VBMS because it had the identical same program manager when we first started building VBMS. He took his lessons from building the—we call it Valerie in the VA Home Loan Program, on how to do things in a paperless environment with your stakeholders, like mortgage lenders and providers. And he brought that lesson learned over into, how do we start building VBMS. He's now actually a regional office director in New Orleans, Louisiana where he's implementing all the things that we have done.

Mr. WENSTRUP. Thank you. And just very quickly, how do you feel we are doing as far as making things more seamless electronically, for example, from going from DoD to VA?

General HICKEY. We continue to work with our partners in DoD. It's a critical partnership for us. You know, the secretary is often quoted as saying, what we do in VA largely does not start in VA, it starts, you know, in their service. It's the nature of that.

So, we continue to work at that and we get better agreements and processes as we do. The next really big one comes 1 June, when the DoD gives me that fully certified, 100 percent complete service treatment record that includes all the records including Tri-Care Contract records, in-patient, out-patient, anything that had to do with the medical readiness, medical history of that veteran in that record and they give it to me telling me that they have fully exhausted that search. That's a big lift for them to do, I appreciate it very much. That's a good partnership role for them to have for us, rather than us try to go backwards into their system and go hunt down and find something in their system. It just makes more sense. They own that servicemember and that medical readiness while they're in service, giving us everything they have is important to do.

Mr. WENSTRUP. Thank you very much. My time's expired.

Mr. RUNYAN. Thank the gentleman and with that chair recognizes the gentle lady from Florida, Ms. Brown.

Ms. BROWN. Thank you. I was a little late today because I was attending the wreath laying at the Women in Military Service for America Memorial. I am reminded of the words of the first President of the United States, George Washington. Whose words are

worth repeating at this time, “The willingness with which our young people are likely to serve in any war no matter how justified, shall be directly proportional as to how they perceive that the veterans of earlier wars were treated and appreciated by their country.”

So, as we go out this Memorial Day, I am hoping that we can give—and you really have given a lot of positive updates. I want it in writing so I can hand it out at the programs that I will be attending on Monday.

I was recently in L.A. and I will be back out there next week with my transportation committee, but I will definitely go and visit once again the veterans facility, because I am very upset that the Federal Government built four facilities, which is 400 units and the State of California, they’re just sitting there, not operational, four brand new facilities and I would like an update on—and it was for homeless, for the veterans to be at the VA facility, four units.

I am very pleased with the progress. It’s only a month that we’re taking care of all of the prior people that had a long list of not being processed. So, can you expand on that a little more? I know that maybe the other Members heard what you had to say, but I need to hear it so that I can convey it to my community.

General HICKEY. Absolutely. Thank you, Congresswoman, for your question. I will take, for the record, your question about the four facilities back to VA for the VHA side of the organization.

But, I will just synopsisize where we are on doing the oldest claims. We started on 19 April. We had 67,000 in the category because we also counted anything that would age over two years while we were going through this 60 day process. We have completed 51.4 percent of those, meaning more than half of those. Ninety-five percent of them, we didn’t even have to use the provisional rating, we gathered all the data, all the effort that we needed to go ahead and make a final decision. Those claims, in terms of grant denial rates, about 70 percent, which is on par with our normal grant denial rate, so we’re doing them at a high level.

And I will also tell you my April—since we started this April, my April quality results are showing that first time ever, we have crossed the 90 percent category for our quality—claim quality across the Nation. That’s an indicator of the investment you all have made and supported us in terms of the training we needed to do for our people. And L.A. has gone through that new station enhancement training so I’d appreciate your feedback on what you’re seeing out there as well.

So, what I’m saying is we are on track, in fact, just a smidge ahead of time. We’re working closely—our VHA counterparts are all in on this one as well, they are working to get the exams we need as rapidly as possible. Our VSOs are out there helping us too. Going out and helping us find things, working with that veteran. So, we’re just extraordinarily appreciative of the all hands on deck approach everybody is taking to do this.

Ms. BROWN. Thank you very much. And, you know, in our last meeting I was impressed with how you’ve turned this around.

General HICKEY. Thank you, Congresswoman.

Ms. BROWN. Thank you. I yield back the balance of my time.

Mr. RUNYAN. Thank you, gentle lady. With that, the chair recognizes the gentleman from Texas, Mr. Flores.

Mr. FLORES. Thank you, Mr. Chairman. Secretary Hickey and Secretary Rubens, thank you for joining us today. Just one—first of all, I appreciate your initiative to try to address these claims and my hope is the same as yours, that it doesn't impact the other claims that don't fall within the categories getting the extra help.

Just as a note for you, my Texas colleague, Mr. O'Rourke and I sent a letter to you back on May the 6th, regarding the Waco Borough (ph). We had some questions and a request for a meeting. I'd like you to follow up on that if you get a chance, hopefully, in the near future.

My first question is—by the way, with respect to Waco, I want to say this, thank you for the new director that we received a little over a year ago. I think he has made a difference and he is helping Texas veterans get the care they need. Also, with respect to the Waco Borough, thank you for working with the Texas Veterans Commission on our strike force program, it does seem like that is making a difference.

And lastly, with respect to Waco, thank you for the implementation of EBS. Now, I don't know if it's made a difference yet, but Director Limpose in Waco knows I'll be sitting down with him every three to six months to follow up with how things are going there.

First question is—this has to do with your press release and letter you issued back in April. You gave a self-imposed deadline of 60 days and now that deadline is approaching. But, in that letter you said three things, one, no issue shall be deferred on a rating document, number two, all two year old claims will be processed within 60 days and number three, the following evidence must be of record and to included service treatment records for original claims, VA medical records evidenced to establish service dates and VA exams required to issue a decision, with emphasis on the last part.

And so, we're aware that—I mean, because we're at, you know, we're getting within the window when that 60 day period is going to extend and some VA exams have not been scheduled, it's going to be tough to make that date. And because of that, some RBSRs have been told that any new VA exam request will have a negative impact on your goal for a 60 day completion. And because those VA exam requests are being scheduled beyond the 60 day deadline, VBA employees are being directed to move forward with the evidence on file without the necessary VA exams and so, it does seem like the directions that are being issued in the field per se are not in accordance with the directions that you've issued. So, can you check on this and get back to us to make sure that these claims are still being adjudicated uniformly and within VA guidance?

General HICKEY. Congressman, I will definitely check on anything you all ever believe that you're seeing or hearing out there, absolutely.

I will say though, that VHA exams—we are literally, just as we are in overtime, the VHA exam units have also had their doctors working overtime. They are doing Saturday and Sunday CMP exams, if necessary.

They are also deploying—TDY deploying doctors to places where we have a large concentration if we think that, you know, there may be more than can be done by the existing workforce there. They are in all hands on deck to be making sure there are enough exam capabilities across the system.

The other thing that we have leveraged largely is, we both have contract exams through the CMP functions. VBA has those in certain places, thank you to this Committee for that provision. So does VHA has a national exam capability. So they're leveraging that capability as well to increase the output from those environments as well, so we are using every possible resource and we're putting the resources in the right place where that veteran is to ensure we get those exams done.

Mr. WENSTRUP. I'm glad to hear that. I'm glad that the health care side is working with you and I do appreciate your initiative to reach out and use private providers as well. I think those are going to be very integral to helping our veterans.

Next question I have is more of macro question. With any organization, you know, your key inputs that you need to be successful are people. You need to have manpower, excuse me, that's the people. But you need to have capital or the funding. You need to have systems and then you need to set the right culture. Pretty much everything VA has asked for with respect to people and systems and funding has been granted. So based on my visits with different boroughs around the country, and I've visited some really great ones like, Muskogee. It seems like the culture still varies a lot and as you sort of dig into the weeds, it seems like the biggest cultural issue we have is that in any given borough you'll have an underperforming group of people that you can't seem to get turned around in terms of their performance or, alternatively, get rid of them.

And so my question is this, what can we, as a Committee, what can we, as a Congress, do to help you deal with these low performers that just aren't going to get it and that aren't going to provide the proper level of service to our veterans, so that we can make way for people who will? So, that you can get the culture, get a Muskogee culture, essentially, throughout every borough in the country.

General HICKEY. Congressman, I have actually visited now and I have got another couple coming up here in the next few weeks, I think, more than 38 of our regional offices across the country in less than two years.

Here's what I see when I walk in there and I have straight up conversations with these folks and look them right in the eyeballs and I see people who care. They are not there because it's a job, in fact, I literally asked this question, how many of you are veterans? And I see the 52—well some ROs more than that veteran hands go up. And then I say okay, put your hands down. How many of you are a direct family member of a veteran? Almost the entire room is covered, maybe one or two that are not, you know, not having a passion for doing this mission because it's the right thing to do.

The first thing I have to figure out in those places where we have performance issues and our employees deserve this, is whether or

not we trained them right. If we did not train them right, then it's not bad on them, it's bad on us. So, that's why we have been extensively focused on the new challenge training model, to make sure we have the right training for our people. Because I can't expect them to do something if they've never been trained really well how to do it. So, we have been very, very focused on that. And then beyond that there is a process, it doesn't just exist in Federal Government. It existed for me when I was in the private sector as well and it's a performance improvement process where we literally sit supervisor to employees experiencing a performance problem and we make a written plan with milestones and performance expectations and we work that plan to get that person's performance up.

I want to get them in a better place and still working for us where they have a passion for this mission.

Mr. WENSTRUP. We all want them to be successful, I agree.

General HICKEY. So, the third thing we are doing, frankly, is in VBMS, we are giving them tools so they don't have to remember everything in their heads from a book that's stacked this big full of rules built from years and years of court decisions and years and years of laws and years and years of all those kinds of different things and regulation on our part to accommodate those things.

So right now, what we have done is we have taken that rule basis and we have put it and built it into the system so it queries them, it helps them remember I got to do this, then this, then this. Push this radial button, try to submit, it's not going to let you submit unless you go do this and this and this.

So, we're helping with some of that performance issue inside the system to get the system to aid in a consistent answer in a consistent process all the time. And we are seeing benefits of that. I think the fact that we have, for the first time, in April hit an over a 90 percent threshold on our national claims level quality and our medical issue quality at 95.6 percent now across the Nation, tells me that's working. Will we have outliers? Everyone, everywhere has a bell curve and we will. We're going to work hard to keep that employee if we can. If we can't, then we will figure out the next steps.

Mr. WENSTRUP. Let us know if we can be helpful. Thank you.

General HICKEY. Thank you.

Mr. RUNYAN. I have one quick question before we move on and it kind of raises a flag. Within this initiative of the two year claim fast tracking, are we at a point where these files are being adjudicated randomly or whether it's by procedure or human nature, are we just getting the easiest ones out of the way first?

General HICKEY. So, Chairman Runyan, thank you for the question. I'll tell you absolutely not, it's actually 180 percent the other direction. We are clearly doing the ones that have been hardest, have taken the most, you know, they are the oldest. We are not grabbing and running and doing the fastest and easiest ones first unless they fall into one of those priority categories that I mentioned before. I don't think you want me to tick through them again, but I would if you want me to.

The ones where they might still have something easy would be a fully developed claim. Those become easier to do and those do go down our express lane as I have committed to our VSOs to do. We

have done 67,000 claims in that express lane—an FDC claim in that express lane in 112 days in total.

So, no, in fact, if anything, we are grabbing a hold in a strong heavy, heavy case management way those have lingered the longest and have been the hardest to do.

Mr. RUNYAN. I just raised that because, obviously, the numbers in this program are impressive and you're halfway through it. There's a deadline that you've self imposed, so, I just wanted to clarify that. The chair recognizes the gentle lady from California, Ms. McLeod.

Ms. NEGRETE MCLEOD. Thank you. I just wanted to clarify something. California doesn't have four homes that are built that are not open, it's two. One in Redding, one in Fresno. And am I not right, Secretary Hickey, that the Federal Government pays for the building of the homes but then the State has to pay for the running and because recently California had a very large fiscal problem, that the homes were built but they hadn't been opened, but it's my assurance that they will be open in October or November?

General HICKEY. Congresswoman, I wish that I could answer your question, but, unfortunately, that is not one of the business lines I do.

Ms. NEGRETE MCLEOD. Well, that is my—that I do know that having come from California just recently and having served on the sub-committee that was actually dealing with the veterans' homes. The veterans' homes were built, only two, one in Redding, one in Fresno, they were held up from opening. They were completed, but because of the fiscal crunch in California they were held out from opening. They will be open in October or November and I was assured by the secretary of the veterans services in California.

General HICKEY. Congresswoman, I will still get the request for both on that subject.

Ms. BROWN. Would you yield to me? I would hate to disagree with you, but I went out there, it's four brand new units in L.A. I personally went there, sitting there that was built with Federal taxpayers money, but the State of California did not have money to operate it. These four, which is—there are four units, but it's 400, I guess, rooms or whatever that is available, brand new, just sitting there.

And the only reason why I raise it is because there should be a system in place where the Federal and the State can work together, because it's been sitting there over two years. I understand we're in a fiscal crisis, but those veterans that could use those facilities are in a much harder crisis. Thank you.

Ms. NEGRETE MCLEOD. I guess you don't want a colloquy, so I'll just—

Mr. RUNYAN. Gentle lady yields back. With that I'll recognize gentleman from Nevada, Mr. Amodei.

Mr. AMODEI. Thank you, Mr. Chairman. Secretary Hickey, it's my understanding from talking with a physician in my district recently that the coding that's used when you talk about records and the adjudication process, that the coding model and that may not be the right phrase, that is used whether you're a private physician or whatever, is 1940s vintage. Is that in the ballpark in terms of diagnosis or whatever?

And he said it in the context of, it's hard for a physician for 2013 or 2012 or whatever, when they're writing stuff for VA to have to try to make it fit with a '40s vintage coding model. And if that's true and if it's not just say, hey it's not true and I'll accept that. But if it is true, then what's being done to kind of bring us up to the point where everybody is talking the same medical language?

General HICKEY. Congressman, I appreciate your question and also the visit that you had with our staff this week, as well, to learn more about what we're doing in Nevada as well.

I have a limited knowledge on this, but I will share with you what I know. There are two different sort of diagnostic code processes and I think this is what you're addressing. One the VA uses and one that sort of private medical folks use. It's my understanding that there's an effort ongoing to see if they can map those two kinds of things together to facilitate a common understanding of those different diagnostic codes.

Beyond that, I will have to take the rest for the record and I'm happy to do so, to get you an answer.

Mr. AMODEI. Okay. Thank you. Also, the mandatory overtime for claims is, obviously, something that's out there on the record. Before that decision was made was there any cost benefit analysis done, mandatory overtime—and I'd be curious as to what the projected cost for that is. I think it's supposed to run for a specific time.

Mr. Takano and some of the Texas folks said, you know, that they had strike teams there and were looking for resources. Was there any cost benefit analysis done to mandatory overtime versus, you know, giving money to those States with task forces or something else other than just saying, hey, guess what, we're all going to turn out all hands on deck for a little bit longer?

General HICKEY. Congressman, we have actually long used overtime as a significant quiver in our arrow in our quiver. We, last year, were in a, for a period of time, albeit a shorter of time in mandatory overtime for compensation claims folks.

We have also until recently with the automation that arrived thankfully in September 24th of last year that allowed us to get the education claims inventory down significantly to the point where we're doing the bulk of that work in about five days.

We used to have to put our education claims processors in mandatory overtime, not for a short period of time, but for almost three quarters of a year.

The reason why it's a good use of that resource is because it takes about two years to get someone to a journey level capability to be able to adjudicate these cases.

And thanks to Chairman Miller's holding of the round table last week, we had the opportunity to talk to some industry partners who also shared with us, it takes them about the same amount of time, 18 months to two years to get someone to adjudicate these kinds of claims.

So, it is the best—and albeit I'm asking a lot from our employees, but we have tried to do it in a way that's sensitive to the fact that they can't just burn straight until the end of the fiscal year. They have to have a moment of reprieve to catch their breath to spend a little time with the family vacation time. So, we have allowed in

the process some flexibility—actually have provided in the process some flexibility for those 20 hours a month, including electing a month where you do not have to do that mandatory overtime—

Mr. AMODEI. I don't mean to cut you off, but I'm down to about a minute. I didn't hear a lot about cost benefit analysis. I do appreciate the historical data, though.

And finally, when you talk about resource allocation and model and I was interested to hear that my colleagues from the Golden State, Ms. Brownley and them talking about L.A. and Oakland. But, unfortunately, the only regional office that serves the State of Nevada is one that's gained some distinction lately.

And I appreciate you making your staff and Ms. Rubens available and look forward to working with you. But when I look at that office and see it, that resources have been cut in terms of personnel and budget—I just want to say, I look forward to you visiting the office, I look forward to hearing what you think after you've got that visit under your belt, but I still find it very curious that resources being cut in an office which in some way leads the Nation in ways that we don't want to. And so I'll look forward to talking with you after you've visited Reno because my time's up and I yield back, Mr. Chairman.

Mr. RUNYAN. Thank the gentleman. With that I recognize the gentleman from California, Mr. Cook.

Mr. COOK. Thank you very much, Mr. Chairman. Obviously, a lot of ground has been covered and I'm happy to see some of the improvements that have been made in this thing. And I'm—full disclosure, I'm probably the most cynical Member of this Committee in terms of the VA and the VA claims.

I still have a problem with the continual use of acronyms on everything. It's part of the culture that we were talking about. I have problems talking about metrics and all these other buzz words. You've got to have words that the veterans understand. Forget the rest of this other stuff. They want to know the straight scoop.

You know, I talk to them, I'm just a dumb Marine. General, I'm not as smart as you or anything like that, but I am tired of the run arounds that I get there.

Now, I hear it takes two years to train somebody, two years. It takes ten weeks to train a Marine, a soldier or what have you and that might be for the most important job that they have and that is to close with and destroy the enemy.

Maybe we should have two years to train them, that is far more important. Now, I get very excited about this and I have to apologize. And I appreciate that you're visiting those organizations. And I have to ask you, do they know you're coming in advance? Because if you look at the history of what has happened, if I was in charge, I'm sorry, I'd show up at 14:00 in the afternoon and say, you know, I'm Cook, here's my social security number, run it on me, what's going on?

And I am very, very happy that attention is being paid and part of it is because of this Committee and I'm just afraid that after this is over we're going to go back in the same rut where, you know, the claims get slower and slower and once again, you know, we get back in this culture.

So, I'm trying to believe this and I apologize for being so aggressive, but I've had too much coffee this morning and I'm late for a Committee and all those things.

But all I'm saying is, the veterans, they just want the straight scoop. They don't want all these big buzz words. They don't want the acronyms. They just get, you know, just let them know what's going on and what their expectations are.

They are, you know, I think they're the easiest patients in the world, I really do. And they go down there and they wait and they wait and they wait and then they come back in another few months and this and that.

And as I said, I'm part of the Vietnam generation and a lot of us have just given up on the system. And this is terrible, a lot of them have just ripped up their claims and they say, you know, no one really cares.

And I think the other thing you have to address is how many of these people have dropped out and said because of all the abuses that have happened maybe in the last decade or even longer, they just have no faith.

So, I appreciate what you're doing. I think we've got to almost rejoin or get these people back in there and all I'm asking is, the language that we communicate, forget the medical terms and use the terms that they understand. And I would ask your help on it and I'm very, very happy that you're making progress on this and I'm sorry I'm so animated this morning.

General HICKEY. Congressman, I appreciate, one, your service to this country and I love Marines, so thank you for your service as a Marine.

Mr. COOK. Is the secretary still going to invite me back to breakfast after my last—

General HICKEY. Absolutely, Congressman.

Mr. COOK. I got it.

General HICKEY. I don't have to ask him that question, absolutely. Let me just—I want to pick up on what you're talking about. The staff in and around me as we are writing things and doing things, here's two things from me, quite talking in lawyer talk and get rid of the gobbley gook. And those are my big fancy words for exactly what you just said, which is let us just in very simply straightforward language tell a veteran what we need to tell them.

So, I'm actually happy that you raised that question. I have been working hard to push the gobbley gook out of the system. That is a culture change. It is a culture change when you have court cases pushing on you and everybody wants to make sure everything's got the lawyer language protection around it or the medical jargon protection around it. But we have to stop doing that, so I'm all on board with your idea.

Mr. RUNYAN. Thank the gentleman. With that I recognize the gentleman from Colorado, Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman and Secretary Hickey. First of all, thank you so much for your service to the United States Army and now your service to the Veterans Administration.

You mentioned, I think, in that complexity and I think there is extraordinary complexity in the claims process and I think you mentioned that taking two years to bring somebody up to speed in

terms of to process claims, to be effective in terms of processing claims, to do that training.

And so, one thing, I guess, one of my questions is, do people specialize in a given—are there people that just only do PTSD or only do Agent Orange or only do physical wounds, such as amputations?

General HICKEY. So, Congressman, you're headed right where we're headed, which is when we are all in an electronic environment, when we can share a claim no matter where you sit in the country and we can say for the six medical issues you have inside that claim, let's get the group of people who do PTSD best to do your PTSD, let's get the group of people who do TBI to do TBI, let's get the people, you know, you can start now saying inside that claim let's apply a human capital filter to that and say who are the best people in demonstrated performance to do those kinds of medical issues. You're going exactly where we're trying to go.

Mr. COFFMAN. Thank you. I would encourage you to start making that movement now. Simply because of the fact that, you know, to have teams that are already specialized, even though you're transitioning from paper to electronic, not to wait in that process.

What I've found when I was State Treasurer for Colorado, I looked at the court system in terms of—I think I used the State of Delaware as an example, that they had done a business court, set up a business court with a court process that only looked at business cases. And I think they called it the commercial court or something like that and so we looked at replicating that in Colorado and in Colorado what we found was, we only had specialty courts for water issues and nothing else.

And so, what the studies that I looked at nationally in terms of adjudicating cases in terms of civil procedure was that cases moved, when there was specialty courts, cases moved along faster and that the results were more uniform. Not only did they move along faster but there was less variance in terms of the results and I think that it's very important to develop that specialty now within the Veterans Administration to say that we're going to develop this expertise in Agent Orange, we're going to develop this expertise in PTSD, in other areas.

And I think that the training will move along faster, the expertise will be developed sooner and I think the results will be more predictive if, in fact, we start the process of specializing these claims personnel now and not waiting until we've gained the electronic capability.

There's no question that when you gain that capability of just doing things electronically that it will be easier, that you will even be, in fact, more sufficient and more able to exploit specialization.

But I think that the claims are large enough where you can do it now and it will make a difference now.

General HICKEY. So, Congressman, thank you for your insight on that. It's very helpful. And, in fact, I will correct something I just said a moment ago. We have actually already started that segmentation. One of the three lanes is a special operations claim lane that there are only certain kinds of very complex medical conditions that can go down that lane and they are specialized to those very senior journey level people who can do them well.

So, for instance, Parkinson's goes down that lane, Diabetes goes down that lane, things that have lots of inferred or—now I'm using a medical term I promised I wouldn't do. Things that have—you know, you claim one thing, but you can have lots of things wrong with you associated with that, from like a Diabetes, you have your foot problem and your blood sugar problem and your head problem and whatever it is. Those kinds of complex claims do now go down our special operations lane and people are trained, specifically, against those kinds of claims.

Mr. COFFMAN. Well, I want to suggest for post-traumatic stress disorder because that is—I'm an Iraq War Veteran and I think that's a huge issue for Iraq and Afghanistan veterans and it's a big piece of the backlog that we have right now. And so, I really think that—and I think it does require a certain specialization. There ought to be a cadre of personnel that are solely focused on post-traumatic stress disorder and that's their speciality and that's their focus and moving those cases along.

I just think that that would make the system more efficient, that would make the adjudication of these decisions much more predictable than they are today.

General HICKEY. Thank you, Congressman.

Mr. COFFMAN. I yield back, Mr. Chair.

Mr. RUNYAN. Thank the gentleman. I, again, have one, other question before I go to Dr. Benishek.

It's an issue of concern brought to the Committee's attention that if the VA can rate the file with a connection in it as it is, there's not an exam being ordered, which potentially could increase the rating. Is there any truth to that?

General HICKEY. I'm going to need to clarify the question again. I'm sorry, there was a lot of movement by my ear, I just missed a few words. I'm sorry, Chairman.

Mr. RUNYAN. You're rating a two year file and there's evidence of service-connection disability in it and we're talking about not ordering an exam to—which is normal procedure, to potentially increase that claim. Is that happening that they're not ordering the exam?

Obviously, there's evidence of service-connection, but there's potential that there could be an increased benefit.

General HICKEY. So, I'm going to say what I'll say and then I'm going to ask Ms. Rubens, see if she can get to your issue even better than I will try to.

The way that we are doing these today is, you have to have a minimum of your service treatment records in order for us to do those and character and nature of service, obviously, and the exam, if the exam is required then we will do those as well and we are expediting those in lots of numbers with lots of all hands on deck out there.

So, I'm not sure I get to the nuance, but I'll ask Ms. Rubens if she does.

Ms. RUBENS. General Hickey, I think you've hit the point. Chairman Runyan, I'm not sure if you're referring to some of the concerns that we've heard mentioned today that we are, obviously, going to go back and follow up on to insure we are ordering those exams.

We've worked with VHA. General Hickey enumerated all of the efforts that they're putting to this as well. I would add to that one other thing and that's that they have committed to having medical doctors in each of our regional offices to work with us so that if one of those other things won't do it, we have an opportunity to look at the evidence that we have, if we still require an exam, the guidances, order the exam.

Mr. RUNYAN. Well, I think my issue is a change in that exam as it's been sitting in that file for two years. Do you see what I'm saying? That not ordering another exam to potentially have a change in—

General HICKEY. I think if the case is that the medical exam is stale, if that's what you're asking, Chairman, will we order another medical exam? Is that what you're asking?

Mr. RUNYAN. Yes. For a potential of an increased rating at that point. You have evidence there but it's, obviously, been sitting and not being adjudicated over a period of time.

General HICKEY. So, I will get that. I will find out explicitly for you what that specific guidance is and whether we even have a problem there. I don't know that we even have a problem there. But I will come back and I'm glad that Secretary Rubens made the comment.

But, we also as a focus of doing these right and well, we asked our VHA partners to position a full-time physician in each of the regional offices, depending on the workload, there are some that are very small and they can't give them enough to do. But there are many of them that are now in regional offices, you know, every single day and they are there for a rater or a VSR to come up quickly to them on the spot and say I need a medical opinion on this, I need, you know, something of that nature where we can get immediate access just in time to be able to grant that condition if we can.

And that is our motto, grant if we can and deny only if we must.

Mr. RUNYAN. I'm just more worried about the evidence you would need to increase a rating, that's my concern on this one and our concern is that a follow up exam is not being ordered. Do you see where I'm coming from?

You have evidence there. There's potential that there could be an increase in benefit if another exam was ordered. I'm just wondering about procedure there.

General HICKEY. Chairman, I'll go look at the issue and try to get a little better information for you to give you a better response. I know we're, obviously, not scratching that itch for you yet, so we will go back and look and see if we can figure out how to get to your concern.

Mr. RUNYAN. I appreciate that. With that I recognize, Dr. Benishek.

Dr. BENISHEK. Thank you, Mr. Chairman. Good morning.

General HICKEY. Good morning.

Dr. BENISHEK. I was kind of curious about the 60 day effort to clean up cases over two years of age and I was happy to hear you say that, you know, you're on time in your 60 day window.

Would you please report to myself and the Committee, it looks like it's going to be June 19th is the date, from what I can understand, that that's the end of the 60 days.

So, I would like to actually hear what your success rate is at that time and what percentage of them are provisional ratings versus, you know, the final ratings, because I'm skeptical a lot of the times of we're going to have this done in 30 days. You know what I mean? I hear that all the time and it's a little frustrating to me.

So, I'd like to get that report at the end of June then what your actual success rate is. I know there's been criticism about, you know, how you're doing it and everything—I don't know, I think if you tried something and if you can actually accomplish it in the 60 days, I think that will be a laudable goal.

I just want to follow up on something that we talked about earlier and that was the performance review for, you know, personnel that don't seem to be meeting their productivity standards.

And you mentioned the teaching, you know, the training for making sure that, you know, two years it takes to train some of these individuals. And I kind of agree with Mr. Cook that that does seem to be a long time to get somebody trained in there.

But I can accept that, but I can't accept the fact that somebody's not performing and I'd just like to know how many people in the—I don't have to know the names I don't imagine, but how many people are actually getting performance reviews in your department? Is there a percentage? I mean, how many cases of performance review are actually, somebody had a review in their file in the last 60 days. Do you know anything about that number?

General HICKEY. So, Congressman, I don't know the number for that. I think you're asking me about the performance improvement plans or the PIPs as they are called.

Dr. BENISHEK. Right. Right.

General HICKEY. I don't have those numbers immediately available to me. But, I do know they are used and they're, you know—

Dr. BENISHEK. Can I get an eight?

General HICKEY. But successfully graduated from in a lot of times, as well. You know, when we put somebody on a performance improvement plan—this is my experience in industry as well. It's my desire to do that in order to improve your performance.

Dr. BENISHEK. Well, exactly, and I understand that and I hear that, but I don't know if it's actually happening. You know what I mean?

How many employees are under case managers or case—how many employees do you have doing that?

General HICKEY. So, we have six different business lines in VBA and in the compensation line, we have for people directly touching a claim, it's about 10,000 people.

Dr. BENISHEK. Oh, 10,000 people, so could you maybe come up with a number or actually give me a relatively accurate number as to how many people have gotten a performance review in the last 60 days out of that 10,000?

Ms. RUBENS. Congressman, I appreciate the question. I don't have the specific number with me, but I can assure you that we look regularly at the number of employees that we've got on performance improvement plans. We'll come back to you with the in-

formation in particular around those 10,000 that are working claims in that last 60 days. How many have been on a performance improvement plan and where we are today with those.

Dr. BENISHEK. Yeah, I would appreciate that, please. Because I'm just not—I'm concerned about the fact that there's not enough performance and there's not enough review of performance in the management of the VA, because I've had this experience where we're going to do something and yet it doesn't get done and I just don't like to hear that answer.

General HICKEY. So, Congressman, one of the things that we have done in the nature of looking at our business and our work a little differently is, I have re-coded the system that allows me to look in the performance system for our employee, a system called ASPEN and I don't know what it stands for, but it's the system where they log what they're doing and the system keeps track of all that.

We have created a way to look at not just claim level, quality and things of that nature, but we have a way now of looking at the individual medical issue level quality that we have never had before.

And what I can tell you as I said earlier in the discussion, we have actually seen both our claim level quality increase as a focus of really focusing in on training, really focusing in with our quality review teams, we took a major investment of the compensation staff to be in process checks and reviews of how people are doing in errors that we typically see.

And as a result of that, we've actually reduced those errors rather significantly over the last year. And that, I think, has contributed to the growth of our quality numbers in the process.

When we look at performance, we look at it both from a production and a quality environment. One can't trade for the other.

Dr. BENISHEK. Well, of course. I mean, I understand that there are going to be a relatively complicated review because claims are different. I mean, you can't expect somebody to process ten claims an hour, because obviously, there's going to be a lot of different variables there. But it seems to me that there should be some standards of performance that you have.

Maybe that will be another thing that I would like to see what exactly the standards of performance are and you said it's complicated, could you give me—Ms. Rubens, perhaps you're the one that we should get that information. I mean, what would be substandard performance then in view of the complicated nature of the review that Ms. Hickey relates?

Ms. RUBENS. We'd be happy to share that information with you. Effectively, if I'm a Veterans Service Representative or a Rating Veterans Service Representative, I have some expectations about the number of things that I do and they vary depending on what part of the process the claim is in, gathering the evidence and making the decision, as well as quality that the under secretary eluded to. The quality review teams are there looking at claims every month for each employee to insure that they are doing a quality job. But we'd be happy to provide some of that information that helps illuminate that.

General Hickey mentioned the improvement and the quality that we're seeing across the system. Organizationally, we've done about

30,000 more claims this year from an output standpoint, as well, then we did last year up until this time.

I would tell you that I think over 50 percent of the employee workforce are veterans themselves, they are very committed to what we're doing. And working within the system of performance, it's not just about the performance improvement, but celebrating the successes that they've brought for veterans.

General HICKEY. And if I might just add one quick thing. They have done all those improvements while they have gone through the singularly largest series of changes and transformation in this organization has seen in decades.

So, not only did they improve their production and improved their quality, they did it while going through a major major change.

Dr. BENISHEK. Well, thank you, I appreciate your comments. I actually appreciated Mr. Coffman's ideas as well, I hope that is taking place and I look forward to seeing your responses to my ask. Thank you, Mr. Chairman.

Mr. RUNYAN. I thank the gentleman and thank you all for being here. General Hickey, Ms. Rubens, thank you for your testimony. You're now excused.

This concludes our hearing for today. I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and include all extraneous material. Hearing no objection, so ordered.

I'd like to, once again, thank our witnesses and audience and Members for joining us here in today's conversation and this hearing is now adjourned.

[Whereupon, at 12:03 p.m. the Committee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. Jeff Miller, Chairman

The Committee will come to order.

Good morning everyone.

Welcome to today's Full Committee hearing, entitled "Expediting Claims or Exploiting Statistics?: An Examination of VA's Special Initiative to Process Rating Claims Pending Over Two Years."

As I initially stated when this initiative was first announced, and as I will reiterate throughout the hearing today: although this new approach sounds promising, we must monitor it closely to ensure that it is good policy rather than just good P.R.

I will admit that I was very frustrated by the fact that both Secretary Shinseki and VA benefits officials testified before this Committee several times in the weeks just before the initiative was announced, yet there was no mention of this initiative to this Committee as a means to address the backlog.

I'd like to take this opportunity to emphasize that an open dialogue between VA and this Committee about the backlog and other issues affecting the Department is critical.

I hope VA will take this into consideration as it continues to develop new strategies to address the disability claims process.

Turning back to the initiative that we are here to focus on today, I'd like to emphasize that VA must not shift resources and manpower away from processing new claims just to clear out older ones.

Every veteran deserves a thorough, fair and timely evaluation of their claim, regardless of when it was filed. This policy should not interfere with that concept, and I hope that it does not in practice. However, the Committee has heard several concerns from stakeholders in the process, namely that RO employees lack guidance on how to carry out some aspects of the initiative.

For example, it is currently unclear to many in the field how claims processors will follow up on provisional ratings that have been issued one year from now. Concerns have also been raised that VHA cannot schedule required VA examinations within the required timeframe to have these oldest claims adjudicated by the June deadline.

Further, there are some concerns that this initiative involves some statistical manipulation. For example, when a provisional rating is issued, the controlling end product is cleared. If a veteran submits additional evidence within the one year provisional period, this evidence is assigned a new end product, with the date of claim being the date the new evidence was received, not the date that the underlying claim it is associated with was first filed. Although clearing and entering end products in this manner will ultimately make the statistics on the backlog look better, they do not get to the heart of the matter, which is how VA plans to improve its workload management processes in the future.

Finally, VA has stated that of the claims it has completed as part of the initiative thus far, many were able to be finally adjudicated rather than issued provisional rating decisions. This begs the simple question of why these claims were not adjudicated prior to the initiative, and again, what VA is doing to better address its workload management practices to prevent situations like this from arising in the future.

Despite these concerns, I do applaud VA for acknowledging that waiting a year, two years, or even longer is too long for our Nation's veterans to receive their earned disability benefits.

VA has stated that to date, they have processed approximately 22,00 of the nearly 42,000 claims identified for the initiative, and that they believe they are on track to meet their target deadline next month for adjudicating these claims.

VA meeting one of its self-proclaimed deadlines would be a welcome change in our continued oversight of the backlog of disability claims. I look forward to hearing more about this initiative at today's hearing.

I'd like to thank Under Secretary Hickey and Deputy Under Secretary Rubens for being here today. I would also like to thank all of those who submitted statements for the record.

I now yield to our Ranking Member, Mr. Michaud.

Prepared Statement of Hon. Allison A. Hickey

Chairman Miller, Ranking Member Michaud, and Committee Members, thank you for providing me the opportunity to discuss the Department of Veterans Affairs' (VA) special initiative to address the oldest compensation claims in our inventory. The first step of this initiative was launched on April 19, 2013. I directed all regional offices (RO) to process within 60 days all rating claims pending for over 2 years. Once those claims are completed, we will focus on rating those claims that have been pending for more than 1 year. This initiative will accelerate the receipt of benefits for those Veterans who have waited for a decision for the longest period of time as part of VA's overall strategy to eliminate the claims backlog in 2015. For the purposes of this testimony, I will address the 2-year old claim plan that is currently underway in all ROs. I am accompanied today by Diana Rubens, Deputy Under Secretary for Field Operations.

Implementation Plan

Effective April 19, 2013, and after valuable input from our Veterans Service Organization (VSO) partners, VA began making "provisional" decisions on the oldest claims in the inventory. This adjudication allows eligible Veterans to begin collecting disability compensation benefits immediately based on the evidence of record, allowing many Veterans who have waited the longest to more quickly begin collecting compensation benefits. In all cases, VA will ensure that the Veteran's applicable service treatment and personnel records are available for review in connection with the claim. We will further ensure that VA medical examinations or opinions are in the record if they are necessary to decide the claim. All Veterans Benefits Administration (VBA) claims processing personnel have been fully trained on how to process these claims and are eager to expedite benefits for those Veterans who have waited the longest.

To ensure fairness, Veterans will be permitted to submit additional evidence or request that VA obtain additional evidence for a full year following the provisional rating, before VA issues a final decision. This 1-year "safety net" provides Veterans the opportunity to identify or obtain additional evidence that may change the provisional rating, particularly with respect to the disability evaluation level assigned. If VA receives additional evidence within the 1 year following the provisional rating that substantiates an increased evaluation, VA will pay the increased compensation back to the original date of claim. Following the year-long period of time for the submission of additional evidence, VA will issue a final decision to the Veteran, and include information should the Veteran decide to appeal the decision. The Veteran will then have the standard year to appeal the decision.

Throughout this initiative, VA will render final, rather than provisional, decisions on claims where all available evidence is of record or when the rating assigned for each claimed issue already provides the highest level of disability compensation allowed under our laws and regulations. Also, Veterans may request to receive a final decision with appeal rights, rather than a provisional decision, before the 1-year provisional period ends.

VBA's plan is to complete claims pending 2 years or longer within 60 days and claims pending 1 year or longer within 6 months. VA will continue to prioritize Veterans who are most in need.

- We have been, and will continue to prioritize claims for homeless Veterans, the terminally ill, former Prisoners of War, and Medal of Honor recipients. About 3,000 to 5,000 Veterans per month in this category are receiving expedited claims processing. We will also continue to prioritize Fully Developed Claims (FDC), which are critical to eliminating the claims backlog.
- Veterans who are facing financial hardship are also prioritized and tracked specifically by VA ROs. VA can assign that status based on the case, or Veterans can self-identify—either when filing or by alerting VA after the claim has been filed. VSOs can also alert VA to prioritize cases for financial hardship on behalf of Veterans they represent.
- For wounded, ill, and injured Servicemembers separating from the military for medical reasons, there is an Integrated Disability Evaluation System (IDES) to ensure a "warm handoff" between the Departments of Defense (DoD) and VA.

For this system, VA dedicates staff solely to process claims for this priority population. VA completes IDES claims in less than half the normal processing time.

This initiative will not affect Veterans who have already received a decision on their claim and have filed an appeal.

Content and Basis of Provisional Ratings

When making a provisional decision, VA will grant or deny the claim based on the evidence of record; however, provisional decisions will not be made on claims where the following evidence is absent from the claims record:

- Service treatment records (STR) for original claims;
- VA medical records;
- Any evidence needed to establish Veteran status and/or pertinent service dates, if available evidence is not otherwise sufficient; or
- VA examinations, if such exams are pending at the time the case is reviewed or if exams are necessary to make a decision on the claim.

If required Federal records outside of STRs have not yet been received, VA will issue a provisional decision and request the Federal records. VA will review any new evidence received as a result of this request and issue a final decision on the claim. If the claimant has additional relevant evidence pertaining to the claim, he or she is given 1 year from the date of the provisional decision to provide it to VA or to request VA's assistance in obtaining it. Upon receipt of any new evidence, VA may render a final decision and provide appeal rights.

VBA notified the Veterans Health Administration (VHA) of this initiative, and the 2 administrations have worked together to identify existing examination requests for claims over 2 years old. Future examination requests on these claims will identify the specific priority, and ROs are working closely with their VHA partners to ensure timely examinations. Nationwide, VHA's average processing time for returning completed exams has remained at 30 days or less since August 2011. As ROs will only be working the oldest claims and certain identified special-issue categories, existing non-priority examination requests will be quickly worked through the system so we can concentrate on these oldest claims.

The contracted disability examination providers have also been notified of VBA's initiative to expedite certain examination requests. Specifically, all 2-year-old claims pending contract examinations were identified, and contact was made with the vendors to ensure prioritization. We do not anticipate that this will affect the scheduling of other pending examinations.

DoD has also collaborated with VBA in this initiative, granting additional access accounts to RO personnel that allow us to directly access DoD's Armed Forces Health Longitudinal Technology Application to search for additional medical evidence, if needed. In addition, for several months now, a number of DoD personnel have been co-located at VBA headquarters to assist in locating service medical records needed to support pending claims.

Reporting Metrics

As a result of this initiative, metrics used to track benefits claims will experience significant fluctuations. By eliminating the oldest claims from the inventory, VA lowers the average days pending for claims in the overall inventory. VA is aware that this focus on taking care of those Veterans who have been waiting the longest will also cause the measure for average days to complete (ADC) a claim to rise significantly in the near term. Over time, as VA clears out this backlog of oldest claims and increases processing of new claims electronically, we expect the ADC measure to significantly improve. As of May 14, there were about 28,800 claims over 2 years old and 206,822 over 1 year.

Summary

VA is launching this initiative to expedite claims decisions for Veterans who have waited the longest. We will also continue to prioritize claims from Veterans who are homeless, terminally ill, former Prisoners of War, and Medal of Honor recipients, those facing financial hardship and our most seriously injured, in addition to processing claims that are fully developed. Today, we have rated 62,000 FDCs in 111 days, on average – demonstrating how critical the FDC initiative is to resolution of the claims backlog. Our VSO partners are fully supportive of using FDC and recognize the increased efficiency, quality, and productivity that result.

We must eliminate the claims backlog; the President has made that very clear. That is why VA is launching this initiative to expedite claims decisions for those Veterans who have waited the longest - we owe them a decision. This concludes my

testimony. I would be happy to address any questions or comments from Chairman Miller or the Committee Members.

Statements For The Record

THE AMERICAN LEGION

The first step to solving a problem is to admit that you have a problem. For many years now when pressed for answers regarding the growing backlog of disability claims, the response from the Department of Veterans Affairs (VA) has been to forestall any concerns by repeating the mantra of “everything is under control, when the Veterans Benefits Management System (VBMS) rolls out, we will have the backlog under control and we will meet our goal of 98 percent accuracy and no claims pending more than 125 days.” On April 19, 2013 VA finally admitted they had a problem, and needed to take extraordinary measures to stay on target.

The Letter that VA issued on April 19 was entitled “Guidance Regarding Special Initiative to Process Rating Claims Pending Over Two Years.”¹ We are pleased that VA is taking action to address this select group of massively backlogged claims, and VA’s efforts to contact The American Legion and other Veterans Service Organizations (VSOs) as they neared a launch date for this plan is further laudable. At the end of the initiative, more than 50,000 claims that have been pending for more than two years will have some kind of resolution for the veteran, while more than 200,000 claims pending a year or more will be similarly resolved. Following the directions of the “Fast Letter”, these claims will be moved to a digital format, further supporting VA’s ongoing transformation to an electronic operating environment. The American Legion finds that there are many things to praise VA about with this initiative.

That said, The American Legion believes that there are many serious concerns still outstanding with regard to the implementation. Ultimately, the disability claims process is supposed to be inherently pro-claimant, with the best interest of the veterans held paramount. The American Legion has been working with our network of over 2,600 accredited service officers to receive real time feedback of what is transpiring in the field. As our Regional Offices (ROs) struggle to implement the program, they are also struggling to address the concerns of veterans who are affected by this policy change.

One of the chief concerns that The American Legion has is the allocation of personnel resources that will need to be devoted in order to successfully implement this program. As we understand it, all Rating Veteran Service Representatives (RVSRs) and the majority of Veteran Service Representatives (VSRs) will be devoted solely to this project, and Decision Review Officers (DROs) will be diverted from their appeals work to work these claims as well. While assurances have been made that certain priority groups (Homeless, Terminally Ill, Medal of Honor recipients, Former POWs, and Fully Developed Claims) will still receive priority, all other work has been tabled to devote resources to this initiative, and our service officers are concerned this may be an overreaction. Claims being worked on one day will be suddenly set aside, even if they are ready to rate, and delayed until the oldest claims can be completed. In the interest of addressing the older cases, a claim that required something as minor as a signature in order to be processed for payment to the veteran may now sit on the shelf needlessly for months. The American Legion believes that there must be a better way to address this process, rather than by suspending work on some claims while diverting resources to others. Even a skeleton crew finishing last minute work on nearly completed claims would help ameliorate this problem.

One of the problems beginning to emerge may be systemic, and bears further scrutiny; ROs are being instructed to assign an “EP (End Product) 400” code to provisional ratings. Our staff has been told the EP 400 code will “automatically expires on a certain date and subsequently disappears.” A full record of any previous adjudicative actions is essential in case a claim must be appealed. What the long term effects of these changes to end product codes will be is still unclear, and how these end product codes will affect tracking of claims is still unclear. The number shuffling by changing end product codes is a serious concern to The American Legion.

Further systemic problems are raised by the conversion of all of these claims to the electronic VBMS format. While The American Legion fully supports moving VA into the VBMS operating model, not every office is prepared for this. Some ROs are

¹VA Central Office (VACO), VBA Letter 20-13-05.

being forced into handling claims in VBMS without the proper preparation and roll out, which creates problems for service officers attempting to help veterans with their claims. In many cases at some ROs, we are receiving reports of claims being decided, and sent out for scanning, before service officers are allowed to view and review the file for appeals determination. If the service officers can't access the full file and analyze the rating, veterans are at a disadvantage for their appeals. In order for the process to be truly fair, everyone has to have access to all of the information. The scanning process alone adds two weeks to a month to the wait time before a service officer can review the file, and if the RO is not yet fully equipped for VBMS, it is likely in a format that will make review difficult.

The lines of communication between VA and the VSOs in this matter have been improved in recent years, but The American Legion still has concerns about this vital link in the communications chain. While some ROs conducted meetings with the VSOs to brief them on the operation of this initiative within their office, this has not been consistently done. The improvements in communication between VACO and the VSOs needs to be better distributed on a national level to ensure it is getting down to the "boots on the ground" level. Furthermore, when VSOs raised concerns about omissions in basic procedural rights regarding the provisional decisions, such as ensuring necessary medical examinations take place, and ensuring all required federal records had been obtained, VACO was receptive to the critiques and made changes to the plan, which The American Legion greatly supports and appreciates; but the fact that those omissions even existed in the first place – and needed to be pointed out by the VSOs involved – is troubling.

Finally, a concern has emerged through this process involving the new forms being utilized by VA for veterans to express a Notice of Disagreement (NOD). The new NOD forms are problematic in two areas, and both of these concerns reflect troubling directions VA is pursuing in terms of potentially affecting the appellate rights of veterans who may be dissatisfied with the ratings of their claims;

Block 13, under Part II – Telephone Contact (see Fig. A), asks the veterans if they would like contact through phone or email with VA regarding their claim. There is no way for the veteran to indicate they would like to include any representative they might have, such as a service officer, involved in the contact. Due to the complexity of the disability claims process a veteran is far better served when there is someone present who understands and can explain the complexities of their individual claim, and knows what questions to ask and how to respond to questions from VA. Some improvement in this area would be to include representation for the veteran, which is in the best interest of the veteran.

Figure A

PART II - TELEPHONE CONTACT	
13. WOULD YOU LIKE TO RECEIVE A TELEPHONE CALL OR EMAIL FROM A REPRESENTATIVE AT YOUR LOCAL REGIONAL OFFICE REGARDING YOUR NOD?	
<input type="checkbox"/> YES	<input type="checkbox"/> NO <i>(If you answered "Yes," VA will make up to two attempts to call you between 8:00 a.m. and 4:30 p.m. local time at the telephone number and time period you select below. Please select up to two time periods you are available to receive a phone call.)</i>
<input type="checkbox"/> 8:00 a.m. - 10:00 a.m.	<input type="checkbox"/> 10:00 a.m. - 12:30 p.m.
<input type="checkbox"/> 12:30 p.m. - 2:00 p.m.	<input type="checkbox"/> 2:00 p.m. - 4:30 p.m.
Phone number I can be reached at the above checked time <input type="text"/>	

The second and perhaps most critical concern addresses Block 15C (see Fig B.) This block presses a number of questions to the veteran of a technical nature regarding their claim. It asks the veteran to provide specific details about their dissatisfaction with the decision, and section C requires them to assign a desired percentage evaluation for their disability.

Figure B

15. PLEASE LIST EACH SPECIFIC ISSUE OF DISAGREEMENT AND NOTE THE AREA OF DISAGREEMENT. IF YOU DISAGREE ON THE EVALUATION OF A DISABILITY, SPECIFY PERCENTAGE EVALUATION SOUGHT, IF KNOWN. PLEASE LIST ONLY ONE DISABILITY IN EACH BOX. YOU MAY ATTACH ADDITIONAL SHEETS IF NECESSARY.		
A. Specific Issue of Disagreement	B. Area of Disagreement	C. Percentage (%) Evaluation Sought (If Known)
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	
	<input type="checkbox"/> Service Connection <input type="checkbox"/> Effective Date of Award <input type="checkbox"/> Evaluation of Disability <input type="checkbox"/> Other (Please specify)	

Veterans are not trained medical or legal personnel, and do not have access to the regulations or resources that ROs use to determine the different levels of disability rating. They are not necessarily qualified to provide this information, and could potentially damage their benefit sought on appeal due to a lack of legal knowledge. While a represented veteran is in a more expert position, it still places the veteran or service officer in the position of doing the VA's job of rating the claim. If a veteran only asks for one step up in rating from 10 percent to 30 percent, when the case actually merits a 50 percent evaluation, will VA simply rate them at 30 percent and consider this "A FULL GRANT ON APPEAL"? As of now, this is unclear. Veterans are not expert in the complete corpus of veterans' law and benefits; they should not be required to provide information in the dark with the very real possibility of damaging their claim on appeal by providing bad information.

On behalf of our National Commander James E. Koutz, the 2.4 million members of The American Legion we would like to thank this subcommittee for their diligent attention to the disability benefits process. Overall this initiative is a positive step forward for VA in addressing systemic problems in the benefits system. However, ensuring veterans are not impacted negatively by this is something that will bear close scrutiny over the coming months. The American Legion will be watching closely, and hopes to work closely with both VA and Congress to ensure the ultimate outcome is in the veterans' best interest.

For any questions regarding this testimony please contact Ian de Planque, Deputy Legislative Director of The American Legion at (202) 861-2700 or ideplanque@legion.org

AMVETS

Introduction

Distinguished members of the Subcommittee on Disability Assistance & Memorial Affairs, it is my pleasure, on behalf of AMVETS, to offer this testimony on VA's recently announced initiative, which requires Regional Offices to process all claims pending for more than two years within 60 days of April 19, 2013.

I would like to begin today by commending the committee for all of its work on behalf of American veterans everywhere, especially its efforts to improve efficiencies by eliminating redundant and/or counterproductive programs and its unwavering commitment to all of the men and women whose job it is to protect and defend this country.

As the United States absorbs the aftereffects of more than a decade of continuous war and in the face of the planned draw-down of military personnel, the VA claims processing system has been, and will continue to be, severely stressed for the foreseeable future. Nothing is more important for our veterans than adequately meeting their physical/mental health care needs and the accurate and efficient processing of their disability claims.

Thanks to improvements in battlefield medicine, swift triage, aeromedical evacuations and trauma surgery, more combat-wounded than ever before are surviving horrific wounds and will be applying for the disability compensation they've earned on the battlefield. Your committee has a responsibility to ensure that the VA and

our nation live up to the disability compensation obligations imposed by the sacrifices of our veterans.

It is encouraging to acknowledge at this time that, despite the extraordinary sacrifices being asked of our men and women in uniform, the best and the brightest continue to step forward to answer the call of our nation in its time of need. I know that each of you is aware of and appreciates the numerous issues of importance facing our military members, veterans, retirees, families, and survivors; however this testimony will be, following these introductory remarks, limited to the VA's claims backlog initiative.

For more than three years, the VA has been engaged in a comprehensive transformation process designed to convert the current claims processing system from an antiquated paper-based system to an electronic-based system. While early feedback on the new VBMS system appears to be somewhat mixed, not unusual when launching new systems, there seems to be sufficient merit to warrant our support. As VA continues to move forward with improvements and innovations, it is essential that Congress provide the resources necessary to complete the work at hand.

There is certainly no shortage of problems plaguing VA's claims processing system, including:

- the unprecedented numbers of claims being filed;
- the failure of claims adjudicators to equitably and accurately decide claims the first time;
- the large number of appeals of claims decisions being filed;
- the VA's outdated and inefficient infrastructure; and
- the layer of middle managers entrenched within the VA who are not only uncooperative and unproductive, their lack of cooperation is actually undermining all of the good work that both Secretary Shinseki and General Hickey are attempting to accomplish.

AMVETS is aware that there have been some within the VSO community who have practically demanded the resignations of both Sec. Shinseki and Gen. Hickey, but AMVETS is not among the naysayers. AMVETS fully supports both of these hard-working, dedicated, results-oriented, forward-thinking leaders and we believe that the cost (in lost productivity, etc) of eliminating them will be extremely detrimental to American Veterans everywhere. AMVETS does not believe that either Sec. Shinseki or Gen. Hickey is the problem; they are actually the best thing that has happened to the VA in decades. A better idea would be to get rid of the folks who are desperately clinging to 'the old ways' and acting as road blocks to progress.

Unfortunately, a tremendous amount of negative energy, especially from the media, is being focused on the claims backlog, which is merely a symptom of the much more endemic problem of reforming the claims processing system as a whole.

AMVETS applauds the VA's ongoing efforts to streamline and improve, thereby shortening, the length of time it currently takes for veterans to receive decisions on their disability claims. The VA's recently announced initiative to provide provisional compensation decisions for the veterans who have waited the longest is an innovative, partial solution to the massive claims backlog problem. It's obvious that the same old ideas are not working and it's time to try something entirely new. If it's okay for our justice system to be based on the motto that one is "innocent until proven guilty" and if we file federal/state taxes and only a small percentage of folks get audited annually, then why not use a similar system of 'presumption' to help our veterans get their claims processed more quickly?

Though the idea may have merit and is certainly intriguing, questions remain to be answered, for example:

- what happens if a veteran is given a provisional rating and later that rating is either downgraded or the claim is denied altogether?
- who will be the judge of whether or not a claim is fully developed?
- should those who have claims based on service in Viet Nam or earlier conflicts be included in the 'high priority' category?
- should victims of military sexual trauma be included in the 'high priority' category?
- will forcing employees to work overtime to process this huge backlog of claims improve the accuracy of rating decisions?
- what happens if, through no fault of their own, a veteran is unable to provide the requested documentation?
- what will happen if an eligible veteran utilizes health and other VA benefits while their claim is pending or has a provisional rating and that claim is later denied?
- what kind of oversight will be provided?

- will accurate provisional ratings be incentivized?
- will private medical evidence be utilized during the decision making process?

AMVETS will certainly be interested in monitoring the outcomes as implementation of this initiative moves forward.

AMVETS offers the following recommendations as part of a holistic solution to the problems plaguing VA's claims processing system:

- that there be an increase in the quantity and quality of training provided to employees involved in the adjudication of claims;
- that all testing or skills certifications instruments be reviewed to ensure that they accurately measure the appropriate job skills;
- that VA continues to engage and utilize the expertise of its VSO partner organizations;
- resources must be equitably distributed between the various claims processing lanes; and finally
- Congress must ensure that the VA receives sufficient funding to appropriately implement its mandate to serve veterans.

This completes my statement at this time; thank you for the opportunity to offer our remarks on this critical issue.

VETERANS OF FOREIGN WARS OF THE UNITED STATES

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I want to thank you for the opportunity to provide testimony for today's hearing.

Over the last decade the Veterans Benefit Administration (VBA) disability claims workload has grown from 330,000 to nearly 905,000¹. During the first six years that increase was a relatively modest 60,000 claims. However, from early 2009 to the present, pending disability claims more than doubled.

Historically, VA tracked claims that were pending longer than 180 days. From 2003 to 2009, claims pending over 180 days ranged from a low of 75,000 to a high of 108,625. In 2009, VA established a goal that no claim should pend more than 125 days. The lower number meant more claims exceeded the goal. In 2010, VA reported 179,863 disability claims pending over 125 days at the start of the year. By January 2013 that number had tripled to over 630,000.

The story told by this data is not new. In the last few years the volume of outrage from veterans, veterans' advocates and members of Congress has increased substantially. What was once an infrequent chant of disenchanting veterans of "deny, deny until I die" has been joined by many other voices demanding answers as to why VA cannot process claims more quickly than it currently does.

During the last five years VA Secretary Eric Shinseki and VBA leaders, most recently Under Secretary for Benefits Allison Hickey, were able to identify many of the systemic problems which slow claims processing and put into motion historic changes in IT modernization which they believe will, over time, enable VA to process claims more quickly and with better quality. Unlike their predecessors they have a single vision and are dragging the second largest bureaucracy in the Federal government into the 21st Century. These are good things.

However, while this long overdue transformation takes place, more and more veterans wait longer and longer for decisions from VA. Although VA made decisions in more than 1 million claims last year it was not enough to reverse the tsunami of claims it received. Inexorably, pending claims grew older and older, one day at a time. The media has been filled with story after story of veterans who had waited seemingly forever, frequently longer than a year. The number of veterans waiting two years or more seemed to explode overnight.

With this as background, what was VBA to do? It did what it has always done; it decided to play a game of Whack-a-Mole.² VA decided to shift its claims proc-

¹Monday Morning Workload Report, January 2003–January 2013; <http://www.vba.va.gov/reports/mmwr/>.

²Whack-a-Mole is one of those carnival games which can never be won, only played. It is usually a table with five or six holes. The head of a plastic mole protrudes from one hole. If you push down the head another pops up from different hole. The object of the game is to see how many moles you can whack with a mallet in a given time frame. The person who hits the highest number of moles wins the game.

essing attention from methodically working all of its claims to concentrating on processing claims pending for more than two years. This reordering of priorities is not new, nor is it necessarily unreasonable in light of shifting workloads.

For instance, in August 2010 VA recognized three new conditions presumptively related to exposure to herbicides in Vietnam. VA leadership knew that they were faced with reviewing tens of thousands of claims previously filed by Vietnam veterans to see if they were entitled to benefits for one or more of the new presumptive conditions. This review was required in order to comply with *Nehmer v. United States Department of Veterans Affairs*³. VA could also reasonably anticipate receiving many more thousands of claims from Vietnam veterans. Faced with this certain dramatic spike in its workload and the relative simplicity of many of these claims, VA decided to shift its priorities to work Agent Orange claims ahead of pending claims.

In the end, VA processed 260,000 Agent Orange claims ahead of other pending claims.⁴ The very nature of this priority caused hundreds of thousands of other claims to grow months, perhaps years, older. VBA leaders are convinced that it was the right decision. Two-hundred-sixty thousand Vietnam veterans are receiving benefits today for conditions stemming from their war which ended 38 years ago. We can assume that most are satisfied with the actions taken by VA. This is what happens when priorities shift; a new set of claimants “win” while others wait longer.

The review of claims more than two years old is a change in priorities.⁵ It places virtually the entire claims backlog on hold until VBA finishes a review of more than 50,000 claims pending for more than two years. During this review, we are told, another 5,000 claims per month will turn more than two years old. After an interminable wait these veterans will receive decisions.

VA states that about 30 percent of the 50,000 claims were “ready to rate.” That is, someone had indicated that all necessary development had been completed. These cases could have been worked at any time. Had regional office management paid attention to the workload reports, it should have assigned sufficient staff to process at least that segment of old claims. Judging from the fact that some regional offices had few claims subject to this review, it appears that some regional office managers managed their workload better than others.

The remaining 70 percent of pending claims would fall into the following categories: Claims which should have been marked “ready to rate” but were not; claims which were awaiting records from Federal government agencies; claims waiting for a required VA medical examination; and claims waiting for records from private or non-Federal government sources.⁶ It is this last group of claims which, we believe, make up the largest segment of these old claims. Often, development is incomplete because of mistakes made by VA early in the processing of the claim.

This project concerns us deeply. When the project was first proposed the VFW and other service organizations sought to create a dialog with VBA. VA adjusted the letter to address some of our concerns. However, the basic problem with this review is the creation of a new type of rating: A provisional rating. While VA has had great latitude in issuing interim ratings when it finds that evidence is sufficient to grant service connection or a higher evaluation even though additional development is required to fully adjudicate other issues, the idea of rating on the evidence of record before development is completed on that issue is new. It is also a disturbing departure from the law and past practice.

For the record, the VFW welcomed the changes made by VBA in modifying this project. We told VBA leaders that we would not oppose this project as we consider it a one-of-a-kind event; that these veterans had waited too long to have their claims

³*Nehmer v. United States Department of Veterans Affairs*, No. CV-86-6160 TEH (N.D. Cal.).

⁴“Balancing the Record on the Claims Backlog”; <http://www.blogs.va.gov/VAntage/8995/balancing-the-record-on-the-claims-backlog/>.

⁵VBA Letter 20-13-05 mandates a review of all claims received prior to July 1, 2011. Except for certain excluded pending claims, VA personnel are directed to rate all claims in this group based on the evidence of record. If development was complete at the time of review VA will make a decision using existing criteria and guidelines and provide appeal rights to the claimant. If development was not complete, but was not excluded from the project, VA will issue a “provisional” decision based on the evidence of record. This provisional decision does not become final for 1 year. During this period a claimant can submit additional evidence and receive a new decision based on the evidence of record. VA will notify the claimant that the decision is now final and provide appeal rights if no evidence is received within 1 year of the issuance of a provisional rating.

⁶It is important to note that a small segment of claims grow old because of the difficulty in obtaining Federal government records in spite of timely efforts to obtain them. Claims from veterans who participated in nuclear bomb tests in the 1940-60’s, for instance, are notorious for taking a long time to develop dosimetry readings from DOD, adjusted exposures and medical opinions.

decided. VBA indicated that it wanted to expand this project to claims pending more than one year once the initial review was done.

Given that VBA wanted to expand the review, we asked that it pause after this project to assess it to determine what problems were noted during the review; what action, if any, was taken to address those problems; what changes, if any, are necessary if the project was to be expanded to claims more than one year old; and what additional problems might develop by expanding this project.

In our view, issuance of a provisional rating is an admission of failure; failure on the part of VA to accurately and completely develop an issue at the start of the claim. Examination of these cases will almost always show that VA performed incomplete development at the start, and failed to fully correct its mistakes and obtain required evidence in a timely manner. Most of these cases show signs of neglect. They sat for many months without any review by progressively more responsible and experienced VA employees.

This project does more than simply bring these cases to the light of day to complete development and decide the issue at hand. With every provisional rating VA tells the veteran that VA failed to complete its job and now the burden of completing development is shifted to the veteran.

In the end, VA will resolve nearly all of the 50,000 two-year-old claims it had pending at the start of this project. The average age of claims pending (ADP) will drop precipitously. VA will take a one-time hit in average days to complete (ADC) but this portion of the workload will no longer be a drag on the rest of the data. For a time VA will have significantly fewer cases pending over the artificial goal of 125 days. However, without fixing its underlying problems of accurate, complete and timely development with rigorous attention to subsequent reviews and correction of any problems noted, timeliness will degrade and VA will slide backwards again.

VBA leadership proposes to expand the more than two year review to claims more than one year old. There are several problems with this expansion. Any expansion beyond the current project institutionalizes the provisional rating. Further, it encourages some VA employees to accept, rather than correct, poor development. It encourages some managers to forego routine reviews to catch and correct mistakes in development because they will know that if a case ages past a certain point they can simply issue a provisional rating and shift remaining development to the veteran.

Finally, the simple logistics of an expanded review become problematic. Consider that if it takes 60 days to review and decide 50,000 claims, it would take another 8 months of concentrated, exclusive effort to review and process the estimated 200,000 claims pending for a year or more. In the meantime, virtually all of the existing work now less than one year old will age by another year. In the end, this project will not solve the backlog problem, it will only deprive thousands of veterans the assistance of VA mandated by law and regulation.

Congress, through the Veterans Claims Assistance Act and other legislation, has instructed VA on the minimum it must do to assist veterans in the development and completion of their claims. We recognize that the legal burden for submitting evidence not in the control of the Federal government ultimately rests with the veteran.⁷ However, Congress decided that the burden does not shift until VA has completed certain actions. This project abrogates VA's responsibility to do the job Congress gave it.

This project is a very public admission that VA has failed to create a viable, effective and efficient system for developing and managing claims. Instead of fixing its problems, VA is demanding that veterans once again suck it up and shoulder the burden of completing the job that VA botched.

We ask Congress to require VA to step up and perform the tasks it is required to do. We ask that Congress end the use of a provisional rating as it prematurely shifts the evidentiary development burden to veterans in contravention of existing law and regulations.

Mr. Chairman, this concludes my testimony.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, VFW has not received any federal grants in Fiscal Year 2013, nor has it received any federal grants in the two previous Fiscal Years.

⁷⁷ 38 CFR 3.159(e)(iv).

TENNESSEE DEPARTMENT OF VETERANS AFFAIRS

To answer the basic question that is before the House Committee on Veterans' Affairs, "Expediting Claims or Exploiting Statistics?: An Examination of VA's Special Initiative to Process Rating Claims Pending Over Two Years," I would lean toward expediting claims more than two years old. If the VA's goal is to expedite those claims because of the time they have been waiting, as opposed to addressing the back log, I fully support that initiative but it does not come without a price. And unfortunately, the price is being paid by our Tennessee Veterans.

The Nashville VA Regional Office (VARO) had approximately 110 claims over two years old when this initiative started and was able to quickly address those. However, the VA has brokered in 1500 claims from the Los Angeles Regional Office for Nashville to rate. Since April 19 Nashville has processed 841 claims from California, leaving 659 still pending processing. 1,740 local claims were processed during this same time period. They have stopped processing all TN Veterans claims, except for fully developed claims, as a result of having to process the claims that were brokered in. For every California claim our VARO has to process, a TN claim goes unprocessed, which will add to the backlog for our Tennessee Veterans. It has also caused a significant reduction in the number of local hearings they have been able to schedule for our TN Veterans.

My Executive Staff and I have discussed the quality of the decisions for the over-two year old claims as well as whether or not they were being given full consideration, to include a compensation and pension exam, if necessary. We also looked at the overall production rate at the VARO to determine if they were processing an exceptionally high number of claims which would be an indication of rushing to a decision. From all that our Claims staff has observed, the VARO is doing due diligence and taking the time to rate these claims properly. The only negative impact they have observed is the delay it is causing for our TN Veterans.

ROBERT J. EPLEY

This statement is provided in response to your staff E-mail request of May 14, 2013, asking me to provide a statement on the VA's initiative to expedite processing of rating claims pending over two years.

Your request indicated you are interested in hearing views of organizations which may provide different perspectives on the implications of the VA initiative. I serve as a member of the Advisory Committee on Disability Compensation. This committee reviews matters relating to the VA Disability Compensation program and provides periodic reports to the Secretary and to your Committee.

The history of the Advisory Committee on Disability Compensation is that its charter and initial instructions from the Secretary suggested focus on the adequacy of the VA Schedule of Rating Disabilities (VASRD), as well as matters relating to veteran's Quality of Life and transition from service to civilian life. The Committee has devoted the majority of its time to these issues, although the VA has recently asked that we review matters related to the claims backlog.

The Committee has provided one interim report and two formal reports since its inception. Our most recent report, dated October 31, 2012, discussed the need for timely and accurate claims resolution and offered six recommendations to improve workflow and processing time. These recommendations did not specifically address claims over two years old. The recommendations could, however, facilitate processing of aging claims. They are listed below:

- Set time expectations for each major step in the claims process to include: establishment of the claim; development of evidence; rating, and award authorization. These expectations should be consistent with the overall goal of 125 days.
- Require early and continuous claims management from filing to disposition.
- In addition to assigning claims to express, special operations or core lanes, triage all claims within 20 days of filing to award any part of the claim supported by the record; identify gaps in development and the records/exams needed to remedy the gaps; notify veterans and/or their representatives of information needed via a standard form.
- Seek out best practices in work flow management for claims and case management from subject matter experts with experience inside and outside VA.
- Standardize hearings by video conferencing to the maximum extent possible at the regional offices and exclusively at the BVA level.

- Establish centers of excellence for the processing of complex claims, e.g., PTSD and TBI.

Our Advisory Committee has heard presentations from VA representatives, including the Under Secretary for Benefits, about the several ongoing initiatives to address the claims backlog and improve processing.

The volume of VBA Compensation claims pending for lengthy periods of time is an extremely important issue and it has vexed the organization for some time.

The VA has asked for, and received, authority to hire more claims examiners to work disability claims. They have solicited management ideas from outside and inside the organization; they are evaluating several suggestions to improve processing. They are actively working to improve the working relationship with DOD and other stakeholders. They are looking at technology to facilitate improvements. But for now at least, the backlog persists and grows.

Examples of key management initiatives to improve processing and address the backlog are the Veterans Benefits Management System (VBMS), eBenefits, Disability Benefits Questionnaires (DBQs), and sorting Compensation claims into “segmented lanes” for more efficient processing. VBMS is intended to streamline the claims process primarily through a conversion to paperless processing. eBenefits will provide a portal for veterans and claimants to access their records and to submit evidence electronically. DBQs provide an electronic protocol that allows private physicians to conduct medical exams that will meet the VA’s evidentiary needs. Segmented Lanes sorts the claims by type and complexity so they can receive more efficient handling.

The initiative to expedite claims over two years old appears to be an overarching one. It will be intense and it is intended to be executed in the very near term. The VA directive on this initiative (referred to as a Special Initiative) is VBA Letter 20–13–05, dated April 19, 2013.

In offering views on the VA Special Initiative, it is important to start by acknowledging that the goal to immediately review, decide, and complete all claims pending over two years is a laudable one. Certainly, those veterans who have been waiting for decisions for two years or more deserve immediate attention.

The key components of the Special Initiative are:

- All Rating Veterans Service Representatives (RVSRs) and as many Veterans Service Representatives (VSRs) will be devoted to the project;
- All two year old cases are to be completed within 60 days (approximately June 18);
- Complete final rating decision if all necessary and pertinent evidence is on hand and the claim is considered “ready to rate”;
- Issue a “provisional” rating decision where VA is still waiting for certain evidence – for these claims, Service Treatment Records, VA medical records, any evidence needed to establish Veteran status and/or pertinent service dates, and appropriate VA medical exams;
- No issues will be deferred;
- For provisional decisions, one year from the date of the decision, ROs will assess all claims and provide notice of a final decision to include appeal rights;
- For provisional decisions, no appeal rights will be provided to the claimant.

The VA Special Initiative addresses a very important issue. It is also complicated. It has significant positive aspects, and it will have ramifications that may seem negative. I have listed some positive components, and some concerns about possible challenges and negative impacts below.

Positives—

- The veterans whose claims have been pending so long can begin to receive their entitled benefits. They certainly have medical and financial needs that have been challenged while they await claims decisions.
- Claims can become more complicated as they age; deciding these claims will have a positive effect on the overall workload.
- Addressing these critical claims on a priority basis demonstrates the VA’s concern for those with potentially the greatest need, as well as the VA’s commitment to reduce the overall backlog.

Possible Concerns—

- If all RVSRs are devoted to the Special Initiative, then other claims will lay dormant for 60 days or more. It is likely that this additional aging will result in additional questions and concerns from the veterans who have filed these “other” claims. Responding to those questions will result in additional resource utilization being diverted from direct decision-making.

- The concept of a provisional rating decision may be confusing to veteran-recipients. Receipt of such a decision may trigger new, additional questions and concerns from the veteran-recipients. Issuance of final decisions wherever possible will be preferable.
- Since the Special Initiative involves some procedural changes from normal processing flow, there may be confusion among VSRs and RVSRs which results in processing variances.
- Provisional decisions executed under the Special Initiative will require a second review and promulgation of a final decision after one year has elapsed. This second review and decision constitutes “new work”. It represents work and resource expenditure that would not be necessary without the Special Initiative. This could result in an overall reduction in claim decision output over the life of the initiative.
- Any special project involves adaptation of standard procedures. Execution of the Special Initiative needs to remain cognizant of the statutory and regulatory framework that guides the Compensation program. The Special Initiative must be executed within the existing statutory/regulatory framework so that decisions are not remanded or reversed through the appellate process.

The concerns suggested above highlight how important it is that this Special Initiative be managed closely and vigorously. Clearly, it has been undertaken with the best of intentions, but good intentions are often subverted by poor execution. The Special Initiative will require close, constant communications within VBA and with the veteran community to avoid missteps. There should be a formal communications protocol developed to assure that all employees and stakeholders are kept up to date on Special Initiative developments.

This special initiative responds to a situation similar to one VBA faced a decade ago when the repercussions of the Veterans Claims Assistance Act (VCAA) resulted in a large backlog. To address the oldest pending claims at that time, VBA created a special team called the “Tiger Team” in Cleveland to handle them. Rather than task all employees at each regional office to be involved, the aging claims were temporarily transferred to the Tiger Team for special handling. This approach could be resurrected to assist with today’s generation of aging claims.

As I mentioned above, VA is already working on several key management initiatives to help alleviate the backlog.

All of these ongoing initiatives have merit and will add improvements to the Compensation claim process. Clearly, VA needs to extract itself from the current limitations that result from reliance on paper. An electronic process will bring many improvements. Also, providing an electronic portal for submission of claims, evidence, and tracking claim progress will be very beneficial. These enhancements will not, however, “fix the backlog”. The Special Initiative on two year old claims will not either. Additional measures need to be implemented to strengthen the initiatives listed above, and to maximize their impact.

I have outlined several areas below where additional measures should be taken to strengthen Compensation program management. The Advisory Committee on Disability Compensation has not discussed these areas in depth or agreed upon recommendations. The views below represent my thoughts.

VBA needs to undertake additional measures that relate to more basic management functions that will provide the foundation for improved technology and improved communications with the veterans. These additional required improvement measures – Organizational Alignment, Ownership, Processing Team Improvements, and Accountability – will provide the foundation necessary to allow for reduction and control of the backlog.

Organizational Alignment.

Clearly, the VA strives to provide veterans with high quality, equitable decisions on a timely basis. The likelihood of achieving these outcomes is greatly enhanced if everyone in the claims process understands how their role contributes to a successful outcome.

Each position in the claims process (e.g., Development technician, VSR, RVSR, supervisor) needs to be structured to clearly focus on the core activity or activities that contribute directly to accurate, timely, professional decisions on disability compensation. The core activities need to be measured. The employees need to understand, and be regularly reminded, how their efforts fit into program outcomes. Positive achievements in their core activities need to be rewarded – regularly and publicly (conversely, poor performance must be identified and addressed quickly).

It is important for each employee to understand how his work feeds into the overall process. No single individual guarantees a positive outcome; all employees are contributing; helping each other move toward a positive outcome. This implies that

there should be regular communication among the different technical positions. A given function needs to know if they are providing the claims package to the next phase in a manner that optimizes that next step.

Ownership.

VBA needs to build in “ownership” of the process. Historically, this has been a problem for VA. There has not been clear ownership of the entire process. But this process ownership must be established and it must resonate from well below the division level in the organization. VBA needs to ensure that processing teams own a claim from start to finish. These teams should include staff to do all phases of a claim: initial intake, triage, evidentiary development, rating evaluation, award authorization, and customer service. Each team should have direct links to VHA and DOD, as well as NSOs. These groups need to be vested in the success of the process.

The role of management is critical to the success of the operations. Supervisory and managerial responsibilities need to be clearly defined; at the core of their work is managing the workflow, analyzing and correcting bottlenecks, and most importantly, managing the people. They are responsible for conveying the organizational message, recognizing quality performers and developing improvement plans for poor performers.

At the same time, VBA needs to build in clear responsibility for monitoring the claims flow. This includes monitoring incoming work, and the number and age of claims pending in each step of the process. By doing this, the responsible manager (the traffic cop) can adjust work assignments, move work around, etc., to minimize any bottlenecks. This function requires a solid, sophisticated cycle time management system.

The Segmented Lanes initiative seems to endorse this process ownership concept, and to the extent it does, that initiative deserves full support.

Processing Team Improvements, Priorities, Flexibility.

There should be clear structure to the process, but there should also be flexibility built in to avoid unnecessary delays, and to properly handle unusual, problematic claims.

The initial phase of the claim process must be strengthened. It is critical that claims receive an initial review quickly, that the review correctly identifies all claimed and inferred issues and evidence needed for an informed, equitable decision. The evidence gathering must start almost immediately. It currently takes about seven months on average to collect identified evidence. Within the existing regulatory and administrative constraints, this timeframe should be closer to three months with the introduction of improved efficiency and accountability measures.

Claim flow needs to be revised to get the claims into the hands of senior technicians early in the process. The purpose of their review would be twofold: determine if ANY claimed conditions could be found service-connected, and clearly direct the action needed in order to make an informed decision. For conditions clearly related to service they would either rate the condition(s) or immediately schedule an exam to determine current disabling effects.

Exam scheduling should be changed. If, at initial review, the senior technician finds that a VA exam is likely going to be needed, then the exam should be scheduled 45 – 60 days in the future. In that way, the evidence development can be completed coincident with the exam.

Specialization should be considered (selectively) for types of claims that are difficult, complex, or time-consuming. (This is similar to VA’s Segmented Lanes concept.) These difficult claims (for example, PTSD, Traumatic Brain Injury, or sexual trauma) should be handled exclusively by a special unit. That unit could develop close relations to stakeholder groups (medical providers, DOD, CURR, etc.) The special unit would own the claim for the veteran’s lifetime. This would facilitate improved communications with the veteran. It would also help build in accountability that is lost when a special unit handles a claim on a “one-time” basis, then sends it back to a “home” office.

After VA converts fully to electronic records, they could consider using specialized offices for “referrals” and expert analysis of esoteric issues. Such specialized offices would operate under unique accountability measures.

Case management should be incorporated into the claims process. Just as specialization can help with complex categories of claims, case management can be an effective tool for individual claims that show difficulties or complexities. Sometimes, these claims need special handling and/or more personal communications with the claimant. Trust can be built, and roadblocks can be averted by more personal case handling. When individual claims are identified as unusual, difficult, or problematic,

they would be assigned to a case manager. As with specialization, case management should be used selectively. It should not interrupt or overwhelm the basic team processing – it should complement that process. Case management activities should be incorporated into the standard processing teams to assure clear accountability.

Accountability.

The Disability program's quality assurance process should be dramatically strengthened. The Compensation program has a national quality assurance program. It is useful for that purpose – Quality Assurance. Additionally, data from that process should be analyzed regularly to determine most persistent quality problems; root causes for those trends should be identified, and systemic corrections should be implemented to reduce the errors. In-process quality control reviews should be institutionalized. (VBA has instituted a process called Quality Review Teams – QRT – but these do not constitute in-process quality control; they are currently designed to sample and quantify individual employee performance). Data from these reviews could identify systemic and individual deficiencies, and lead to corrections that expedite the process.

The Performance Management process needs to support and reinforce organizational alignment. VBA uses an extensive Performance Management System, but the system should undergo thorough review and revision to assure that performance measures reflect the core activities of each position in the process. If the positions have been constructed properly to focus on activities that build toward successful outcomes, then reward of positive completion of those core activities will incentivize actions which lead to successful outcomes. Each position should have performance measures focused around their core actions. The structure of each position, and its performance measures, should also relate clearly to the performance measures of the whole claims process, so they are clearly linked to their colleagues' performance in the process. By constructing performance measures this way, each employee will be rewarded for focusing on their core activities; completing those activities productively, accurately, timely, and professionally.

The concepts I have outlined above are probably not comprehensive. Additional enhancements may be necessary to build an optimum claims process. But I believe each of these ideas can help improve the current process.

Thank you for the opportunity to address these very important issues before your Committee. I greatly appreciate any opportunity to contribute to improved service to our veterans.

Robert J. Epley

IRAQ AND AFGHANISTAN VETERANS OF AMERICA

Chairman Miller, Ranking Member Michuad, and Distinguished Members of the Committee:

On behalf of Iraq and Afghanistan Veterans of America (IAVA), I would like to extend our gratitude for this opportunity to share with you our views regarding the topic of today's hearing on "Expediting Claims or Exploiting Statistics?: An Examination of VA's Special Initiative to Process Rating Claims Over Two Years."

IAVA is the nation's first and largest nonprofit, nonpartisan organization for veterans of the wars in Iraq and Afghanistan and their supporters. Founded in 2004, our mission is important but simple – to improve the lives of Iraq and Afghanistan veterans and their families. With a steadily growing base of over 200,000 members and supporters, we strive to help create a society that honors and supports veterans of all generations.

On April 19, 2013, the Department of Veterans Affairs (VA) announced that it would be promptly implementing a new initiative intended to expedite disability compensation cases in which the claimant has been waiting for more than one year for a rating decision. This, as we understood it, would be accomplished by providing provisional ratings based on available probative evidence within a veteran's file and allowing that veteran up to one year to submit additional evidence and receive an increased rating decision based on the additional evidence added to his or her file within that period.

IAVA, like many other veteran and military service organizations as well as this Committee and its Senate counterpart, was initially surprised to learn of this new initiative. We were simultaneously perplexed as to why it had not been instituted previously and hopeful that it would prove to be a change for the better in how the VA handles seriously delayed disability claims decisions. However, at just beyond

the half way point of the initial time period set out by the VA for the first phase of this new initiative, it remains too early for outside advocacy, service, and watchdog organizations to assess the wisdom, authenticity, and impact of this special claims processing initiative.

Our initial impression of this new initiative was that it would include cases pending for more than one year and that the 60-day time period laid out by the VA for carrying out this initiative would apply to that entire batch of cases. This would have been a promising, albeit admittedly challenging, scenario indeed, but one to which it at first appeared the VA had committed itself. However, it soon became clear that the VA was quickly unlinking the initial batch of cases it had touted as falling within the new initiative (i.e., those pending for one year or more) from the time period that it had touted as tied to the new initiative (i.e., 60 days). Now, it seems, the VA plans to only tackle cases pending for more than two years within that first 60-day window and then subsequently tackle one-plus year cases over a yet-to-be-specified period of time. While this is certainly a positive development for veterans whose claims have been pending for egregiously lengthy periods, it is hardly the sweeping initiative that we were all initially led to believe was being undertaken by the VA to significantly reduce the disability claims backlog in a short amount of time.

In taking on the commitment of this special claims processing initiative, the VA warned that some new claims may become backlogged that may not have otherwise become backlogged because of the new focus on older claims at the expense of newer claims. The VA also warned that the backlog might temporarily get worse before it got better as a result of this new initiative. However, it appears that the backlog has steadily decreased by a somewhat healthy margin over the several weeks preceding this hearing. If this pace continues, then the VA's predictions about the backlog worsening as a result of this special initiative may prove to be unfounded.

If this is the case, and there is no decrease in progress as a result of this special initiative, then the VA is certainly due credit for succeeding in at least one efficiency improvement related to backlog claims processing and management. This is important because most of the VA's stated backlog solutions have centered around technological improvements and advances that would primarily help with future filed claims and would not directly impact the current backlog of paper-based claims that are the subject of great public and congressional concern. For this reason, the VA needs more focus on backlogged paper-based claims and less on pivoting and redirecting to talking points about how it will prevent recurrences and future resurgences of the backlog or how it will address future disability claims.

While the VA's technological improvements are not the most advanced or sophisticated compared to similar technology used in private industry and in other parts of government, they are nevertheless improvements. But what the VA needs to address more thoroughly is what it is going to do to tackle the current backlog of paper-based claims. This special claims processing initiative appears promising on the surface, despite what appears to have been a shifting goal post in the beginning of the game. However, what this Committee will need most in order to fully evaluate this initiative as well as the VA's overall performance is data, information, and communication, all of which the VA has been less than forthcoming with at times.

For many, the claims backlog is about numbers and metrics. For others, it may be about politics and accountability. But for IAVA, the claims backlog is about real lives, real people, and real members of our organization who have paid their dues to our nation and sacrificed their health in its defense, but who are now waiting for that nation to fulfill its promise to care for those who have borne the battle, to paraphrase President Lincoln and the VA's own mission statement. For IAVA, the problem has a human face and a real voice, like that of IAVA member Rachel McNeil, who joined the Army Reserves in 2002 and deployed to Iraq in December of 2004. Rachel filed a claim after she came home from Iraq in 2006, and had been more than 827 days since the VA even acknowledged that she filed a notice of disagreement with their decision in 2010.

IAVA member John Wypyszinski spent 16 years in the military in both the Army and the Navy as a nuclear, biological, and chemical operations specialist, and later as a medic and a hospital corpsman with the Marines. He deployed twice to Iraq before he was medically retired in 2007 due to injuries, but he was lost in the VA disability claims process for an excruciating 963 days. And then there's IAVA member Luis Cardenas Camacho, who served in the Marine Corps from 2004–2008 and deployed to Iraq three times. Upon returning home, Luis found himself fighting new enemies, including PTSD, depression, and his physical injuries. Luis has been dealing with the VA disability claims office for five years and still hasn't received his benefits.

It is stories like these - the real stories and real lives of real heroes - that motivate us here at IAVA, that fuel our outrage at the slow pace of progress on the back-

log, that exacerbate our impatience sometimes with the Veterans Benefits Administration (VBA), and that make us wary of surprise "special initiatives" to address the backlog in ways that seemingly could have been utilized all along. For us, and for other outside advocacy and service organizations, it is difficult to diagnose problems, provide solutions, and assess impact without access and data, just as it would be impossible for a mechanic to assess and fix an engine problem without being able to look under the hood or for a doctor to diagnose and treat a patient without being permitted to see or talk to that patient. It is our hope that though this hearing, as well as through continued aggressive oversight and inquiry on the part of this Committee, substantive answers to the question that is the topic of this hearing can be ascertained.

We again appreciate the opportunity to offer our views on this important topic, and we look forward to continuing to work with each of you, your staff, and this Committee to improve the lives of veterans and their families. Thank you for your time and attention.

DISABLED AMERICAN VETERANS (DAV)

Chairman Miller and Ranking Member Michaud:

Thank you for inviting DAV (Disabled American Veterans) to submit testimony for today's hearing examining the Department of Veterans Affairs (VA) new initiative to expedite compensation claims decisions for veterans who have been waiting one year or longer. As the nation's leading veterans service organization (VSO) assisting veterans seeking disability compensation and other benefits, DAV has tremendous experience and expertise relating to the processing of claims. With a corps of 270 full-time professional National Service Officers (NSOs) and 35 Transition Service Officers, DAV assists almost a quarter of all veterans who file claims for disability compensation each year.

Under this new program, VA is focusing its efforts on the oldest claims pending and will make decisions based upon the evidence that has already been received, even if there is identified evidence that has not yet been obtained. If a current medical evaluation is required for a rating decision, VA will seek to provide an expedited exam. These claims would then receive provisional ratings with benefits awarded retroactively to the original date of claim. Although this program was originally intended to focus on claims that were pending more than two years, it was launched on a larger scale by expanding its target to all claims pending more than one year.

Provisional rating decisions are required to specify what evidence was used to make the rating decision and also list any evidence or documentation that has not yet been provided to VA or that VA has been unable to obtain. The veteran would then have up to one year to submit additional evidence or to request that VA obtain new evidence that the veteran identifies. If at the end of the one-year period, the veteran has not provided any additional evidence nor requested that VA seek to obtain additional evidence, the provisional rating decision would become final. Once the rating decision becomes final the veteran has the standard one-year period in which to file an appeal. Provisional rating decisions, however, are not appealable, although the veteran can request that the provisional decision become final prior to the end of the one-year period and then file an appeal thereafter.

Mr. Chairman, VA's intention for initiating the provisional rating program is to expedite decisions for those veterans who have been waiting the longest and we certainly agree that these veterans deserve a decision. We are very aware that some claims sit on shelves for years awaiting evidence that may or may not make a difference in the final rating decision, and agree that in some cases, a provisional decision could at least provide partial benefits while further evidence is sought that may increase the rating assigned. As such, we do not oppose VA's provisional rating initiative at this time. However we do want to be certain that VA will not be making provisional decisions when they could be making normal rating decisions with little or no additional development. Furthermore, we also need to be certain provisional ratings do not become an excuse for simply denying veterans' claims as a means to lower the number of pending claims.

For these reasons, it is imperative that VA be extremely open, transparent and forthcoming with information and results on a regular basis so that we can ensure that provisional ratings benefit veterans. We applaud this Committee for conducting today's oversight hearing and we would offer several areas of inquiry that we hope you will address.

It has now been more than four weeks since the provisional rating program was begun and VA has not yet publicly released any data about the number of provi-

sional rating decisions completed. Such data should be broken down in as many useful categories as possible, starting with the number of provisional decisions that granted benefits and the number that denied benefits. How do the allowance rates for these provisional decisions compare to that for normal rating decisions? We would hope that such information is forthcoming by the time of this hearing and that it will then continue to be publicly released on a regular basis, weekly if at all possible, so that we and other veterans advocates, as well as Congress, can properly evaluate and oversee this program.

We would also like to review all of the directives and directions provided by VA to its Regional Offices, including any training materials related to this program, in order to increase our confidence in this program. In addition, we want to examine actual provisional decisions to ensure that they are properly listing the evidence that is missing or has not yet been obtained, crucial information for veterans deciding whether to accept a provisional rating or to appeal a final rating decision.

We want to analyze the changing performance metrics used by VA to measure progress on claims processing. In announcing this initiative, VA indicated that several standard measurements would begin to fluctuate as older claims were resolved. Specifically, the Average Days Pending for claims would be expected to decrease as the oldest claims on the books are removed. However, the Average Days to Complete a claim would be expected to increase as the longest pending claims would now become part of that metric. VA should provide weekly updates to determine if these metrics do shift as anticipated. In addition, VA should provide weekly updates on measurements of accuracy for provisional ratings, as well as analysis of how this initiative is affecting the overall number of claims completed and the number of claims pending. Until we have sufficient information and data about the provisional rating initiative, we will be unable to determine if it is operating as intended, whether it merits continuation or whether it needs to be adjusted or ended.

Finally, we would like to encourage Congress and VA to seek other ways to rapidly award partial or temporary benefits to disabled veterans when the evidence of record clearly supports such awards. VA currently has the authority under 38 Code of Federal Regulations, section 4.28, to issue prestabilization ratings for veterans who are discharged from active duty due to severe injuries or illnesses that are not yet fully stabilized or healed, and which cause significant limitations in their ability to be employed. VA also has rules to award intermediate rating decisions with deferred issues as discussed in M21-1MR, Part II, Subpart iv, Chapter 6, Section A. Intermediate rating decisions for multi-issue claims can be made when the record contains sufficient evidence to decide some of the claimed issues, including service connection, even though remaining issues require further development, and will be deferred. Although VA has had these authorities for a number of years, VA rarely takes advantage of them to provide at least partial or minimum benefits to veterans on an expedited basis. DAV believes that both prestabilization and intermediate ratings should be encouraged and expanded to apply to additional circumstances.

We also believe that a new "temporary minimum rating" for claims in which the evidence of record is already sufficient to support at least a minimum 30 percent service-connected disability rating would provide a tremendous benefit to many veterans. Similar to intermediate ratings, these "temporary minimum" ratings should not slow or impede the regular development and processing of the rest of the claim. With the adoption of paperless e-folders and smart processing, temporary ratings could be easily accomplished without the risk of "double work" by VA. Although these temporary rating authorities would not directly reduce VBA's workload or the backlog, providing a rapid award of at least some benefits, based on the available records, to disabled veterans would increase overall confidence in the claims process, and likely help to reduce the number of appeals filed by claimants. Most importantly, these changes would expedite much-needed assistance into the hands of veterans and their families during difficult transitions and recoveries.

Mr. Chairman, throughout VA's transformation process, we have maintained that the most important result must be to create a system designed to decide each claim right the first time. Whether the use of provisional ratings should become a permanent part of VA's future claims processing system remains an open question until we have sufficient results demonstrating its merit. While we understand the importance of reducing the backlog of pending claims, it does little good to lower that number by making bad decisions that are incomplete or inaccurate, leading to appeals and re-filed claims. VA must remain focused on completing the transformation process currently underway so that they can both reduce the pending workload, as well as be prepared to handle the future workload. In conclusion, we urge this Committee to continue supporting VA claims transformation process while also continuing to conduct regular and comprehensive oversight.

BERGMANN AND MOORE, LLC
Introduction

We thank Chairman Jeff Miller and Ranking Member Mike Michaud for the opportunity to present a statement for the record regarding plans by the Department of Veterans Affairs (VA) to focus on adjudicating Veterans' disability compensation claims aged 730 days or more and now pending at the Veterans Benefits Administration (VBA).

Bergmann & Moore, LLC, is a Bethesda, Maryland law firm representing the appeals of Veterans before VA and the U.S. Court of Appeals for Veterans Claims (CAVC). The firm's partners and several associates previously worked for VA. We have a strong interest in ensuring VA processes disability claims in a timely and accurate manner for our Veterans as well as their surviving family members.

A brief review of recent events prior to this hearing is vital in order to understand why this issue is important to our nation's Veterans and families.

On March 11, 2013, reporter Aaron Glantz at the Center for Investigative Reporting (CIR) published a news article revealing a tremendous increase in the number of claims pending at VBA for one year or longer.

CIR reported the number of claims in that category rose sharply, from less than 11,000 at the end of Fiscal Year 2009 to nearly 245,000 at the end of December 2012 ("VA's ability to quickly provide benefits plummets under Obama," Center for Investigative Reporting, March 11, 2013).

We thank Congress for holding this hearing focusing on the implications of Fast Letter 20-13-05, "Guidance Regarding Special Initiative to Process Rating Claims Pending Over Two Years," issued by VBA on April 19, 2013.

In VBA's Fast Letter, VBA staff are instructed to identify and rate disability compensation claims pending two years or longer. Under Secretary for Benefits Allison A. Hickey, VBA's top official, ordered that VBA Regional Offices "... will devote all [Rating Veterans Service Representatives] and as many [Veterans Service Representatives] as are needed to ensure that all two-year old claims are processed within 60 days from the date of this letter."

The same day, Chairman Miller issued a statement regarding VBA's new policy.

While this new approach sounds promising, we will be monitoring it closely to make sure it's good policy rather than just good PR. Driving our skepticism is the fact that Sec. Shinseki and VA benefits officials have testified before our committee several times in just the last few weeks, yet the first official notice of this initiative didn't come until today – minutes before VA issued its press release.

A few days later, the Committee announced today's hearing, which is titled, "Expediting Claims or Exploiting Statistics?: An Examination of VA's Special Initiative to Process Rating Claims Pending Over Two Years."

Four Significant Concerns

In addition to agreeing with Chairman Miller's statement and the urgent need for this oversight hearing, Bergmann & Moore raises four significant concerns about VBA's new policy.

1. VBA's Fast Letter Conspicuously Ignores Veterans' Appealed Claims Remanded Back to VBA.

We are troubled that VBA's Fast Letter is silent on the issue of appealed claims remanded back to VBA Regional Offices and still awaiting final adjudication. These are claims that Veterans or surviving beneficiaries filed many years ago – in some cases more than a decade – that have been returned from either the Board of Veterans' Appeals (Board) or the Court of Appeals for Veterans Claims (Court). The appealed claims were remanded following an acknowledgment or directive for either additional development – because of incomplete development in the past – or other specific actions for VBA to complete prior to final adjudication.

The most tragic statistic this hearing should focus on is a fact reported by CIR: as many as 53 Veterans die each day waiting on a VBA claim decision. We have experienced this tragedy many times with our clients over the years. We can vouch for the fact that Veterans with strong cases, who would very likely have won substantial benefits if VA had adjudicated their claims, died waiting.

The exact number of claims languishing at VBA after a remand from the Board or Court remains unknown, as VBA does not appear to specifically account for them. The length of time VBA takes to adjudicate these claims is also unknown. From our

experience with assisting thousands of Veterans, we know appealed claims often take years for VBA Regional Offices to adjudicate.

Moreover, VBA employees who work at various VBA regional offices have told us multiple times in recent years that substantial delays in appealed cases are being caused by VBA pulling resources away from appeals in order to make its numbers regarding initial claims look good for Congress. We have no way to independently verify these statements, but they are so widespread as to be ubiquitous, and they seem to be corroborated by VBA's inattention to appeals in Fast Letter 20-13-05.

VBA's silence on appealed claims is disappointing and distressing to Veterans because the law already mandates that VBA provide "expedited" treatment for appealed claims remanded by the Board and Court (38 USC 7112). Under the new Fast Letter, VBA acts as if appealed claims don't exist and that VBA may continue ignoring existing law.

2. VBA Did Not Provide for Notice and Comment.

We are concerned that VBA's Fast Letter established a new process that should be promulgated through the regulatory process, i.e., through notice and comment in the Federal Register. Specifically, the provisional decision process removes appellate rights from the decision and places the claim in a one-year limbo period. For example, if VA provisionally grants a 0 (zero) percent rating this decision will stand for one year prior to it becoming final upon which the Veteran can then appeal. Thus, VBA appears to have created a new set of procedures without informing and then allowing input from vital stakeholders and the public, as required by law.

3. The Fast Letter Exalts Speed Over Quality and Will Likely Result in Additional Delay for Veterans.

Third, VBA's Fast Letter emphasizes speed by mandating completion of older claims within 60 days. However, the Fast Letter mentions "quality" only once. We are very concerned about VBA's new policy because VBA staff are already under tremendous pressure to quickly decide claims, and we expect VBA to make more mistakes with VBA's arbitrary deadline to adjudicate all identified claims within 60 days.

Evidence of additional pressure is VBA's nationwide use of mandatory overtime announced on May 15, 2013. VBA has used overtime in the past, yet VBA claim inventory was only temporarily reduced. We are concerned about VBA's existing poor quality claim decisions, and we believe VBA's additional unrealistic time constraints will exacerbate VBA's unconscionable number of mistakes as well as potentially place more strain on already overworked VBA staff.

VBA's frequent errors include a failure to properly develop evidence, improper denials for service connection, low ratings, and a failure to pay retroactive benefits. In this specific circumstance, we are concerned VBA will issue provisional ratings that are artificially low in an attempt to clear the decks of cases pending two years or longer.

Per the Fast Letter, these decisions will then sit for one year during which an appeal process is not contemplated, pending VA's final assessment (pending "additional guidance in the future regarding procedures for the review of [these] cases after the one-year period has ended" (page 3, emphasis added).

Only after the one year period expires will the Veteran be notified that the claim has become final and be provided appellate rights. Veterans will then be forced into a new (and presumably overcrowded) waiting line in order to pursue their claims further with a timely appeal.

It must be noted that the Fast Letter provides a process to obtain a "final decision with appeal rights before the one-year provisional period ends." In order to avail oneself to this process, however, the Veteran is required to send VA a signed statement containing the following quoted language: "All necessary evidence was considered by VA. I request that this provisional decision be made final" (page 4).

We are strongly dismayed that a Veteran is required to make this acknowledgment in order to bypass the one-year waiting period.

VBA's own error statistics (which we view as extremely low given our experience reviewing VA decisions over the years) validate our concerns. According to VBA's "ASPIRE" web site, as of March 2013, VBA's error rate was an unacceptable 13.3 percent. VBA's national goal is two percent. Therefore, VBA's reporting of VBA's error rate is more than six times VBA's national goal.

In June 2012, VA's Office of the Inspector General (OIG) testified before this Committee that VBA made errors in 30 percent of high-risk claims, or 15 times higher than VBA's goal. We find OIG's error rate far more credible because it is independent and nationwide over a period of four years.

We urge Congress to ensure that an objective review of VBA's performance is set up. We recommend the Government Accountability Office or VA's OIG audit a random sample of claims completed under VBA's new Fast Letter to monitor and report on this new process, including accuracy, timeliness, training, staffing, and the impact on other pending claims, including those on appeal.

4. Mixed Messages from VBA and VA's Office of Public Affairs

When the Department unveiled the new policy, VA sent mixed messages to Veterans, service organizations, advocates, and the public on this important issue. The confusion began when VBA and VA's Office of Public Affairs described two **different** target groups for expedited claim processing.

The title of VBA's April 19, 2013, Fast Letter is, "Guidance Regarding Special Initiative to Process Rating Claims Pending Over **Two Years**" (emphasis added). In sharp contrast, a VA Public Affairs office press release issued the same day focuses on a different and much larger population: "The Department of Veterans Affairs announced today it is implementing an initiative to expedite compensation claims decisions for Veterans who have waited **one year** or longer" (emphasis added).

By constantly moving the goal posts, VBA makes objective measurements of their performance difficult. We urge Congress to end the confusion sown by VBA and VA by establishing a clear set of measurements and then holding agency leaders to those goals.

The Bottom Line

Timeliness and accuracy remain the bottom line measurements of VBA performance for older, unadjudicated claims. At the end of March 2013, before VBA announced the new policy of adjudicating claims pending two years or longer, the average number of days to complete a claim was 291.5 days. As of May 13, 2013, the average number of days rose sharply to 338.4 days. That's a 16 percent increase in less than two months.

In Los Angeles, California, VBA's average time to complete a Veteran's disability claim is a staggering and outrageous 588.5 days, or nearly 20 months.

In conclusion, VBA's claim delay and error crisis appear to be worsening. We believe VBA should either abandon this ill-conceived "special initiative" or revise it to ensure that the claims of provisionally-rated Veterans are not held hostage for a year or longer pending a final, appealable decision. Additionally, VBA must be closely monitored by an agency outside VBA to ensure the process serves a beneficial purpose by improving accuracy and timeliness.

We respectfully ask Congress to consider the following four steps:

- 1. Confront VBA on the obvious danger that VBA will provisionally rate claims artificially low, thus depriving Veterans of compensation.
- 2. Confront VBA on the lack of due process for Veterans who are not satisfied with VBA's provisional rating, yet are not provided with appellate rights for one year so the Veterans may continue to pursue their claims.
- 3. Order VBA to provide monthly statistics about the number, age (in days), and RO location of all appealed claims on remand now pending at VBA, to include the results of this "special initiative."
- 4. Order VBA to immediately produce and promptly execute an action plan to timely and accurately complete these appealed claims, **including those on remand from the Court and Board**, that are waiting years, and in some cases decades.

We continue looking forward to working with the House Veterans' Affairs Committee so our Veterans receive accurate and timely decisions to their VA disability claim applications and appeals.

Too many Veterans died waiting on a decision from VBA, especially Veterans waiting for a decision on an appealed claim; nearly 20,000 during Fiscal Year 2012, according to CIR's reporting. The situation is intolerable, and we encourage Congress to take action.

We are concerned that VBA's new policy is little more than a public relations effort to cast a shadow on the recently exposed and unacceptably long delays in adjudication. Without oversight, additional staffing, and training, we believe VBA's Fast Letter will cause more problems for Veterans and will ultimately backfire.

Question For The Record**Question From: Chairman Miller, To: VBA**

At HVAC May 22nd hearing to review the VA's initiative to expedite processing of oldest claims in the backlog, Chairman Miller asked USB Hickey, "We are at a point now where the Secretary had said back in 2010 that we would be at a point that we'd be processing claims at 160 days?" USB Hickey responded that she would research the data and provide a response. **The following is USB Hickey's response:**

In the FY 2012 budget request (developed in 2010), VBA set ADC targets of 158 days for FY 2011 and 148 days for FY 2012. However, VBA also noted in the budget submission that due to the complexity of the readjudication of the previously denied Agent Orange claims, as well as the overall increased volume of workload, inventory was projected to increase from 2010 through 2012. The complexity of the overall workload was also projected to continue increasing, as more Veterans filed for a greater number of disabilities, including conditions such as PTSD, combat injuries, diabetes, and diseases associated with environmental hazards.

VBA received 230,000 Agent Orange claims in FY 2011, including 93,000 claims requiring readjudication under the Nehmer settlement. The complexity of completing the 230,000 presumptive Agent Orange claims required more resources over a greater period of time than VA initially anticipated. Completing the Agent Orange/Nehmer claims required approximately one-third of VBA's rating capacity, including all thirteen day-one-broker-center (D1BCs), which were dedicated exclusively to the Nehmer readjudication, as well as rating resources in all 56 regional offices. These resources were dedicated to Nehmer/AO from October 2010 through April 2012.

While VBA completed more than one million claims for the second consecutive year in FY 2011, receipts of 1.3 million claims exceeded production, causing VBA's inventory of claims to grow and become older. From the end of FY 2010 (when VBA began working the new Agent Orange claims), through the end of FY 2011, VBA's inventory increased from 531,698 claims to 810,455 claims, or by 52 percent. VBA's backlog, which includes claims pending over 125 days, increased from 34 percent at the end of FY 2010 to 60 percent at the end of FY 2011.

In FY 2012, VBA completed more than one million claims for the third consecutive year, and VBA is on track to complete more than one million claims again in FY 2013. However, due to the age of the overall inventory, average days to complete (ADC) increased as the oldest claims in the inventory continue to be prioritized. VBA is currently executing an initiative that initially focused on completing all claims pending over two years by the end of June 2013. As VBA completed these older claims, ADC increased. However, since VBA began this initiative on April 19, 2013, the average days pending (ADP), meaning the average wait time for Veterans with current pending claims, has decreased.

VBA has completed approximately 22,000 more claims than we received this fiscal year. As the number of claims completed continues to exceed claims received and we complete the initiative to complete claims for Veterans waiting the longest, ADC will continue to decrease.