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Veterans' Disability Benefits Commission

Research Question #17

“Because Vocational Rehabilitation and Employment (VR&E) benefits are an integral part of the compensation package for many service connected veterans, what changes, if any, are needed in the program?”

- ***Should age be a factor in determining eligibility? For example, should a 22 year old veteran and an 80 year old veteran be afforded the same consideration for entitlement for vocational rehabilitation benefits? Should normal retirement age be used as a cutoff?***
- ***Should VR&E counselors be involved in determining whether a service connected veteran is unemployable?***
- ***Is the 20% disabled threshold an appropriate requirement for entitlement to VR&E services?¹***

Introduction

The Vocational Rehabilitation and Employment (VR&E) Service is one of five business lines within the Department of Veterans Affairs (VA) Veterans Benefits Administration (VBA) that provides benefits and services to veterans. Congress authorized the program under title 38, Code of Federal Regulations, Chapter 31. The mission of VR&E is “enable veterans with service connected disabilities and employment handicaps obtain and maintain suitable employment. When the severity of disability prohibits suitable employment, VR&E assists those veterans to achieve maximum independence in daily living.”² VR&E primarily delivers Chapter 31 (title 38 of the U.S.C.) rehabilitation services to assist veterans with service-connected disabilities to compete for and keep jobs in the civilian workforce.

Three key features distinguish the VR&E delivery strategy from the service delivery strategies of VBA's other lines of business. VR&E provides individualized services that require face-to-face interaction with the veteran to deliver benefits and services in contrast to VBA's other lines of business that focus on claims processing. Second, the life cycle of an active VR&E case may extend over four or more years. Third, VR&E has the largest out-based network of service delivery points of any VBA business line. The VR&E Service workload is predominately driven by two factors: the number of eligible veterans applying for rehabilitation and training, and the number of veterans who actually enter into the development and implementation phases of a rehabilitation plan.

¹ Veterans' Disability Benefits Commission: *Approved Research Questions*. These issues were raised in the discussion section of Research Question 17, October 14, 2005

² Veterans Benefits Administration *Annual Benefits Report Fiscal Year 2005*. September 2006, p. 86

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DRAFT**

Eligibility & Entitlement

There are several eligibility requirements. First, individuals still on active duty awaiting discharge due to a disability or those who have a compensable disability incurred after September 15, 1940, are eligible. Additionally, veterans are eligible for the program for 12 years from the date VA notifies them that they have a qualifying compensable disability or have received an increase in their compensation rating. Entitlement is granted if the veteran is rated at 20 percent or more and has an employment handicap. If the veteran is rated at 10 percent and has a serious employment handicap he/she may be considered entitled as well. As defined by the VR&E program, an employment handicap is an impairment of the individual veteran's ability to prepare for, obtain, or retain employment consistent with his or her abilities, aptitudes, and interests. A Vocational Rehabilitation Counselor (VRC) makes the entitlement determination based on a comprehensive evaluation, which includes assessments of the veteran's interests and abilities as well as the extent of impairment due to their disability.³

In FY 2005, VBA reported that there were a total of 61,116 applicants, 2,962 were denied eligibility, 7,376 were denied entitlement. There were 39,764 entitled to services while there were overall, 55,228 participants. There were 11,964 veterans considered rehabilitated.⁴ The vast majority of the participants (32,909) were Gulf War era veterans.⁵ The average age of the participants was 47 for males and 40 years for females.⁶ In descending order, the three most common percentages of disability for participants was at the 30, 40, and 20 percent rating.⁷

VR&E Activities for 2005

Status	Total
Applicants	61,116
Denied Eligibility	2,962
Entitled to Services	7,376
Participants	55,228
Rehabilitated	11,964 – 9,140 employed - 2,824 independent living

Historically, the number of veterans applying for VR&E participation increased by 73 percent; from 37,829 in FY 1992 to 65,298 in FY 2003. During the same time period, the number of veterans in various active phases of the Chapter 31 program increased from 58,155 at the end of FY 1992 to 97,158 at the end of FY 2003; a 67 percent increase. Although the number of applicants remains at about the same level as FY2003, the number of actual participants has dropped substantially. It is also important to note, that despite the tens of thousands of program participants, the number of veterans rehabilitated by obtaining a job or achieving independent living goals has averaged only about 10,000 for the last decade.

³ Report to the Secretary of Veterans Affairs: *The Vocational Rehabilitation and Employment Program for the 21st Century Veteran*, VA Vocational Rehabilitation and Employment Task Force, March 2004, p. 45-46

⁴ Veterans Benefits Administration *Annual Benefits Report Fiscal Year 2005*. September 2006, p. 87

⁵ Ibid. p. 89

⁶ Ibid. p.93

⁷ Ibid, p. 91

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DRAFT

[We have requested data on the usage rate by service connected veterans and will include later.]

Age as a Factor

Under current policy, age is not a factor in determining eligibility or entitlement to VR&E services. When the VR&E Task Force reviewed VR&E Participation data for 2003, it found that the largest age cohort, or 46 percent of the veterans were between the ages of 36 and 50, another 31 percent were between the ages of 21 and 35 years, approximately 21 percent were between the ages of 51 and 64 (although not reported), and 2 percent were over age 65 years.⁸ This trend has continued. In FY 2005, the largest participation contingency by age (12,105) are male veterans between the ages of 30 to 39 year, followed by veterans ages 40 to 44 (7,957) and 45 to 49 (7,851). There are only 1,117 male veterans over the age of 60 participating in VR&E.⁹

Furthermore, according to the *Older Americans Update 2006*, the percentage of Americans 65 years and older in the workforce has increased. In 2005, 33.6 percent of men age 65 to 69 are employed, and almost 13 percent of men are over 70 years of age are employed. For women of the same age ranges, there are 23.7 and 7 percent participation.¹⁰ This trend is not only explained by financial necessity, but because older Americans are more functional (perhaps with medication and assistive devices) and based on the need for social contact, intellectual challenges and the sense of worth that comes from work.¹¹ Therefore, employment serves many purposes at any age.

VR&E History

The inception of veterans' vocational rehabilitation was as a government service to war-injured veterans during the World War I era. The War Risk Insurance Act of 1914 was the precursor of vocational rehabilitation initiatives.¹² In 1917, the War Risk Insurance Act of 1914 was amended to provide for war veterans' rehabilitation and vocational training in cases of dismemberment, injuries to sight or hearing, and other injuries resulting in permanent disability.¹³

VA's vocational rehabilitation programs evolved after World War II, the Korean War, and the Vietnam War. During these periods, the organizational structures to administer the rehabilitation program also changed. In the past, vocational rehabilitation was part of various VBA organizations such as the Veterans Services Division that was composed of full-time, career benefits' counselors who met face-to-face with veterans. This structure integrated VBA's counseling workforce. This division was disbanded in the mid-1990s and the Compensation and

⁸ Report to the Secretary of Veterans Affairs: *The Vocational Rehabilitation and Employment Program for the 21st Century Veteran*, VA Vocational Rehabilitation and Employment Task Force, March 2004, p. 54

⁹ Veterans Benefits Administration *Annual Benefits Report Fiscal Year 2005*. September 2006. p. 88

¹⁰ Federal Interagency Forum on Aging Related Statistics. *Older Americans Update 2006: Key Indicators of Well-Being*. Washington, DC: May 2006. p. 18-19

¹¹ Ibid.

¹² 38 Stat. 711 (September 2, 1914).

¹³ 40 Stat. 398, 407. (Oct. 6, 1917).

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DRAFT

Pension Service assumed responsibility for staffing what are now called Contact Teams at each Regional Office. In this model, there are no longer full-time, career benefits' counselors. At one time, vocational rehabilitation was also in the same structure with what is now VBA's Education Service. Since the mid-1980s, VBA's vocational rehabilitation organization has not been stable in terms of structure and alignment within VBA. In 1986, the Vocational Rehabilitation and Counseling Service were again combined with the Education Service. The perception that Chapter 31 is an education and training program and not employment has been reinforced through the years given VR&E's alignment with the Education Service.

In 1990, the Vocational Rehabilitation and Education Service was reorganized administratively as the Vocational Rehabilitation Service. In 1993, the name of the organization was changed to the Vocational Rehabilitation and Counseling Service. As a result of years of criticism, the name of the organization and field structure was changed in 2000 to the current Vocational Rehabilitation and Employment Service. This name change was instituted to accentuate the programs focus on the end result, which is employment. Although education and training programs are significant components to rehabilitation, they are not the final outcome. A veteran who obtains a degree, but not a job has not fulfilled the full potential of that degree. Therefore, by highlighting employment, VA hoped to increase the number of veterans who found occupations and careers that would provide meaningful and gainful employment. In comparing the VBA Annual Reports for FY 2004 and 2005, there were 882 more veterans classified as rehabilitated.

As a result of two decades of reorganizations, realignments, and name changes, VR&E is not portrayed a stable organization. This instability may be part of the reason that program changes have not been fully implemented according to the 2004 VA Task Force Report to the Secretary. The Task Force's opinion is predicated upon the empirically-measured failure to meet the explicit intent/objectives expressed in the legislation, i.e., enabling veterans with service-connected disabilities to attain maximum independence in daily living, and to the maximum extent feasible, to become employed and maintain suitable employment.

VR&E Program Description

The VR&E program is an integral part of the compensation package for all eligible service-connected veterans as it can play a key role in transitioning back into the civilian work force. Additionally, the program is explained to disabled service-members who are leaving the military and receive the Transition Assistance Program (TAP) or Disabled TAP (DTAP) briefings by the Departments of Defense (DoD), Labor (DOL), Homeland Security (DHS), and VA.

A veteran who is eligible for an evaluation under Chapter 31 must complete an application and meet with a Vocational Rehabilitation Counselor (VRC). If the VRC determines that an employment handicap exists as a result of a service-connected disability, the veteran is found entitled to services. The VRC and the veteran will then continue counseling to select a track of services and jointly develop a plan to address the rehabilitation and employment needs of the veteran.

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DRAFT

The rehabilitation plan specifies an employment or independent living goal, identifies intermediate goals, and outlines services and resources needed to achieve these goals. The VRC and the veteran works together to implement the plan and achieve successful rehabilitation.

If a veteran is found not to be entitled to services, the VRC will help the veteran locate other resources to address any rehabilitation and employment needs identified during the evaluation. Referral to other resources may include, state vocational rehabilitation programs, DOL employment programs for disabled veterans, other federal or local agencies providing services for employment, small business development advisors, internet-based resources for rehabilitation and employment, and/or student financial aid information.

Services that may be provided by VR&E include:

- Comprehensive rehabilitation evaluation to determine abilities, skills, interests, and needs
- Vocational counseling and rehabilitation planning
- Employment services such as job-seeking skills, resume development, and other work readiness assistance
- Assistance finding and keeping a job, including the use of special employer incentives
- If needed, training such as On the Job Training (OJT), apprenticeships, and non-paid work experiences
- If needed, post-secondary training at a college, vocational, technical or business school
- Supportive rehabilitation services including case management, counseling, and referral
- Independent living services.

Five Tracks to Employment¹⁴

Reemployment	Rapid Access	Long-Term	Independent Living	Self-Employment
Return to former civilian job	DOL ReaLifeLines	On the Job Training	In-Home Assessment	No Traditional Employment
USERRA 1994	Army Material Command	Apprenticeships	Assistive Technology	Flexible Schedule
	DOD Support Programs	Internships	Independent-living Skills Training	Accommodating work environment
	VA Coming Home to Work	Job Shadowing	Community Support Programs	Funding for start up supplies, etc
	Military Severely Injured Center	Higher Education	Referrals: med, dental, eye, etc.	Assistive Technology
	Helmets to Hardhats			
	Private Sector Initiatives			

There are 5 tracks to employment: reemployment, rapid access to employment, employment through long-term services, independent living services, and self-employment that are explained

¹⁴ *Report to the Secretary of Veterans Affairs: The Vocational Rehabilitation and Employment Program for the 21st Century Veteran*, VA Vocational Rehabilitation and Employment Task Force, March 2004, p. 45-46

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DRAFT

during the TAP briefings and offered to eligible veterans.¹⁵ The table above reflects the options and services available to the veteran participating in a VR&E track. A VA counselor evaluates eligible service members/veterans for an employment handicap, and determines entitlement and which track they would be most suitable for based on their needs.¹⁶

VR&E Program Reviews and Evaluations

To date, there have been a number of external and internal sources that have reviewed and evaluated the VR&E program.

The Commission reviewed the following VR&E evaluations:

- The Vocational Rehabilitation and Employment Program for the 21st Century Veteran completed in March 2004
- VBA's Outcome-Based Assessment of the VR&E Chapter 31 Program completed in June 2005 by independent auditor, Dr. David Dean
- GAO Report: *VA Should Improve Its Management of Individual Unemployability (IU) Benefits by Strengthening Criteria, Guidance and Procedures* completed May 2006
- GAO Report: *Vocational Rehabilitation: VA Has Opportunities to Improve Services, but Faces Significant Challenges* completed April 20, 2005
- Veterans' Disability Benefits Commission Site Visit Final Report completed October 2006

In May of 2003, VA's Secretary called for an "unvarnished, top-to-bottom independent examination, evaluation and analysis"¹⁷ of the VR&E program. As a result, the VA Task Force on Vocational Rehabilitation and Employment conducted a comprehensive review of the program and reported their findings and recommendations in, *The Vocational Rehabilitation and Employment Program for the 21st Century Veteran* in March 2004. As another internal check on the operation of the VR&E program, the VBA authorized an outcome-based assessment of the program in an effort to determine the efficacy of Chapter 31, and to explore possible economic impacts affecting the program. Serving as an external source, the Government Accountability Office (GAO) has conducted several reviews and critiques of the rehabilitation and employment program, citing challenges VA faces in improving the program.

According to these sources, the VR&E program has made significant steps in the right direction in meeting challenges and has moved forward in its delivery of services within the past three years. However, many of these reports documented that there is still room for improvement in fundamental and operational aspects of the VR&E program and its relationship to the compensation program and are further outlined below.

VA Task Force on VR&E

¹⁵ Frederick Steier, Ed.D. *Vocational Rehabilitation and Employment Program Benefits* presented to the Veterans Disability Benefits Commission, March 16, 2006, Washington, DC

¹⁶ Ibid.

¹⁷ *Report to the Secretary of Veterans Affairs: The Vocational Rehabilitation and Employment Program for the 21st Century Veteran*, VA Vocational Rehabilitation and Employment Task Force, March 2004.

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The VA Task Force on Vocational Rehabilitation and Employment conducted a comprehensive review of the program and compiled 110 recommendations for the Secretary. The Task Force's report captures many of the challenges VR&E encounters in its efforts to provide disabled veterans opportunities and services to obtain suitable employment. Additionally, the report offers recommendations, primarily redesign changes, that should be made within the program to ensure a proactive and effective employment program.

Critical themes identified by VR&E Task Force included:

- Weak VBA and VR&E Central Office leadership and accountability.
- Lack of program direction and outdated policies and procedures.
- Limited data and analysis to effectively manage the program.
- Emphasis on long-term education rather than a priority focus on employment.
- Low success rates and a high attrition rate of program participants.
- Failure to provide follow-up support for "rehabilitated" veterans.
- Poor planning and implementation of improvement projects.
- Failure to effectively coordinate nation-wide partnerships between VA and DOL.
- Need for a more aggressive and proactive approach to serving veterans with serious employment handicaps.
- Outdated work process techniques.
- Lack of comprehensive rehabilitative services.

The Task Force did commend the VR&E Service for some of the efforts that have been taken, particularly in the most recent past few years, to refocus its efforts on employment. Beginning in the mid-1990s, the VR&E Service initiated a number of internal Task Forces and projects with the intent of reforming the program. These efforts were well-intended, but in the view of the Task Force, these efforts did not focus on the fundamental problems impacting improved performance nor were they effectively planned and managed. As a result of unsuccessful reform plans combined with reduced program management and oversight by Central Office, "...VR&E Officers in the field have been left to individually implement the program with little direction from Central Office."

The recommendations made by the Task Force are based on two main objectives. First, the Task Force argues that VR&E program priorities should be placed on the population of disabled veterans that have the most serious disabilities that impact quality of life and employment. Secondly, the system should eliminate the need for service-connection as a prerequisite for receiving VR&E services so that as many disabled veterans as possible can receive service, especially those transitioning service members found unfit for duty and for veterans 50 percent disabled and receiving special monthly compensation for loss/use of a limb.¹⁸ The Task Force found that eligibility, entitlement, and application process for VR&E to be hindering factors in delivering timely services and recommended bypassing the C&P process and accelerating the delivery of services.¹⁹ The Task Force recommended that service members found unfit for duty and medically discharged from the military should be automatically entitled to VR&E services

¹⁸ Ibid, p. 81

¹⁹ Ibid.

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DRAFT

so that they can make informed choices about their future.²⁰ They also recommended the removal of the limiting period so that any veteran at any time could seek VR&E Counseling.²¹ There is a large veteran population who has never filed a disability claim, but may need transition assistance, education or vocational counseling, personal problem assistance, or employment assistance.²² Currently, eligibility for chapter 30 is limited to those not more than one year from the date of last discharge from active duty; or who are serving on active duty and are within 180 days of the estimated date of discharge.²³

Out of the 110 recommendations, several key priorities included: the five tracks to employment; (noted above) implementation of a new organizational structure within VA Central Office (VACO) with four assistant director positions; enhance VACO capacity for management and operational analyses; additional space for staff; contractor support services; fill staff vacancies; base funding on RO actual cost and not national average; implement functional capacity evaluations; improve claim timeliness; and improve information technology funding, training, and contracting.

Task Force Recommendations

Program	Organization	Work Process	Integrating Capacity
Eligibility	Fiscal Accountability	Workload Management	Regulations & Manuals
Employment	CO & Facilities	Contract Services	Performance Measures
Independent-Living	CO Staffing	Case Management	Quality Review Process
Partnerships	Workforce Management	Specialization	IT
		VHA Priority Services	Training
		FCE technology ²⁴	Resource Management
		DTAP	Analysis & Evaluation

The most significant and persistent criticism from Task Force members as well as Veterans Service Organizations (VSOs) has been that VR&E has still not fully implemented the type of organizational integration and programmatic changes necessary to comply with the legislative intent to enabling veterans with service-connected disabilities to attain maximum independence in daily living, and to the maximum extent feasible, to become employed and maintain suitable employment. Additionally in 1999, The Congressional Commission on Servicemembers and Veterans Transition Assistance identified major deficiencies in all federal programs serving veterans including serious problems with the Vocational Rehabilitation program. The Transition Commission concluded, "...if VA has not made significant improvements in achieving the program's employment purpose in two years, the Commission recommends that the

²⁰ Ibid. p. 81

²¹ Ibid.

²² Ibid. p.80

²³ 38 USC § 3697A

²⁴ According to the VR&E Task Force "Functional Capacity Evaluation (FCE) technology is a systemic method of measuring a person's ability to perform meaningful tasks on a safe and reliable basis ... (and) ...establishes a clearer understanding of the impact of an injury or illness on someone's ability to function in work related activities and in dialing living.... FCE is ideally suited to facilitate assessment of rehabilitation potential and employment suitability."

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DRAFT

responsibility for delivering the services be opened to full competition to outside entities.” This recommendation has not, however, materialized in the intervening period.

VBA’s Outcome-Based Assessment of the VR&E Chapter 31 Program

The VBA outcome-based assessment was undertaken to determine the effectiveness of the Chapter 31 program and to explore economic impact of the program due to the recession and aftermath of the September 11th attacks.²⁵

During the period 1992 through 2002, the VR&E program accepted applications from almost one-half million veterans. The cost of readjustment benefits and general operating expenses for administering the Chapter 31 program exceeded \$4.6 billion during the same period. There was a concern that the number of “rehabilitations,” which exceeded 10,000 annually, would decline for reasons related to poor economic conditions, rather than the VR&E’s provision of services. Thus, the Task Force recommended that this study be conducted to explore the issue.

Data were obtained from the Chapter 31 Master Record, the Defense Manpower Data Center (DMDC), and the Social Security Administration (SSA). A profile of attributes for veterans who applied for Chapter 31 benefits during the period 1991-2003 was constructed and used to determine the treatment and comparison groups. A return on investment (ROI) framework was used to compare “earnings impacts” to the costs of administering and participating in the Chapter 31 program. Although not explicitly stated, “earnings impacts” or “treatment impacts” are the terms used for the affects on veterans’ earning capacity that Chapter 31 services provide, which make program participants’ earnings different from those of program dropouts (comparison group).

Treatment impacts were obtained using individual-specific longitudinal earnings records obtained from the SSA for the period from 1985-2002. The per veteran earning impact values were converted to a “future value” so that they could be easily grouped and added together. The future value of benefits from 1992 to 2002 equaled \$22,000. This figure represents the “returns” component of the Chapter 31 program ROI equation.

The costs component was derived from a longitudinal tracking of subsistence allowances and hours of academic and non-academic training for the period 1992-2002 obtained from the Chapter 31 Master Record. The total amount of subsistence allowances, readjustment costs and operating expenses was a cumulative annual cost of \$234.7 million for the 14,115 veterans, an average cost to VR&E of \$16,630 per treated veteran.

The future value figure of estimated benefits per veteran was divided by the future value of the total costs per veteran to obtain a “benefit-cost ratio” of 0.45, 0.51, and 0.19, depending on the earnings estimation technique. Essentially, a one dollar “investment” by VR&E and the veteran incurred for direct and implicit costs results in between \$0.19 and \$0.51 in increased earnings by an applicant for Chapter 31 services in 1992. Furthermore, according to VBA data for FY 2005, male veterans who successfully achieved rehabilitation, annual earnings went from an average of

²⁵ Dr. David Dean, *Outcome-Based Assessment of the VR&E Chapter 31 Program*, VBA, June 2005

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DRAFT

\$5,011 to \$29,591. Female earnings increased from \$4,178 to \$27,576 in a variety of career fields ranging from managerial, clerical, services, construction, processing and agricultural.²⁶

There were ten general recommendations made to VBA for conducting any future assessment of VR&E programmatic impacts:

- Integrate all available information from the VBA and DMDC about the veteran's demographic and socioeconomic attributes into an "applicant profile" to assess impact of Chapter 31 service provision.
- Conduct "pipeline studies" of appropriate groups of veterans who do and do not apply for Chapter 31 services to identify appropriate comparison groups for evaluating program impacts.
- Develop capability at the VR&E Central Office to use available data sources (e.g., Corporate WINRS, BDN) to determine the type, duration, and cost of service provision to each veteran receiving Chapter 31 services.
- VR&E should determine feasibility of using existing and readily available administrative records to track employment and earnings of Chapter 31 applicants.
- Bring VR&E performance standards in line with those proposed by OMB and already implemented in WIA, and, to a lesser extent, in RSA and VETS. In addition to a rehabilitation rate at program termination there is a need for an outcome that measures longer-term employment retention.
- A change-in-earnings performance indicator should be implemented which accurately measures the difference in earnings between pre- and post-program periods.
- Investigate the possibility of incorporating a "credentials" outcome as a performance indicator in the VR&E "balanced scorecard."
- Include adjustments for the characteristics of program participants, local economic conditions, and the business cycle in establishing performance standards.
- The costs and benefits of the independent living outcome need to be re-evaluated and distinguished from the other performance standards.
- In addition to performance standards, the VR&E Chapter 31 program needs to be subjected to rigorous on-going evaluation to identify what the true program impacts are.

This particular study evaluated the economic impacts of Chapter 31 services, but does not make any recommendations that are related to service provision or participant perceptions. The study provided information on the potential impact on earnings and opportunity costs veterans incur as participants in the program. Neither this study, nor the VR&E Task Force addressed issues of veteran satisfaction with the program overall and its processes.

GAO Reports

In 2005, GAO reported on VR&E operations, the Task Force findings and recommendations, and VA's overall efforts to provide vocational rehabilitation to injured service members returning from Afghanistan and Iraq. In response to the Task Force recommendations in the area of eligibility and entitlement, GAO generally agreed with the Task Forces three key findings, which were:

²⁶ Veterans Benefits Administration *Annual Benefits Report Fiscal Year 2005*. September 2006. p.93

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DRAFT

1. VR&E has not been a VA priority in terms of returning disabled veterans to the workforce,
2. VR&E has a limited capacity to manage its growing workload, and
3. The VR&E system must be redesigned for the 21st century employment environment.

In the GAO statement before the Subcommittee on Economic Opportunity, Committee on Veterans' Affairs, House of Representatives, GAO cited many of the recommendations it has made throughout the years concerning the VR&E program.²⁷ Additionally, GAO commented that VA's outmoded disability criteria raise questions about the validity of its disability decisions because medical conditions alone are generally poor predictors of work incapacity. For example, advances in prosthetics and assistive technologies (for workplace accommodations) can enhance work capacity by compensating for impairments. According to GAO this means that the Task Force recommendation to focus on severity of disability rather than on employability may not ensure that veterans with the most severe employment handicaps receive priority services from VR&E.²⁸

Additionally, GAO explored VR&E services and made several recommendations regarding its utilization in its report, "*VA Should Improve Its Management of Individual Unemployability (IU) Benefits by Strengthening Criteria, Guidance and Procedures.*" According to this report, the GAO supported the Task Force's finding that, "VR&E should provide more complete vocational assessments to assist in disability and vocational decisions...specifically...perform a functional capacity evaluation that would identify what work a veteran could do in the paid economy despite his or her disabilities."²⁹ GAO further saw this as a significant role VR&E could be playing in IU determinations, however, currently, no such assessment is required. GAO reported that as of FY 2005, there were a total of 219,725 veterans collecting IU.³⁰ VR&E only evaluated 495 IU cases in the last fiscal year 2005³¹ out of its 61,116 applicants.³² GAO does not estimate resource requirements if VA were to mandate all IU claimants be evaluated by a VR&E counselor.

VR&E Staffing Issues

At the RO level, VR&E is organized along the following staffing lines³³:

²⁷ Bascetta, Cynthia, GAO, *Vocational Rehabilitation: VA Has Opportunities to Improve Services, but Faces Significant Challenges.* GAO-05-572T, April 20, 2005

²⁸ Ibid, p.5

²⁹ GAO. *Veterans Disability Benefits: VA Should Improve Its Management of Individual Unemployability Benefits By Strengthening Criteria, Guidance and Procedures.* GAO-06-309, May 2006, p. 12

³⁰ Ibid, p. 10

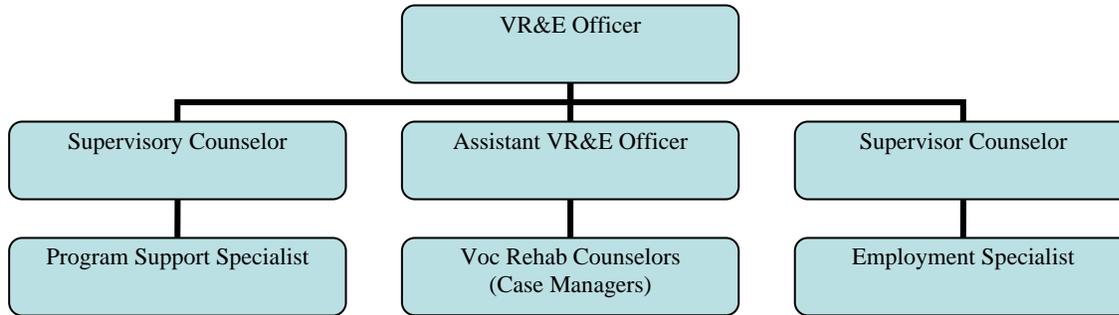
³¹ Frederick Steier, Ed.D. *Vocational Rehabilitation: Eligibility, Services, Outcomes* presented to the Institute of Medicine, (IOM) Washington, DC, September 21, 2006

³² Veterans Benefits Administration *Annual Benefits Report Fiscal Year 2005.* September 2006. p. 87

³³ The VR&E organizational chart was presented at a briefing by J. Margarita Cocker, VR&E Officer, VA Regional Office St. Petersburg, FL to the Veterans' Disability Benefits Commission on February 15, 2006

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DRAFT



The Program Support Specialist determines a veteran's eligibility for the program. The Voc Rehab Counselors or Case Managers determine entitlement and feasibility and develop a rehabilitation plan along one of the five tracks of employment discussed previously. The counselor or an employment specialist then works with the veteran to implement the plan and, finally, releases the veteran once his/her rehabilitation potential has been met.

According to VR&E in VACO, a preferred caseload size is not to exceed 125 cases per counselor/case manager. As of March 2006, VR&E had 92,495 active participants and approximately 623 case managers, but by August there was an increase to 663 managers report and a drop in participants to 90,767.³⁴ However, since 2001, the number of applicants to VR&E has almost doubled from its 52,204 level.³⁵ The average caseload decreased from approximately 148 veterans per manager to 137. The VR&E employee shortage was described in 2004, when a Task Force Report recommended that VBA should add more than 200 new employees to the workforce. However, according to the DOL, their Disabled Veterans' Outreach Program (DVOP) Specialists carry an average case load of 50 veterans. The States, for their Department of Rehabilitation Services, suggest that an average caseload be between 80 and 100 people with disabilities who are actively seeking employment.³⁶ The Army Wounded Warrior program has assigned one Family Management Specialist a caseload of 40 soldiers to best maximize rehabilitation and transition capabilities.³⁷ Therefore, the ideal VR&E program ratio of veterans to case managers is still uncertain.

The American Legion National Commander, Paul Morin, reiterated this concern in September 2006 testimony before the Senate Veterans' Affairs Committee by stating that an "increased workload hinders the staff's ability to effectively assist individual veterans with identifying employment opportunities. In April 2005, the average caseload of a typical VR&E counselor approached 160 veterans."³⁸ Commander Morin outlined other concerns with VR&E staffing including training issues, coordination with the DOL States' VETS program staff, and the development and implementation of performance standards.³⁹ Although additional case

³⁴ Garrick, Jacqueline. *Veterans' Disability Benefits Commission Site Visit Summary Final Report*. October 2006

³⁵ Veterans Benefits Administration *Annual Benefits Report Fiscal Year 2005*. September 2006. p. 95

³⁶ Garrick, Jacqueline. *Site Visit Summary Final Report*, Veterans' Disability Benefits Commission: October 2006

³⁷ COL Mary Carstensen, Director, Army Wounded Warrior Program in Alexandria, VA interview with Jacqueline Garrick, Veterans' Disability Benefits Commission on October 12, 2006.

³⁸ Morin, Paul, (National Commander) The American Legion. *Fiscal Year 2008: Views and Estimates for the Department of Veterans Affairs* presented to the US Senate Veterans Affairs Committee, Washington, DC on September 20, 2006, p. 22-23

³⁹ Ibid.

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DRAFT

managers have been hired throughout the country, there are still concerns with the appropriate level of staffing and distribution patterns.

Employers Training & Hiring VR&E Veterans

According to the VA website there are several options in which an employer can contact a RO and seek to hire a veteran. The first option is under the VR&E On-the-Job Training Program. In this case the employer hires a veteran at an apprentice wage and VR&E supplements the salary up to the journeyman wage (up to maximum allowable under OJT). As the veteran progresses through training, the employer begins to pay more of the salary until the veteran reaches journeyman level and the employer is paying the entire salary. VR&E will also pay for any necessary tools. The employer is also eligible for a federal tax credit for hiring an individual who participated in a vocational rehabilitation program. Another program is the Special Employer Incentive Program, which is used for veterans facing extraordinary obstacles to employment. A veteran is placed in an OJT or a work experience with an employer and VR&E can reimburse the employer up to 50 percent of the veteran's salary for up to 6 months. The employer is also eligible for a federal tax credit for hiring an individual who participated in a vocational rehabilitation program. Finally, there is the Non-Paid Work Experience Program. A veteran is placed in a local, state, or Federal government office. The placement does not count against the agency's FTE and the agency does not pay the veteran. VR&E pays the veteran monthly subsistence allowance while the veteran is participating in the program. During the placement, the veteran works towards gaining and/or strengthening particular skill sets. Though the office is under no obligation to hire the veteran, the goal of this program is for the veteran to obtain full time, permanent employment in the office where he/she is placed or a similar office.⁴⁰ According to the VR&E office, for FY 2006, the number of veterans participating in On-the-Job Training/Apprenticeships is 186 and for Federal Non-Paid Work Experience (NPWE)/Special Services there are 84 veterans in the program.⁴¹

VR&E does not have a formal customer satisfaction survey that is administered to employers for each individual training or special employer service rendered during the rehabilitation process. Therefore, feedback was solicited from the Disabled American Veterans; (DAV) a major participant in the on-the-job training program (OJT) for their National Service Officers (NSO). DAV has had its current Memorandum of Understanding (MOU) with VA for six years. In an interview with Brian Austin, DAV, Assistant National Service Director on October 12, 2006⁴², he described their organizational experiences with VR&E as very successful and a great tool for training new NSOs. However, he also saw the need for additional follow up on a regular basis by VR&E, especially when participants are struggling and are not going to be successful. DAV would like to see VA intercede more, but they do not, except for when veterans have a need for specialized equipment. Mr. Austin suggested that communication could be improved by having annual surveys and MOU reviews with employers and quarterly performance reviews with the

⁴⁰ VR&E Information for Employers http://www.vba.va.gov/bln/vre/emp_resources.htm (Accessed: October 9, 2006.)

⁴¹ Robert J. Roundtree, Supervisor of Employment Services, VR&E, VA, reported data in an email to Jacqueline Garrick, Veterans' Disability Benefits Commission on October 10, 2006.

⁴² Brian Austin, Assistant National Service Director, DAV, reported information through a telephone conversation with Jacqueline Garrick, Veterans' Disability Benefits Commission on October, 12, 2006.

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veteran. Participation satisfaction surveys should also be conducted with veterans to obtain their feedback on the usefulness of the program.

Additionally, in researching VR&E, the Veteran's Disability Benefits Commission tried for over 8 months to create an opportunity for any veteran interested in a Non-Paid Work Experience Program placement under VR&E, but found the process (from the employer perspective) to be time consuming, confusing (with multiple contacts to four different VR&E staff members within Central Office and the ROs), fraught with misinformation, and only produced results after a veteran self-identified as interested in interning with the Commission. Then, it took several more weeks and phone calls to facilitate the process. Ultimately, the veteran abruptly left the internship when he could no longer maintain the financial burden of his out-of-pocket expenses. In this case, increased contact with a VR&E counselor and a review of the plan might have facilitated a more productive outcome.

Findings

There are many programmatic and operational components to the VR&E program, which have received a great deal of attention and scrutiny from internal and external sources. The Task Force, a VBA contractor, VSOs, and the GAO have made numerous recommendations for improvements. Some of these recommendations have been implemented and others are in process. It is expected that as younger veterans are transitioning from the military, they will be looking for assistance in their ability to return to the civilian market work force and to find suitable gainful employment. In reviewing recommendations from the entities identified above, several themes do emerge that address staffing and training issues, IT enhancement, performance measurement and increasing program utilization. Furthermore, VR&E does not track its participants beyond 60 days nor does it survey them regarding their satisfaction with the program or the job they were able to procure as a result of their participation in the program. Additionally, it does not follow up well enough with employers. There is no feedback loop with them regarding their satisfaction with the program or regular reviews of their MOUs. By not surveying participants and employers, VR&E loses valuable opportunities to collect lessons learned and improve services delivered.

In considering the Commission's specific question on age, the number of VR&E recipients who are over 65 years is significantly low at only 2 percent. *The Older Americans Report* found that the percentage of those 65 and older in the workforce is increasing. There still might be a need by this older, employment-seeking population for vocational rehabilitation. There is no evidence to support a cutoff point at any age. This would be consistent with the previous decision of the Commission to not consider age as a factor (RQ15a) when a veteran files for compensation.

The VR&E Task Force recommended expanding eligibility for VR&E Counseling Services to all veterans seeking suitable employment and making any service member found unfit for duty and medically separated from the military automatically entitled to VR&E Services.⁴³

⁴³ *Report to the Secretary of Veterans Affairs: The Vocational Rehabilitation and Employment Program for the 21st Century Veteran*, VA Vocational Rehabilitation and Employment Task Force, March 2004., p. 81

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DRAFT

The Task Force found that the requirement for any level of service-connection should be eliminated, so that as many veterans as possible could benefit from VR&E services.⁴⁴ This would simplify access to the program and counselors could assess the need and motivation of veterans to further their education, obtain gainful employment, and/or improve their quality of life. This recommendation by the Task Force would eliminate the need for any threshold (currently at 20 percent) to be established prior to the veteran being able to apply for the program. If approved, this recommendation would dramatically expand the program for veterans who are not rated with a service connected disability.

Additionally, the GAO concluded that VR&E counselors could also be employed to conduct assessments of IU claimants. Thereby determining their level of employment handicap, which might not warrant compensation, but rather could be corrected with adaptive equipment or training, for example. This level of attention to veterans who have previously been unemployed or unemployable could facilitate their return to the workforce or improve their independent living skills.

Commission Options

As the Commission deliberates on VR&E issues, each option would need to be considered separately.

The Commission could choose to:

1. Maintain VR&E program status quo on age as a factor
2. Recommend an increase in VR&E resources.
3. Recommend mandatory VR&E screening process for IU claimants
4. Expand access to VR&E Counseling to all motivated disabled veterans seeking to return to work.
5. Expand access to VR&E Services for all medically separated service members
6. Expand tracking of VR&E participants and employment outcomes beyond 60 days.
7. Conduct veteran satisfaction surveys on the program and with the job that they are able to procure after program participation and track employer satisfaction and lessons learned through surveys and MOU reviews.
8. Endorse GAO findings that VR&E has not been a VA priority in returning disabled veterans to the workforce, it has a limited capacity to manage its growing workload, and it must be redesigned for the 21st century employment environment.

⁴⁴ Ibid. p. 96

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Appendix 1: VR&E Program Steps

Step 1: Eligibility Determination Based on the following Criteria:

To receive an evaluation for VR&E services eligibility, a veteran must:

- Have received, or will receive, a discharge that is other than dishonorable
- Have a service-connected disability rating of at least 10%
- Submit a completed application for VR&E services

The basic period of eligibility in which VR&E services may be used is 12 years from the latter of the following:

- Date of separation from active military service, or date the veteran was first notified by VA of a service-connected disability rating.
- The basic period of eligibility may be extended if a Vocational Rehabilitation Counselor (VRC) determines that a veteran has a Serious Employment Handicap.

Step 2: Actions after Eligibility is Established

The veteran is scheduled to meet with a Vocational Rehabilitation Counselor (VRC) for a comprehensive evaluation to determine whether the veteran is entitled to services. The comprehensive evaluation includes:

An assessment of the veteran's interests, aptitudes, and abilities

An assessment of whether service connected disabilities impair the veteran's ability to find and/or hold a job using the occupational skills he or she has already developed; a process of vocational exploration and goal development.

Step 3: Entitlement Determination

A Vocational Rehabilitation Counselor (VRC) determines whether a veteran has an employment handicap based on the results of the comprehensive evaluation. Entitlement to services is established if the veteran is within his or her 12 year basic period of eligibility and has a 20% or greater service-connected disability rating and an employment handicap.

If the service-connected disability rating is less than 20% or if the veteran is beyond the 12 year basic period of eligibility, then a serious employment handicap must be found to establish entitlement to VR&E services.

Step 4: After an Entitlement Determination is Made

The veteran and VRC work together to:

- Select a VR&E program track leading to an employment or independent living goal
- Identify viable employment or independent living services options

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- Determine transferable skills
- Explore labor market and wage information
- Identify physical demands and other job characteristics
- Narrow vocational options to identify a suitable employment goal
- Investigate training requirements
- Identify resources needed to achieve rehabilitation
- Develop an individualized rehabilitation plan to achieve the identified employment or independent living goal

Step 5: Determining the Components of a Rehabilitation Plan

A rehabilitation plan is an individualized, written outline of the services, resources and criteria that will be used to achieve successful rehabilitation. It is an agreement that is signed by the veteran and the VRC and is reviewed annually to determine whether any changes may be needed. <http://www.vba.va.gov/bln/vre/vrs.htm>.

Depending on their circumstances, veterans will work with their VRC to select one of the following Five Tracks of services:

1. Reemployment (with a former employer)
2. Rapid employment services for new employment
3. Self-employment
4. Employment through long term services
5. Independent living services

Step 6: After a Rehabilitation Plan is Developed

After a plan is developed and signed, a VRC or case manager will continue to work with the veteran to implement the plan to achieve suitable employment or independent living. The VRC or case manager may coordinate services such as tutorial assistance, training in job-seeking skills, medical and dental referrals, adjustment counseling, payment of training allowance, if applicable, and other services as required to achieve rehabilitation.

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Vocational Rehabilitation and Employment (VR&E)

Legal Analysis:

Research Question #17: Because Vocational Rehabilitation and Employment (VR&E) benefits are an integral part of the compensation package for many service-connected veterans, what changes, if any, are needed in this program?

Introduction

This paper provides an overview of the legislative history and major statutory provisions affecting the Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) Program under 38 U.S.C., Chapter 31. VA's VR&E program is charged with delivering timely, effective vocational rehabilitation services to veterans with service-connected disabilities. Its purpose is to provide injured soldiers, sailors, airmen, Marines, and other veterans with disabilities a "seamless transition" from military service to a successful rehabilitation and on to suitable employment after service to our nation. The legislation tacitly recognizes that for some severely disabled veterans, the definition of success will be acquiring the skills to live independently, achieving the highest quality of life possible with hope for eventual employment given future advances in medical science and technology.

VR&E provides vocational rehabilitation services to veterans who have a service-connected disability. To receive these services a veteran must be found both eligible and entitled. The outcome of these services should lead to suitable employment that is consistent with the veterans' aptitudes and interests, or achieving independence in their daily living.

<http://www.vba.va.gov/bln/vre/vrs.htm>

Educational and Vocational Counseling is provided for eligible service members, veterans, and veterans' dependents. The desired outcome of this counseling is assistance in the selection of an educational or vocational goal and/or assistance in selecting training institutions where this goal may be pursued.

VA has maintained an active Transition Assistance Program and Disabled Transition Assistance Program (TAP/DTAP) throughout the United States and around the world. Since the implementation of TAP/DTAP through the original legislation (P.L. 101-237) and the legislation which expanded TAP/DTAP (P.L. 101-510). VA has provided VR&E information to separating service members and their families. Eligible members must be:

- within six months prior to discharge from active duty, or
- within one year following discharge from active duty

VR&E counseling services are also provided to separating service members and their families who are participants in a GI Bill program. The following chapters of title 38 address additional services provided under the auspices of the VR&E program. These include:

- Chapter 18 - *Benefits for Children of Vietnam Veterans*, [Spina Bifida Program](#)

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- Chapter 30 - *All-Volunteer Force Educational Assistance Program*
- Chapter 32 - *Post-Vietnam Era Veterans' Educational Assistance*
- Chapter 35 - *Survivors' and Dependents' Educational Assistance*
- Chapter 1606 - *Educational Assistance for Members of the Selective Reserve*
- Chapter 1607 - *Reserve Educational Assistance Program*

<http://www.vba.va.gov/bln/vre/vec.htm>

Legislative History and Major Program Developments

Vocational rehabilitation as a government service to war-injured veterans began during the World War I era. In 1917, the War Risk Insurance Act of 1914 was amended to provide for war veterans' rehabilitation and vocational training in cases of dismemberment, injuries to sight or hearing, and other injuries resulting in permanent disability. 40 Stat. 102. (June 12, 1917).

Eligibility for vocational rehabilitation was established retroactively to the date the United States entered World War I-April 6, 1917. No program authorization was made, however, for individuals disabled in service between World War I and II. Thus, this cohort of veterans had no opportunity to benefit from vocational rehabilitation, as the program did not exist during that time.

In 1943, Public Law 78-16 reestablished the vocational rehabilitation program for veterans of World War II. Achievement of vocational rehabilitation was again defined as completing suitable vocational training, just as it had been during the World War I era. The maximum entitlement was four years, and no veteran could receive rehabilitation beyond six years after the war's end. Approximately 621,000 disabled veterans received vocational rehabilitation training following their service in World War II.

Public Law 87-815 was enacted in 1962, and for the first time vocational rehabilitation benefits were provided to disabled veterans of peacetime military service. This public law authorized vocational rehabilitation benefits for veterans who served during peacetime between World War II and the Korean Conflict. However, eligibility was more restrictive than for wartime disabled veterans. Veterans with ten percent and twenty percent service-connected disability ratings were not eligible for vocational rehabilitation services. This restrictive peacetime legislation also applied to the vast majority of Vietnam era veterans who received reduced benefits from August 1964 to January 1975, a period, some have argued, to have been their time of greatest need.

Public Law 93-508, enacted in 1974, relaxed eligibility and entitlement provisions of the veterans' vocational rehabilitation program. The legislation allowed the delivery of rehabilitation services to ten percent and twenty percent service-connected disabled veterans whom VA determined to be in need of vocational rehabilitation services. The term "vocational rehabilitation" continued to be defined as training to restore employability lost as a result of a service-connected disability. Thus, veterans who successfully completed training for suitable employment were determined to be rehabilitated.

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In the late 1970s, in response to pressure from veterans, the vocational rehabilitation program came under sustained congressional scrutiny. Congress directed VA to engage in greater efforts to encourage veterans to use available vocational rehabilitation and counseling services.

In 1977, Public Law 95-202 (known as the GI Bill Improvement Act of 1977) mandated that the Veterans Administration review its vocational rehabilitation program and compare it to the state-federal vocational rehabilitation program established under the Rehabilitation Act of 1973. The review concluded that the vocational rehabilitation program was in need of substantial revision to bring it up-to-date and make its services commensurate with then current rehabilitation practices. In response to these findings, the VA Secretary created a task force for P.L. 95-202 in 1977 to improve the program.

The work of the 1977 task force resulted in the creation of the current VR&E program through the enactment of the Veterans' Rehabilitation and Education Amendments of 1980 (Public Law 96-466). The purpose of the program was changed to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment (defined as congruent with the veteran's interests, aptitudes, and physical/mental capabilities). This change expanded the scope of vocational rehabilitation beyond only training, to include both suitable employment and independence in daily living. This development fundamentally altered the philosophy and purpose of the program.

Apart from the "suitable employment" provision, Public Law 96-466 added another new dimension to VA's vocational rehabilitation program—that of "independent living." VA was mandated to provide rehabilitation services to the most severely disabled veterans, even though they may never become competitively employed. This new aspect of the program was designed to provide services that enable severely disabled veterans to live and function as independently as possible. By adding this component to its rehabilitation program, VA was following the lead established by public vocational rehabilitation programs.

Eligibility requirements were tightened again in 1990, when Public Law 101-508 (the Omnibus Budget Reconciliation Act of 1990) increased the level of disability required for the program from ten to twenty percent. Veterans with only ten percent disability ratings already in the program or who had previously applied for the program could continue to receive rehabilitation services. However, this program's eligibility restriction was short-lived. By 1993, Public Law 102-568 (Veterans Benefits Act of 1992) changed the requirements again so that certain veterans with ten percent disability ratings could participate in the program. The law also revised chapter 30 (All-Volunteer Force Educational Assistance Program) benefits eligibility, effective 10-19-84. It stated that there would be a period when chapter 30 participants who were assigned full time by the Armed Forces to a civilian institution for a course of education would not be considered as having a break in the continuity of active duty service. Additionally, veterans of World War II, other veterans with a service-connected disability or disabilities rated at least 20 percent compensable, and certain disabled servicepersons pending discharge or release from the military who are pre-determined by VA to receive at least a 20 percent rating would be eligible for vocational rehabilitation if they had an employment handicap. The law provides that veterans

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DRAFT

with a 10 percent service-connected disability may be eligible if they first applied for vocational rehabilitation prior to November 1, 1990, and they have an employment handicap. In addition, veterans with compensable ratings of 10 percent may also be eligible if they are found to have a serious employment handicap. http://www.warms.vba.va.gov/admin22/m22_4/part01/ch03.doc. The rapidly shifting eligibility requirements were attributable to ongoing fiscal constraints and political vicissitudes within Congress in its response to pressure from competing constituencies. *Vocational Rehabilitation and Employment 2004 Task Force Report to the Secretary*. Department of Veterans Affairs, 2004.

Currently, veterans are eligible for program services if they have a twenty percent or higher compensable service-connected disability *and*⁴⁵ VA determines that they have an employment handicap. Public Law 102-568 defines an “employment handicap” as an impairment of a veteran’s ability to prepare for, obtain, or retain employment consistent with his or her abilities, aptitudes, and interests. Veterans with a ten percent service-connected disability also may be eligible if they meet the additional criterion of having a “*serious*”⁴⁶ employment handicap.” The statute defines a serious employment handicap as, “a significant impairment of a veteran’s ability to prepare for, obtain, or retain employment consistent with his or her abilities, aptitudes, and interests.” Pub. L. 102-568. The eligibility period generally extends for twelve years, beginning on the date VA notifies the veteran of a qualifying rating. Veterans found eligible for services can receive up to 48 months of benefits during the twelve-year period. If the service-connected disability rating is less than twenty percent or if the veteran is beyond the twelve year basic period of eligibility, then a serious employment handicap must be found to establish entitlement to VR&E services. *Id.*

In 1996, Public Law 104-275 addressed the subject of “limited rehabilitation” within the VR&E Program. Limited rehabilitation was defined as participation in self-employment and the completion of home-bound training to veterans with severe service-connected disabilities who require self-employment to achieve vocational rehabilitation.

Congressional and other governmental hearings: Reactions to the VR&E program

The most recent major programmatic development regarding VR&E occurred on January 10, 2000, VR&C (Veterans Rehabilitation and Counseling-the original program designation) officially became known as VR&E to emphasize its renewed focus on finding and maintaining suitable employment for rehabilitated veterans.

<http://www.gla.med.va.gov/documents/75%20years%20of%20highlights.doc>

In the U.S. House of Representatives’ March 12, 2001, “Report to the Committee on the Budget from the Committee on Veterans’ Affairs,” submitted pursuant to § 301 of the Congressional Budget Act of 1974 as it pertains to the budget proposed for Fiscal Year 2002, lawmakers reiterated their original intent to authorize VR&E to furnish all services and assistance necessary to enable service-connected disabled veterans to become employable, obtain and maintain suitable employment, and/or to achieve maximum independence in daily living. Additionally,

⁴⁵ Emphasis added

⁴⁶ Emphasis added

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they explicitly articulated the fact that VR&E is expressly authorized to provide educational and vocational counseling services to eligible active-duty members, veterans and dependents.

Congress stated clearly in that report that VR&E had been renamed to reflect a newfound emphasis on employment - the VR&E program's ultimate goal. The Committee had been pleased with recent VBA initiatives to promote better case management and lifecycle completion times and success rates. The Committee was also pleased at that juncture with VR&E's progress in integrating Employment Service Specialist positions into existing service delivery schemes. Further, the Committee commended the VR&E program for its strategic document "The Business Case Continues." <http://veterans.house.gov/about/budget/viewest.htm>

The Committee remained concerned, however, with VR&E's heavy reliance on private contractors to fulfill various phases of the VR&E program lifecycle. Further, participant dropout rates and the quality of post-program employment were still troubling to the Committee. Therefore, the Committee recommended steady increases in funding levels for each successive year. *Id.*

Despite the changes described herein, the most significant and persistent criticism within Congress is that VR&E has still not fully implemented the kinds of changes-programmatic, organizational, and work processes-required to comply with the intent of the law, which is to provide suitable employment for veterans. In its 1999 report, *The Congressional Commission on Servicemembers and Veterans Transition Assistance*, major deficiencies were found in all federal programs serving Veterans, including VR&E. The Commission concluded:

"...if VA has not made significant improvements in achieving the program's employment purpose in two years, the Commission recommends that the responsibility for delivering the devices be opened to full competition to outside entities."

Similar criticisms have increased in recent years in reports from the General Accounting Office (GAO), the Veterans Service Organizations' Independent Budget, VA's Office of the Inspector General, and from VR&E Internal Reports. *Vocational Rehabilitation and Employment 2004 Task Force Report to the Secretary*. Department of Veterans Affairs, 2004.

Recent Developments within VR&E: Response to OEF/OIF

Recently, programs initiated under the auspices of VR&E are to address the needs of veterans who served in Operation Enduring Freedom/Operation Iraqi Freedom (OEF/OIF), including The Coming Home to Work Initiative (CHTW).

The Coming Home to Work initiative (CHTW) is a part of VA's early outreach efforts. Through this initiative, unpaid work experience in a government facility is made available to VR&E eligible service members pending medical separation from active duty at Defense Department Military Treatment Facilities, with a special emphasis on OEF/OIF service members and veterans. Participants work with a Vocational Rehabilitation Counselor to obtain volunteer or work experience in a Government agency that supports their career goals. Participants must have

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written permission from their military chain of command and medical care team to participate in CHTW. CHTW is meant to provide valuable civilian job skills, exposure to opportunities, and work experience history to service members facing medical separation from the military and uncertain futures.

CHTW provides VR&E-eligible service members and veterans with the opportunity to obtain training and practical job experience by working in a Federal, State, or local government agency. Types of work may include administrative, clerical, professional, technical, or wage-grade jobs. The government agency incurs no cost and has no obligation to hire the veteran participant. However, hiring the veteran is encouraged, when staffing and budget permit. The government agency has the opportunity to evaluate the veteran prior to consideration for hiring in a temporary or permanent position.

Under the 30 percent or More Disabled Veteran and the Veterans Recruitment Appointment (VRA) direct hiring authorities, participants can be hired quickly and non-competitively. These direct hiring authorities provide value to both the veteran and the hiring manager. Many service members who participated in CHTW while their physical evaluation boards were pending at the Walter Reed Army Medical Center in Washington, DC were hired to fill salaried positions with VA immediately upon military separation. These positions were filled both in the Washington, DC area and at VA offices near the veteran's home of record. Positions have been filled at grades ranging from GS-5 through GS-13 based on individual qualifications, and include management analysts, IT specialists, budget analysts, program support assistants, telecommunication specialists, technology assistants, program analysts, and contract specialists.

Due to the success of CHTW participants in the Washington, DC area, the initiative is being deployed nationally. Currently, six additional VA Regional Offices are implementing CHTW at the Military Treatment Facilities with the largest current or projected need. Need is based on the number of service members that are in a medical hold status and are expected to be separated from the military due to service-connected disabilities.

<http://www.eeoc.gov/abouteeoc/meetings/6-28-06/caden.html>

Vocational Rehabilitation & Employment Case Coordinators (VRECC)

Another recent VR&E programmatic initiative is priority outreach and case management services for OIF/OEF service members and veterans who apply to the VR&E program. Regional offices recently designated specific individual(s) to serve as the Vocational Rehabilitation & Employment Case Coordinators (VRECC). These case coordinators ensure that servicemembers and veterans receive priority attention through their application, entitlement, and a five-track employment process. The case coordinators also participate in VR&E early intervention and outreach activities, including the CHTW program.

<http://veterans.house.gov/hearings/schedule110/mar07/03-07-07/BillBorom.shtml>

Partnership with the Department of Labor Veterans' Employment and Training Service (DOL-VETS)

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The VR&E Service and the Department of Labor's (DOL) Veterans' Employment and Training Service (VETS) continue to work together to provide employment services through a Memorandum of Understanding (MOU) signed October 2005. VETS and VR&E have adopted a team approach to job development and placement activities to improve vocational outcomes for program participants. All veterans entering a program of vocational rehabilitation are informed of the employment assistance available through the VETS Program and are encouraged to register with the State Workforce Agency. *Id.*

DOL has Disabled Veterans Outreach Program (DVOP) Specialists and Local Veteran's Employment Representatives (LVER) who are part of the public workforce investment system and are part of a network of over 3,200 One-Stop Career Centers throughout the country. VA believes that augmenting DOL services with VR&E staff maximizes the employment services available to veterans and increases the opportunities for successful placements. Both agencies are committed to working together to improve successful employment outcomes to veterans. Currently 38 VA Regional Offices have a co-located DVOP Specialist or LVER. There are 71 DVOP Specialists or LVERs at these 38 stations. Having the DVOP Specialist or LVER on-site is a "best practice" that enhances the efficiency of teamwork between the two agencies. *Id.*

Overview of VR&E Statutory Provisions under 38 U.S.C. § 31

Chapter 31: Training and Rehabilitation for Veterans with Service-Connected Disabilities

Legislative Intent

38 U.S.C. § 3100 clearly directs the VR&E program to provide services and assistance necessary to enable veterans with service-connected disabilities to become employable, and to obtain and maintain suitable employment; or if necessary, to achieve independence in daily living to the maximum extent feasible.

Objective

Job acquisition, in a suitable work situation, is the plainly stated objective of the vocational rehabilitation program (38 C.F.R. 21.1). During the evaluation process, personal assessments, occupational research and individual life goals are reviewed relative to future job considerations. The second stated objective of the vocational rehabilitation program is to provide entitled seriously disabled veterans all services necessary to enable them to achieve maximum independence in daily living.

Scope

VR&E counselors develop rehabilitation plans to assist veterans in accomplishing the program goal of suitable employment. Chapter 31 services can include: comprehensive evaluation services, vocational exploration and counseling, educational and personal adjustment counseling, financial assistance for vocational and educational training expenses, medical treatment, tutorial

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DRAFT

assistance, reader or sign language interpreter services, employment services, case management services, work adjustment training, and adult basic instruction.

Within the language of 38 U.S.C. § 3100, Congress defined suitable employment as employment that:

- Is both stable and continuing,
- Is consistent with a veteran's pattern of interests, aptitudes, and abilities; and
- Does not aggravate a veteran's disabilities.

While the primary focus of the VR&E program is providing necessary assistance to enable service-connected disabled veterans to prepare for, achieve, and maintain suitable employment, the program also serves veterans whose service-connected disabilities impact their capacity to seek out and maintain suitable employment. VR&E provides independent living services to assist veterans in becoming more independent in their daily living activities. Independent living services and assistance applies when a vocational goal by a veteran is not reasonably feasible. The purpose of the independent living program is to assist the veteran to achieve maximum independence in daily living. The term "independence in daily living" means the ability of a veteran, without the services of others or with a reduced level of the services of others, to live and function within the veteran's family and community.

Eligibility and Application

38 U.S.C. § 3101 states that the term "employment handicap" means an impairment resulting in substantial part from an inability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests. Although the veteran's disability is not the only criteria upon which an employment handicap may be determined, it plays a predominant role in the process of defining the existence of an employment handicap.

In the past, Congress established an eligibility requirement of 30% combined service-connected rating. At present, a person shall be entitled to a rehabilitation program under the terms and conditions of Chapter 31 if the veteran has a service-connected disability rated at twenty percent or more that was incurred or aggravated in service on or after September 16, 1940; or is hospitalized or receiving outpatient medical care, services, or treatment for a service-connected disability pending discharge from the active military, naval, or air service, and the Secretary determines that the person is suffering from a disability which will likely be compensable at a rate of twenty percent; and is determined by the Secretary to be in need of rehabilitation because of an employment handicap. A veteran who has a service-connected disability rated at ten percent which was incurred or aggravated in service on or after September 16, 1940; and is determined by the Secretary to be in need of rehabilitation because of a serious employment handicap is also eligible. 38 U.S.C. § 3101.

Veterans meeting basic eligibility requirements submit VA Form 28-1900. This form provides the veteran with basic information on entitlement as well as a brief explanation on the different services that might be provided.

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DRAFT

The period of eligibility is statutorily defined under Section 3101 as up to twelve years from the date VA notifies a veteran that they have a qualifying compensable disability. If certain conditions prevented the veteran from participating in a program of rehabilitation or if a veteran is determined to have a serious employment handicap, the twelve-year limit may be waived. Id.

Definitions and Determinations:

The elements that are to be considered in the determination of an Employment Handicap are detailed in 38 CFR 21.51 and 21.52. The following definitions in sections 21.51 and 21.52 provide guidance to VR&E counselors:

Employment Handicap (EH) is an impairment of the individual veteran's ability to prepare for, obtain, or retain employment consistent with his or her abilities, aptitudes, and interests. The impairment results in substantial part from a service-connected disability. For veterans rated at twenty percent or more, a finding of employment handicap results in a finding of entitlement.

Serious Employment Handicap (SEH) represents a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with his or her abilities, aptitudes, and interests. The SEH results in substantial part from a service-connected disability. For veterans rated at ten percent and for veterans whose 12-year period of basic eligibility has passed, a finding of an SEH is necessary to establish entitlement.

Pursuant to 38 CFR 21.51 and 21.52 guidelines, the VR&E Counselor must determine if the veteran has experienced restrictions on employability caused by:

- The veteran's service-connected disabilities
- The veteran's non-service-connected disabilities
- Deficiencies in education and training
- Negative attitudes toward people with disabilities
- The impact of alcoholism and drug abuse
- Consistency with abilities, aptitudes and interests
- Other pertinent factors

An employment handicap exists under current criteria when all of the following conditions are met:

- The veteran has an impairment of employability;
- The veteran's service-connected disability materially contributes to the impairment
- The veteran has not overcome the effects of the impairment through
- employment in an occupation consistent with his or her pattern of abilities, aptitudes, and interests.

38 CFR 21.51 and 21.52.

Relationship of Disability to Employment Handicap

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DRAFT

The veteran's service-connected disability need not be the *sole or primary* cause of the employment handicap but it must "materially contribute" to the impairment. That is, its effects must be identifiable, measurable, or observable.

The Court of Veterans Appeals (COVA) in Davenport v. Brown (1995) set aside regulations that required a causal nexus between a veteran's service-connected disability and an employment handicap or serious employment handicap. Public Law 104-275 *redefined* the terms "employment handicap" and "serious employment handicap" under Pub. L. No. 102-568 to include a requirement that such an impairment must result in substantial part from a service-connected disability effective. This became effective with applications received on or after October 9, 1996. Once it has been determined that a veteran has a qualifying "educational handicap" under established criteria, the existence of a service-connected-disability constituting a substantial contribution to the employment handicap has been established.

Under the *revised definitions* of Public Law 104-275, the primary difference between an employment handicap and a serious employment handicap, is one of the degree of vocational impairment, not degree of service-connected disability.

Guidance for VR&E counselors is contained in VBA Circular 28-97-1 and VR&E Service Policy Bulletin 99-1, and 38 CFR 21.51.

Program Services

The VR&E program provides the following services and benefits to help veterans achieve the stated objective of their vocational rehabilitation plan:

- a) Counseling and Evaluation. Every applicant for Chapter 31 benefits receives an individualized evaluation of his or her need for services which includes a comprehensive assessment of interests, aptitudes, abilities, limitations imposed by disability, and rehabilitation needs.
- b) Vocational Training Benefits. Chapter 31, provides school tuition, fees, books, and training supplies. Specific tools, such as computers, art supplies, mechanical tools, and the like may be provided as required of the educational or training program. Tutoring services are provided to meet the individual's needs.
- c) Monthly Subsistence Allowance. Veterans in approved vocational rehabilitation training are paid a non-taxable monthly subsistence allowance.
- d) Medical Benefits. Under Chapter 31, program recipients are entitled to every medical service necessary to assist him or her in completing the program of services. These benefits include the full range of medical and dental services required for the individual's needs.
- e) Case Management Services. A VR&E case manager is assigned to each Chapter 31 recipient. This case manager is responsible for ensuring the delivery of all services to the recipient, and for offering all necessary assistance to help the recipient successfully complete the program of services.

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DRAFT**

f) Independent Living Services. Veterans who are determined to be unable to achieve suitable employment are offered a comprehensive evaluation of their needs as well as all services necessary to assist them to achieve maximum independence in their daily living. Such services may include medical treatment, special instruction in daily living activities, purchase of special equipment and/or supplies, and modification of their living quarters.

g) Employment Services. Most Chapter 31 participants have a program goal of attaining and retaining suitable employment. Case managers are tasked with assisting participants in identifying, applying for, and retaining suitable jobs for at least 60 days. Program participants who are enrolled in a training program which involves primarily a classroom setting often wait until their training programs are nearing completion to avail themselves of job placement services.

Entitlement Expiration of VR&E services (per statutory guidelines)

The duration or maximum length of a veteran's participation is defined by specific type of VR&E service provided; provisions are in place for extensions should necessity arise.

Extended evaluation (when VA is unable to determine reasonable feasibility for achievement of a vocational goal)—entitled veterans may participate up to 12 months with additional extensions if necessary of up to 6 months.

Achievement of a vocational goal— entitled veterans may participate up to 48 months (extensions may be granted for veterans determined to have a serious employment handicap and if certain other conditions apply)

Achievement of an independent living goal— entitled veterans may participate up to 24 months.

Conclusion

VR&E is authorized by Congress under 38 U.S.C. § 31. The mission of VR&E is to help veterans with service-connected disabilities to prepare for, find, and maintain suitable jobs. For veterans with service-connected disabilities so severe that they cannot immediately consider work, VR&E offers services to improve their ability to live as independently as possible.

VR&E is a long-standing compensatory benefit for disabled military veterans. Since its inception during WW I under the War Risk Insurance Act, its mission has been to provide empirically-validated, cost-effective vocational rehabilitation services and educational benefits to veterans with service-connected disabilities as well as to dependents, and, in some cases, non-service-connected veterans (such as those engaged in VA's Transition Assistance Program and Disabled Transition Assistance Program (TAP/DTAP) authorized under P.L. 101-237 and P.L. 101-510.) A long line of legislation, described herein, elucidates the processes that were conceived and implemented to facilitate a "seamless transition" from military service to successful rehabilitation and suitable employment. Persistent criticism, as noted by the VR&E Task Force, has been leveled against VR&E since its inception regarding its lack of efficacy, efficiency, and

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DRAFT

accountability. In a previous task force in the late-1970's, an attempt was also made to address these problems and culminated in the creation of the current iteration of VA's VR&E Program through the enactment of the Veterans' Rehabilitation and Education Amendments of 1980 (Public Law 96-466).

Repeated efforts at reform throughout the years have met with varying degrees of success. Since the inception of the major 1980 reforms, VR&E has been significantly impacted by statutory changes, such as Public Law 101-508, which in 1990 eliminated entitlement for veterans with a 10 percent service-connected disability. Then, in 1993, Public Law 102-568 changed the law again so that veterans with a 10 percent service-connected disability were once again entitled to benefits. In 1996, Public Law 104-275 defined and provided for "limited rehabilitation" as participation in self-employment and the completion of training for home-bound veterans with severe service-connected disabilities to achieve vocational rehabilitation. On January 10, 2000, VR&C officially became known as VR&E to emphasize its focus on finding and maintaining suitable employment for rehabilitated veterans.

More recently, VA has attempted to address the vocational and employment reintegration needs of returning OEF/OIF service members is the Coming Home to Work initiative (CHTW). Through this initiative, unpaid work experience in a government facility is made available to VR&E eligible service members pending medical separation from active duty at Military Treatment Facilities. Participants work directly with a VR&E vocational rehabilitation counselor to obtain volunteer or work experience in a Government facility that supports their career goals. CHTW provides valuable civilian job skills, exposure to opportunities, and work experience history to service members facing medical separation from the military and uncertain futures. VA is also facilitating successful reintegration via priority processing of OEF/OIF service member applications, and an ongoing alliance to facilitate job development and placement activities with the Department of Labor Veterans Employment and Training Service (DOL-VETS).