Veterans' Claims Adjudication Commission

Established Pursuant to Public Law 103-446

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Transmittal to:
Honorable Alan Simpson, Chairman, Committee on Veterans' Affairs, United States Senate
Honorable John D. Rockefeller IV, Ranking Member, Committee on Veterans' Affairs, United States Senate
Honorable Bob Stump, Chairman, Committee on Veterans' Affairs, U.S. House of Representatives
Honorable G.V. (Sonny) Montgomery, Ranking Member, Committee on Veterans' Affairs, U.S. House of Representatives

In accordance with section 402(e)(2) of Public Law 103-446, we are pleased to transmit to you the Commission's report of findings, conclusions, and recommendations regarding the Department of Veterans Affairs system for the disposition of claims for veterans benefits.

Congress framed the statute to assure that the Commission's composition would produce diversified expertise. As specified in section 401(b), one of us is a current and one a former official of VA, two of us were recommended by Veterans Service Organizations and have a thorough understanding of the VA system, and five of us are from other professional backgrounds (including other federal agencies and the private insurance sector). The majority of us came from outside the veterans community and were unfamiliar with the veterans benefits system when we began our service with the Commission. Consequently, the Commission's frame of reference is significantly external and considerably diverse.

We note that in 1993 VA had 570,000 pending compensation and pension claims. As of July 1996, regional offices had reduced that number to 346,000. The Veterans Benefits Administration anticipates more improvement. They project that their Business Process Reengineering initiatives will further reduce administrative barriers to improved claims processing. In addition, the Board of Veterans' Appeals reports that changes there—such as their administrative realignment—have reduced response time to 595 days as of September 1996, down from 781 days at the end of fiscal year 1994, and increased decisions per FTE. The Commission recognizes these achievements.

The Commission found VA's process and procedures for adjudicating disability compensation claims and deciding appeals analytically inseparable from the claims passing through these processes. We found VA's system for the disposition of claims for veterans benefits truly meaningful only in the context of the nature, frequency, and time frame of such claims. In our report we explore the demographic characteristics of veterans who claim benefits and provide our views on factors driving the system of benefits, particularly disability compensation.

Since the Commission had neither the resources nor the time to study all VA program areas, we made a thoughtful and deliberate decision to concentrate on disability compensation. All evidence points to the Compensation and Pension (C&P) program as the focal point of concerns and criticisms rather than the Education, Insurance, Loan Guaranty, or Vocational Rehabilitation programs. The overwhelming majority of VA's yearly actions involve claims in the C&P program area. Furthermore, disability compensation payments alone ($11.6 billion in FY 1995) account for almost 65 percent of the total annual appropriation for *all* VA benefits programs. Veterans pension payments in FY 1995 totaled $2.2 billion. The compensation program also serves a far greater number of claimants than does the pension program. Other factors favoring a focus on disability compensation included:

- disability compensation determinations systematically involve more decisional issues than pension determinations (for compensation purposes, disabilities must be determined to be related to a period of military service);
- disability compensation claims typically require multiple complex decisions (among veterans awarded disability compensation during FY 1995, almost three disabilities per veteran were determined to be service connected); and
- the vast majority of appeals to the BVA and CVA involve compensation claims.

In regard to adjudicative and appellate process and procedures, the Commission concludes that the shortcomings of the existing system are many and varied. Therefore, while VA and Congress can adjust the current system, each adjustment would achieve only incremental improvement. No single improvement is likely to change the system dramatically enough to alter the perceptions (whether true or false) that the VA system is failing, is not efficient, and/or does not provide appropriate service to veterans. The basic question is, "Why does the system fall short of expectations?" To address this question, the Commission believes it is essential to understand the nature of the benefits claims that compose the system's workload. Only with this and related contextual information can the Congress and VA make the informed judgments and multiple decisions required to bring the system's performance in line with expectations and within available resources.

Our report presents our findings, conclusions, and recommendations in the areas specifically required by the legislation. However, this aspect of our report is reminiscent of a long series of similar reports from other bodies extending in time from the recent Blue Ribbon Panel to the "Bradley Commission" of 1956. While each of these reports has driven some improvement to the system, none has found a "magic bullet," none has truly solved the problems or the perception of problems.

What we hope will be of special value to the Congress, to the VA professionals, and to all who seek to improve the VA benefits system is the perspective—the enlightenment—provided by the data developed by the Commission. We believe, for instance, that in critiquing or changing the system, one must consider that the disability compensation benefit established by the Congress:

- requires multiple complex decisions for each claim;
- requires decisions establishing disability by degrees (in increments of 10 percent), as distinguished from the categorical "disabled" or "not disabled" determinations common to other disability programs; and
- permits veterans to file claims—most notably for increased degree of disability—throughout his or her lifetime.

In addition, the overwhelming majority of claims are processed to completion by the regional offices. Among disability compensation claims initiated by veterans, fewer than five percent result in actual appeals to the BVA.

VA's disability benefits system is one of many such systems experiencing recent difficulty. Our report documents problems in other government programs and the private disability insurance industry stemming from cultural changes and the accelerating pace of advancements in the medical sciences.

The Commission assembled or, in many cases, developed these data to answer process and contextual questions raised by Commissioners at public meetings. We believe these data are representative of the kinds of objective information needed to inform attempts to redesign or improve the VA disability benefits system. While these data and our discussions of them do not provide total solutions, we hope that they will direct policy makers' attention to areas of legitimate and appropriate pursuit in support of efforts to develop a system that all agree improves the service to our nation's veterans.

In closing, the Commission is grateful to the Secretary of Veterans Affairs and other officials of the Department, particularly the Under Secretary for Benefits, for the high degree of cooperation and staff support. This study and report would have been impossible without the extensive, dedicated support of career professionals detailed to the Commission by the Department of Veterans Affairs. We have provided a copy of this report to the Secretary of Veterans Affairs.

Sincerely,

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EXECUTIVE SUMMARY

There is no debate over whether the American people and their government owe something special to veterans. Americans have entrusted to the Department of Veterans Affairs the duty of serving the men and women who served America. VA has an extraordinary obligation, on behalf of veterans and taxpayers alike, to live up to the trust placed in it.

In keeping with the evolution of government's role since the 1930s, America has gradually broadened the veterans benefits package. At the same time, the veteran population has grown and aged. Following World War II, VA grew into a large agency with a mission that touched many people's lives directly. With the Korean and Vietnam Conflicts, the demands of a growing client population and increasingly complex benefits programs strained VA's ability to deliver the high quality services Americans deserve. Today, VA is struggling to adjust to historic changes, as the system for processing benefits claims is now, finally, subject to the systematic influence of the judicial branch of government. VA must address claims processing production and quality challenges at the same time it seeks to revitalize and modernize its organization, an enterprise which cannot be postponed. No group wants more dearly to see it succeed than those who administer it every day.

The Commission developed a body of statistical data to help it understand the claims processing system and its products. The basic statistics were taken almost exclusively from VA's own data base. Frequently, however, Commissioners' questions could not be answered by existing VA reports. The Commission had to organize, analyze, and present VA data in different ways. This body of data is presented in the report.

An intriguing picture of VA disability compensation benefits and the claims processing system emerges:

- Historically, "repeat" disability compensation claims compose the largest broad category of either compensation or pension claims and outnumber original claims by nearly 3 to 1.

- Most "repeat" claims (69 percent) and most appeals (67 percent) among the Commission's seven-day, 100-percent sample of the compensation pending file during FY 1995 were filed by veterans already in receipt of compensation; about 30 percent in each category were filed by veterans over age 61.

- Veterans who were newly awarded disability compensation during FY 1995 averaged 2.7 *service-connected* disabilities each, in addition to an unknown number of disabilities VA found not service connected. Accordingly, the number of decisions required for these claims was at least 2.7 times (and possibly significantly more than that) greater than the number of claims.

- 50 percent of all service-connected disabilities among veterans newly awarded compensation in FY 1995 were evaluated zero percent disabling. (To be awarded compensation, a veteran must have at least one disability evaluated 10 percent or more disabling.)

- 36 percent of all service-connected disabilities among veterans newly awarded compensation in FY 1995 were evaluated 10 percent disabling.

- 16 disabilities (grouped by diagnostic codes) accounted for nearly 50 percent of all disabilities among veterans newly awarded compensation in FY 1995. Of these 16 disabilities, many are commonly experienced (*e.g.,* knee, back, and skin conditions, arthritis, and hypertension) in the general population.

- The most prevalent condition among veterans newly awarded compensation in FY 1995 was knee impairment.

The Commission believes that the development and use of this kind of data is prerequisite to making informed decisions about the claims process. The Commission's objective in presenting these data is to show the system as it is.

II

Four major concerns regarding the administration of VA benefits persist.

VA Disability Compensation Claims Do Not End. There is no "finality" to the VA disability claims adjudication process. While the system has a distinct beginning, it ends only with the death of the veteran. Veterans can file and re-file. As long as certain limited criteria are met, VA must reconsider the same or similar issues repeatedly. Repeat claims, which outnumber original compensation claims by about three to one, dominate the adjudication and appeals system.

A Commission projection model shows that if VA received *no* original compensation claims for 20 years beginning in FY 1996, repeat claims volume in FY 2015 would be *at least* 55 percent of its 1995 level.

The Commission notes that VA is required to adjudicate many claims based on events, evidence, and medical records that are decades old. This need to deal with aging original evidence strains both the system's resources and its ability to effectively assist claimants in establishing entitlement to benefits.

Also striking to the Commission is that initial claims accounted for only 15 percent of all compensation applications processed by VA in fiscal year 1995. Congress has put VA in charge of a claims adjudication system that the Commission believes lacks real finality and as a consequence processes mostly repeat claims.

The System of Claims Processing is the second major concern of the Commission. The Commission concludes that the problems of the adjudicative and appeals processes cannot be solved by fine tuning. The system has become cumbersome and outmoded. Both the VBA and BVA have made some noteworthy attempts to rectify their problems. In addition to substantially reducing the pending claims backlog, the VBA has made progress on the Blue Ribbon Panel recommendations; surveying its customers and employees; developing case management prototypes; and attempted restructuring of regional offices. These have not turned the system around. More recently, the VBA has initiated a reengineering project designed to significantly improve the compensation and pension initial adjudication processes. The Commission finds this initiative promising, but its results remain to be seen. At the BVA, realignment of the Board, the Select Panel on Productivity, and single-signature decisions have modestly reduced backlogs and processing delays. Additional attorneys at the Board and better productivity are also steps in the right direction. But they are not enough.

The Commission is concerned about the adjudication and appeals process currently in place. While some improvements have been made, they have generally been administrative in nature and peripheral to the essential problems facing the claims processing system. Therefore, Congress needs to look closely at process. The Commission endorses in principle:

- expanding the role of regional office Hearing Officers;
- greater policy direction by Congress and the Secretary, to include defining burden of proof, well-grounded claims, and duty to assist;
- building an improved "partnership" among VA, veterans, and their representatives; and

- promulgating regulations that provide the Secretary's construction of the statute, incorporating and formalizing VA's adjudication experience.

Taken together, these recommendations can improve the process by which compensation and pension (C&P) claims are adjudicated. Hearing Officers can provide more, and better, service in face-to-face situations than other adjudication entities. They can be an integral and crucial part of the appeals process, too. A hearing before a Hearing Officer, either in person or of the record, should be mandatory for appellants, and Hearing Officers should have *de novo* review authority. This appropriately concentrates productive resources at the important place in the process where veterans come face-to-face with VA. Veterans would begin their appeals at this stage. Expansion of the Hearing Officer role can build on a program which, according to all available data, has worked very well.

The Commission regards the current VA system as "adversarial/paternalistic." An adversarial review process, in the form of the Court of Veterans Appeals, has been superimposed on VA's traditional "paternalistic" adjudication system. Clearer policy direction can clarify administratively what the Court has had to do judicially. Most importantly, Congress needs to attend to the concept of "duty to assist," either by providing specific definitions or codifying the Court's rulings.

The Commission outlines a plan for a greater claims-processing "partnership" between VA and VSOs. Improving what is already a vital relationship will provide better overall service to veterans. Enhanced partnership can be built in such a way as to be seen not as usurping one anothers' long-established duties, but as reinforcing each others' complementary roles.

The System for Administrative Appeals Processing is a third area of concern. Since Congress established the Court of Veterans Appeals in 1988, the BVA is no longer the court of last resort. The Commission believes that the BVA's traditional role in the adjudication appeals process should be reevaluated. In its recommended redesigned adjudication and appeals, the Commission endorses in principle making the Board of Veterans' Appeals an *appellate* body. In conducting an appellate review, the BVA would ensure the prior decision is legally sufficient and can stand as the Secretary's final decision. An appellate review would focus the BVA's legal expertise on purely legal issues and would sharpen those issues before the Court. Such a review also has the potential to be less resource intensive.

Strategic Management is the fourth area of concern to the Commission. In this era of government reinvention, reengineering, and redesign, VA is seen as essentially without strategic, long-term, direction. Consequences in VBA have included Information Technology modernization delays and ill-considered, subsequently aborted regional office restructuring plans. VA is currently implementing the Government Performance and Results Act of 1993, which has provided an impetus for improving its planning processes.

VA leaders are aware of the need for strong strategic management and recognize that much needs to be done. However, a lack of strategic direction at the Department level hinders decision making by the Administrations and the BVA. Initiatives of the VBA and BVA are not linked to broader Department strategic objectives or to each other. Decision making in the Department is not supported by credible data and long-term analyses of program trends.

The Commission believes that a comprehensive data base similar in content and analysis to that presented in this report needs to be developed. This body of data should be greatly expanded and continuously updated. It should be used:

- to provide the background for discussions and decisions about the claims processing system;
- as the basis for improved strategic management within VA;

- as the basis of an Annual Report on the disability compensation program; and
- to predict workloads and plan resource requirements.

Informed estimates could be made concerning frequency of disability claims. For example, VA should project the number of claims for compensation by frequently claimed conditions, such as hypertension, knee conditions, etc., that every 10,000 military discharges will generate. Trends could, and should, be identified and tracked. Such data should also be used to project future liabilities of the disability compensation program and any proposed changes to it. In addition, the data could be used to craft implementation of other recommendations in this report to conform more closely to actual conditions. An active advisory committee on VA disability compensation should play a major role in ensuring that outside/third-party points of view are brought to bear on the development, publication, and use of such data.

III

The Commission also believes it is useful to step away from any assumption that the current adjudication "product" is best for future veterans. It is in this context that the Commission brings to the attention of the Congress—without proposing policy solutions—the "pros" and "cons" of revising adjudication processes and procedures by means of:

- explicitly defining the purpose of disability compensation;
- a delimiting date for filing most claims; and
- lump sum payments to veterans with minimal disabilities.

In addition, the Commission embraces, in principle, VA pension simplification. Pension is a program known for its labor intensive character.

The Commission concludes that the four main areas of concern—lack of finality, claims processing problems, the system for administrative appeals processing, and inadequate strategic management—are interrelated. Improvements in *one* area will cascade into other areas. Conversely, continued inattention will intensify the challenges VA faces in its adjudication and appeals system. It is imperative that Congress and the Secretary work toward developing a claims processing system both can assert is the best possible for current veterans, as well as for America's sons and daughters who will follow.

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The Chairman invited Commissioners to express alternative views on any aspect of the Commission's work. These views are presented in Chapter XI.

GLOSSARY OF TERMS AND ABBREVIATIONS

Authorization Decision Makers - VBA employees responsible for deciding administrative (*i.e.,* nonmedical) claims processing issues. They generate benefit payment rates and entitlement dates and decide dependency, income, line-of-duty, and other nonmedical entitlement issues.

BDN - **Benefits Delivery Network** - Formerly referred to as the *Target* system, BDN is the main computer system for all claims processing activities, including development, award, disallowance and related actions. BDN generates the payment information that is sent to the Department of the Treasury for producing, changing, or holding benefit checks. BDN also contains the "master records" of award, disability, and payment information for beneficiaries.

BIRLS - Beneficiary Identification and Records Location Subsystem - An index of veterans and beneficiary records which contains personal, military service, and VA file number and location information.

Blue Ribbon Panel - The Blue Ribbon Panel on Claims Processing was established in June 1993 by then-Deputy Under Secretary for Benefits R. J. Vogel to recommend improvements in VBA's claims processing system. Authorities on veterans' benefits from both VA and veterans' service organizations were named as members.

BVA - **Board of Veterans' Appeals** - A VA organization directly responsible to the Secretary which decides benefit questions in cases where the claimant disagrees with the decision of the VA regional office. A BVA decision on appeal represents the final decision of the Secretary.

C&P - **Compensation and Pension** (See **Compensation**; see **Pension**)

CFR - **Code of Federal Regulations** - The Secretary's rules and regulations are contained in Title 38 of the Code of Federal Regulations (38 CFR). The Secretary of Veterans Affairs is empowered to prescribe all rules and regulations, consistent with existing law, necessary or appropriate to carry out the laws administered by the Department. (Section 501, Title 38 USC)

Claim - Any application, document, inquiry, or other issue requiring adjudicative action.

CNA - **Center for Naval Analysis -** Provides expert, independent analysis in technological matters.

COIN - **Computer Output Identification Number** - A code number that identifies specific collections of management data.

Compensation - A monthly payment made to a veteran because of disability incurred in or aggravated during military service.

Compensation and Pension (C&P) Service - The VBA organization responsible for administering the compensation and pension programs. These programs fall into eight broad categories: Disability Compensation (38 USC, Ch 11); Dependency and Indemnity Compensation (DIC) and Death Compensation (38 USC, Ch 13 and Ch 11); Disability Pension (38 USC, Ch 15); Death Pension (38 USC, Ch 15); Burial Benefits (38 USC, Ch 23); Automobile Allowance/Adaptive Equipment (38 USC, Ch 39); Clothing Allowances (38 USC, Ch 17); and Special Adapted Housing (38 USC, Ch 21).

Court - **U.S. Court of Veterans Appeals (CVA)** - Established by the Judicial Review Act of 1988, the Court is located in Washington, D.C. It has exclusive jurisdiction to review decisions of the BVA. The

Court is empowered to affirm, modify, reverse, or remand a decision of the Board, and to establish binding precedents with regard to VA's administration of the law.

Denial Rate - The percentage of all claims or appeals in which benefit payment was disapproved during a given time period by an identified organization.

Dependency and Indemnity Compensation (DIC) - A monthly payment to the eligible survivors of a veteran who died in service or whose death was caused by a service-connected disability.

Development, or **Claims Development** - In the context of processing claims for VA benefits, "development" is the collection by the regional office of evidence needed to determine entitlement. This activity may include requesting information or documentation by letter (to the veteran, a private physician, or other third party) or telephone; arranging for the veteran to be examined at a VA medical facility; requesting medical treatment reports from VA or other medical facilities; requesting military service information from the Department of Defense; and/or other means of collecting information needed to resolve the claim.

Diagnostic Code (DC) - A four digit number between 5000 and 9916 that corresponds with a ratable disability listed in the VA Schedule for Rating Disabilities. VA's rating schedule contains more than 700 diagnostic codes.

DoD - Department of Defense.

DOOR - **Distribution of Operational Resources** - A monthly report that provides information about VBA's use of workforce and other resources.

E/P - **End Product** - A unit of classification and measurement for identifying and managing workloads.

Evaluation - The process of determining the degree to which a medical condition disables a veteran, or the result of such a determination (*e.g.,* "a disability evaluation of 30 percent.")

EVR - Eligibility Verification Report - A form used to gather income information to determine continuing entitlement of pension recipients.

FTE or FTEE - Full Time Employee Equivalent - An expression of personnel resource utilization. The expression refers to the amount of work that could be accomplished by one employee in one business year (2,080 hours). Mathematically, the FTEE needed to perform a given job is equal to the total number of hours spent at the job (whether by one employee or more), divided by 2,080. For example, if ten employees each work 1,040 hours to complete a project, the human resources cost of the project is five FTEE.

FY - **Fiscal Year** - The 12-month budgeting period for VA and other Federal entities. In relation to the calendar year, the Fiscal Year extends from October 1 of the previous calendar year through September 30 of the current calendar year (*e.g.,* FY 1996 ran from October 1, 1995, through September 30, 1996).

Grant Rate - The percentage of all claims or appeals in which benefit payment was approved during a given time period by an identified organization.

Informal Claim - Under 38 CFR §3.155, any indication of an intent to file a claim.

Maintenance Actions - Adjudicative activity required by law or regulation to confirm a beneficiary's continuing entitlement to the benefit being paid. These actions are initiated by VA, not by the claimant.

However, for VA work management purposes, they are often referred to as "claims" in that they require application of an analogous work process.

NOD - **Notice of Disagreement** - Under VA's current appeals process, any written communication indicating the claimant's disagreement with a regional office decision. In the current process, the Notice of Disagreement is the first step in an administrative appeal to the Board of Veterans Appeals.

OIG - Office of the Inspector General - Each government agency, including VA, is required to have an independent Inspector General to investigate waste, fraud, abuse, and/or mismanagement.

Original Claim - An original claim is a claimant's first application for a particular benefit.

Paternalism - VA's traditional claims process, particularly the process in use before the Court of Veterans Appeals was established, has been described as "paternalistic." The expression refers to a perception among some veterans and advocates the VA (specifically the VBA) conveyed an attitude of benign aloofness. The VBA was thought to assure veterans that it was acting in their best interests but at the same time not fully share information about claims processing criteria. As a result, veterans felt they could not make informed judgments for themselves about the appropriateness of the VBA's actions.

Peacetime Service - Active military duty served during times Congress has *not* declared a period of war for purposes of entitlement to VA benefits. Veterans of peacetime service are eligible for service-connected disability compensation under the same criteria as wartime veterans. However, peacetime service does not qualify veterans for nonservice-connected disability pension.

Pending Claims - Claims on hand, either in process or waiting to be processed, also called "backlog."

Pension - Generally, a monthly payment to eligible wartime veterans and survivors based upon total nonservice-connected disability and monetary need.

PIF - Pending Issue File - A working file that holds data for a pending claim and maintains work-tracking control until an award or disallowance is processed.

Productivity - Efficiency with which an organization's resources are utilized to produce output; *i.e.,* the amount of services or goods produced (output) in relation to the resources utilized (input).

Rating Decision Makers - VBA employees (rating specialists and rating technicians) who—on the basis of service and medical records—determine whether a claimed disability exists, the relationship of the disability to military service, and the current extent to which it disables the claimant.

RCS - **Reports Control Schedule** - VA's system for controlling and tracking recurring data reports.

Remand Rate - The percentage of all appeals returned by the CVA or the BVA for additional information or action during a given time period.

Reopened Claim - VA traditionally referred to any claim filed after the initial claim for benefits as a reopened claim. However, this definition no longer applies. 38 CFR §3.160(e), describes a reopened claim as any application for a benefit received after final disallowance of an earlier claim. The Court has interpreted this provision to apply to any claim for a specific benefit that has been finally denied in a prior decision. Use of the term "reopened claim" is now restricted to only that situation.

Repeat Claim - Claims from "repeat" customers. For purposes of this report, the term means any application involving a disability determination submitted to VA after one (or more) prior VA disability decision(s) pertaining to the same claimant. The VBA once referred to any such claim as "reopened."

However, the VBA redefined the term "reopened claim" in November 1995 following a Court of Veterans Appeals decision held that the term as used did not accurately depict certain second and later applications for benefits. The Commission, in an effort to avoid confusion, chose the term "repeat" claim to mean any disability claim after an initial decision, without regard to the nature of the issue(s) involved.

RO - Regional Office - A VA field office composed of divisions which carry out the functions of VBA. Fifty-eight such offices currently exist, with at least one office in every state.

Secretary - The Secretary of Veterans Affairs - The official responsible for operating the Department, the Secretary is nominated by the President, and the nomination must be confirmed by the Senate.

Service Connected or **Service Connection** - A disability is considered to be service connected if it was incurred or aggravated during a period of active military service from which the veteran was discharged under conditions other than dishonorable and was not due to willful misconduct of the veteran. A service-connected disability evaluated 10 percent or more disabling by VA entitles a veteran to receive disability compensation.

SOC - **Statement of the Case** - A formal response by a regional office to a veteran's Notice of Disagreement. The regional office issues a SOC after it has reviewed its (unfavorable) decision and found no grounds for reversing it. The SOC summarizes the chronology of significant events leading up to the regional office decision, lists all the evidence used to reach the decision, explains the reasons and bases for the decision, and cites all applicable law. The SOC is required by law as a step in the appeals process.

SSOC - **Supplemental Statement of the Case** - A second formal response by a regional office to a Notice of Disagreement. The regional office sends a SSOC to record its additional action when a veteran submits more evidence after having received a SOC, but the regional office does not change its decision. In such cases, a SSOC is required by law.

TAP - Transition Assistance Program, DTAP - Disabled Transition Assistance Program - Joint efforts of the Departments of Defense, Labor, and Veterans Affairs. These statutory programs furnish employment assistance, job training assistance, and other transition services, including counseling on the full range of VA benefits and services, to servicemembers who are scheduled for separation from active duty.

USC - United States Code - The statutes of the United States of America. Title 38 USC is the section that applies to veterans' benefits.

VA - Department of Veterans Affairs - Established in 1930 as the Veterans Administration, when Congress authorized the President to "consolidate and coordinate government activities affecting war veterans." In 1946, the Department of Medicine and Surgery was established. In 1953 the Department of Veterans Benefits (DVB), the predecessor of the current Veterans Benefits Administration, was created to administer the GI Bill and VA's huge compensation and pension programs. The VA insurance program became part of DVB in 1963. The National Cemetery System was transferred to the VA in 1973 from the Department of the Army. On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (VA), the 14th department in the President's Cabinet.

VBA - Veterans Benefits Administration - The organization responsible to the Secretary for administering a wide variety of benefit programs authorized by the Congress. Major benefits include disability compensation, disability pension, burial assistance, rehabilitation assistance, education and training assistance, home loan guarantees and life insurance coverage.

Veterans Service Organization - **VSO** - An organization dedicated to advocating veterans' causes and interests, and assisting veterans in their interactions with VA.

VHA - **Veterans Health Administration** - The organization responsible to the Secretary for providing health care services to eligible veterans. The VHA operates VA's network of 173 medical centers, 441 ambulatory care (outpatient) clinics, 134 nursing homes, and other treatment and residential facilities.

WIPP - Work-in-Process Computer Subsystem - This system provides management information on the processing status of active claims and appeals.

THE ROLE OF THE VETERANS' CLAIMS ADJUDICATION COMMISSION

I. Composition of the Commission

By law, the expertise of the Commission is diverse.

Pursuant to section 401(b) of Public Law 103-466, the Veterans' Claims Adjudication Commission is composed of nine members with varied backgrounds. A review of the legislative history shows the House and Senate Committees on Veterans' Affairs felt that the Commission should bring together a group of experts with knowledge and experience in programs either concerning veterans benefits or in programs similar to VA's. With VA's process for the disposition of claims as the focus of the study, the Committees believed that expertise in the administrative aspects of benefits or claims processing—both internal and external to VA—would be desirable.

One of the Committees' main goals in defining the composition of the Commission was to create a body with various interests, skills, and professional disciplines that would represent the mutual interests of veterans, government, and taxpayers. The Committees also sought to create an atmosphere of independence and credibility. Representatives from veterans service organizations as well as current and former experts from VA were considered essential.

The Committees chose not to limit the Commission's expertise to areas involving veterans law, because they did not want to replicate previous studies or task forces relating to the adjudication process. The Committees agreed that the Commission should include experts in the management of programs which involve the delivery or provision of a benefit to a claimant through an objective claims adjudication process.

Committee members believed that the Commission would benefit from inclusion of experts in the administration of programs involving large volumes of claims and decisions. Although VA's adjudication process is arguably unique compared to other federal or private benefit programs, they also believed that involving experts in the management of non-VA programs would also be useful. For these reasons, the Committees chose to include people with expertise and experience in the claims adjudication processes of the insurance industry and of federal benefit programs, such as Social Security and Workers' Compensation, as well as a person with administrative law expertise.
In sum, two Commissioners are officials of the Department of Veterans Affairs (one current, one former), and seven are from outside VA. The Commission notes that even including the two Commissioners from veterans' service organizations—who by virtue of their service in those organizations have extensive knowledge in the adjudication of VA claims and appeals—the majority of Commissioners are from outside VA. Based on this composition, the Commission's reference point was largely external.

Commissioners' names and titles are listed in the transmittal letter at the beginning of this document.

The Commission notes it is considered an advisory committee for purposes of the Federal Advisory Committee Act (FACA), Public Law 92-463. In accordance with the provisions of the FACA, the Commission was chartered on January 13, 1995.

II. Restatement of the Commission's Statutory Mission

Section 402(a) of Public Law 103-446 describes the Commission's purpose as being to ". . . carry out a study of the Department of Veterans Affairs system for the disposition of claims for veterans benefits."

In brief, the Commission is charged with evaluating the efficiency of current VA adjudication processes and procedures (including the effect of judicial review), and with determining the means for increasing efficiency, reducing the number of pending claims, and enhancing the claims processing system.

Section 402(c) requires that the Commission's study contain a comprehensive evaluation and assessment of VA's claims adjudication system and other matters that the Commission determines relevant to the study, including:

1. the preparation and submission of claims by veterans;
2. current VA processes and procedures, including consideration of:
   - the scope and nature of review at each stage, and the role of hearings;
   - the number of staff involved and their respective grade levels, experience, and qualifications;
   - the opportunities which exist for the submittal of new evidence; and
   - the availability of alternate means for completing veterans' claims;
3. the effect on the adjudication system of attorneys, veterans service organizations, and other advocates;
4. the effect of initiatives by VA to modernize the information management aspects of its adjudication process;
5. the effect of performance standards at both the regional office and Board of Veterans' Appeals levels;
6. the extent to which recommendations of the "Blue Ribbon Panel" on claims processing have been implemented and their effect on the adjudication process;
7. the effectiveness of various pilot programs initiated at VA regional offices, and VA's actions in implementing such programs nationwide; and
8. the effectiveness of current quality control and assurance practices used by VA.

III. Scope of the Commission's Review

As previously noted, section 402(a) of the Public Law directs the Commission to carry out a study of the VA system for the disposition (adjudication) of claims for "veterans benefits." Taken literally, the term "veterans benefits" would mean *all* benefits administered by the Secretary of Veterans Affairs. This would include the following: Disability Compensation, Disability Pension, Education, Vocational Rehabilitation, Loan Guaranty, and Insurance, as well as other "benefit" programs. Taken even further, it could possibly include other programs through which "services," *e.g.,* medical care, are provided to veterans. Despite the broad meaning of this term, the Commission does not believe that Congress intended such an expansive interpretation. Rather, it believes the intent of the legislation was to focus on the disposition of claims for compensation and pension.

The plain language of section 402(a) does not itself limit the term "veterans benefits" in any manner, nor is there a statutory definition of the term. However, an examination of the House Veterans' Affairs Committee's focus—primarily the oversight and legislative activities undertaken by the Subcommittee on Compensation, Pension and Insurance during the course of the past several Sessions of Congress—and the

Senate Veterans' Affairs Committee's similar focus on the backlog of claims for compensation and pension, suggests that these are viewed as the programs most affected by the adjudication process, which includes activities at the regional offices and the Board of Veterans' Appeals (BVA).

Furthermore, the greatest percentage of claims decided by employees within the adjudication divisions of the Veterans Benefits Administration regional offices and subject to subsequent appeal to the BVA relate to the compensation and pension programs. It is reasonable to conclude that, when Congress referred to the "system for the disposition of claims for veterans benefits" in Public Law 103-446, it probably meant the people, facilities, and rules involved in adjudicating compensation and pension claims.

Another indication of congressional intent is the requirement in the statute that the Commission evaluate and assess the extent of the implementation of the recommendations of the Blue Ribbon Panel on Claims Processing, which focused entirely on the compensation and pension programs.

Finally, the absence of any discussion of other programs, such as Educational Assistance, Loan Guaranty, or Insurance, in the respective Committee documents comprising the written legislative history of the public law lends further support to the conclusion that the adjudication of claims for benefits under these programs was not contemplated.

The Commission has received several letters from veterans service organizations commenting on the Commission's interpretation of the scope of its work under the law. These letters are duplicated in Appendix AA.

IV. Methodology

A. Final Report

The Commission met three times in public session in 1996 deliberating findings, conclusions, and recommendations. Each Commissioner took responsibility for analyzing a subject-matter area for purposes of formulating final conclusions and recommendations.

The Commission continued the approach it employed in its preliminary report, communicating directly with VA employees who adjudicate claims and developing and analyzing data, some of which were new and unique to the Commission. This included:

Statutory Reporting Area:	Approach:
Preparation/submission of claims adjudication process and procedures	The Commission conducted a work session with Ms. Pat Owens, President, Integrated Disability Management, a division of UNUM Life Insurance Company of America, to learn more about private approaches to industry disability insurance. The Commission conducted a focus group with veterans, VA adjudication employees, and VSO representatives in Atlanta to explore the feasibility of "lump sum" payments to veterans with disabilities compensable at the 10-percent rate.
Effect of attorneys, veterans service organizations, and other advocates	The Commission conducted a focus group with veterans, VA adjudication employees, and VSO representatives in St. Louis to explore a "partnership" approach to claims processing.

Extent/effect of implementation of Blue Ribbon Panel on Claims Processing recommendations	The Commission surveyed 1,465 regional office adjudication employees and 300 VSO claims representatives on Blue Ribbon Panel implementation and adjudication matters; the VA Partnership Council approved administration of the survey.

Other Issues Relevant to the Study as Determined by the Commission:

Veterans Added to the Disability Compensation Rolls During Fiscal Year 1995	100 percent sampling of Compensation and Pension master file to ascertain the distribution of disabilities for which compensation was awarded during FY 1995.
Review of Cases Rated Ten Percent Service-Connected for the Most Frequent Compensation Award: Knee Condition	The Commission reviewed 107 cases from a single regional office to learn more about the veterans and VA's process for evaluating their disabilities.
Strategic Management	The Commission conducted working sessions with Wilson W. Wyatt, Jr., Executive Director, American Academy of Actuaries and staff, Harry Ballantyne, Chief Actuary, Social Security Administration, and Richard Foster, Chief Actuary, Health Care Finance Administration.

B. Preliminary Report

The Commission carried out its deliberations through five public meetings and one work session during 1995.

The Commission organized itself around the nine statutory reporting areas specified in Title IV of Public Law 103-446. Based on expertise and professional interest, each Commissioner led the analysis in one of the reporting areas. This included (1) proposing for the approval of all Commissioners a methodology and work plan for studying the subject of the specific reporting area and (2) presenting proposed preliminary findings and conclusions to the Commission based on research and analysis conducted in accordance with the approved methodological approach.

In addition to numerous data, briefings, and presentations provided to the Commission by VA officials, two valued approaches emerged in carrying out the Commission's work: (1) communicating directly, in various ways, with VA employees who adjudicate claims and decide appeals daily; and (2) developing independent data, original and exclusive to the Commission. A few examples of these two approaches follow:

Statutory Reporting Area:	Approach:
Preparation/submission of claims process and procedures	Commissioners spent a day at VA's Philadelphia regional office, orienting themselves to the claims adjudication process.

Appellate process and procedures	The Commission: • surveyed 186 attorneys (including Board members) at the Board of Veterans' Appeals; • analyzed 100 remanded appeals; and • interviewed Board Members and staff attorneys.
Effect of modernizing Information Resources Management	Commission-sanctioned fact-finding visits to three VA regional offices by KMPG Peat Marwick. On-site review of regional office and BVA ADP systems by selected Commission members.
Effect of attorneys, veterans service organizations, and other advocates	Survey of 15 regional offices regarding VA cost to administer attorney-fee payments from retroactive benefits awarded following appeal.
Statutory Reporting Area:	**Approach:**
Effect of work performance standards established at regional offices and the Board of Veterans' Appeals	Survey of eight regional offices regarding adjudication division goals and objectives; position descriptions/performance plans for each position; and the distribution of performance ratings for the past three rating cycles.
Other Issues Relevant to the Study as Determined by the Commission:	
Analysis of Pending Reopened Disability Compensation Claims and Pending Appeals Certified to the BVA	100 percent computerized sampling, through Compensation and Pension master file, of 111,101 pending reopened disability compensation claims and 38,685 pending appeals.
Analysis of Completed Original and Reopened Claims	Manual survey of 299 claims folders at six VA regional offices involving recently adjudicated claims for compensation.

The Commission also consulted with the professional organizations which represent veterans in their pursuit of veterans benefits, primarily disability compensation and pension, receiving the views of one such organization at each Commission meeting, and numerous written submissions.

The Commission solicited and benefited from the participation of the staff of the House and Senate Committees on Veterans' Affairs in each of its public meetings.

Following open and public deliberation on proposed preliminary findings and conclusions at its fifth public meeting on October 24 and 25, 1995, each Commissioner was invited to indicate disagreement with any individual finding or conclusion. The Chairman continued to invite disagreement through mid-January 1996, as Commissioners completed the preliminary report.

The Commission further notes that it was unable to obtain information about the experience and qualifications of the staff involved in VA's current adjudicative processes and procedures as required in section 402(c)(2)(B) of Public Law 103-446. Such data were not available in aggregate form.

INTRODUCTION

The Commission's final report represents the assimilation of a variety of perspectives, which the Commission believes is what Congress intended in enacting Public Law 103-446. Congress specified in the law the diversity of experience and expertise it wanted in the nine members of the Commission. The Secretary of Veterans Affairs was directed to appoint: one current and one former official of the Department of Veterans Affairs; two individuals in the private sector who have experience in the adjudication of claims relating to insurance or similar benefits; two individuals employed in the Federal government (other than VA) who have expertise in the adjudication of claims for benefits under Federal law other than laws administered by the Secretary of Veterans Affairs; two individuals recommended to the Secretary by veterans service organizations; and an individual with expertise in the field of administrative law.

To a large extent, then, the diversified composition of the Commission determined the nature of its deliberations. For example, because a majority of the Commission members had little familiarity with, and no expertise, in VA's claims adjudication system, the first order of business was for these members to learn the "nuts and bolts" of the system. This learning process, however, did not start from a clean slate. Each member, including those who were thoroughly familiar with the system, brought their individual perspectives to the learning and deliberation process. These diverse perspectives contributed objectivity to the learning process because preconceptions or assumptions regarding the adjudication process would be questioned rather than routinely accepted. In this way even the members who were most familiar with the system were able to view it from a fresh perspective. This intellectual approach was particularly important in evaluating the common perception that VA's claims adjudication system was functioning poorly, a perception which had caused the creation of the Commission.

The perception that VA's claims adjudication system was functioning poorly was shared by those most familiar with and intimately involved in the system—the Veterans' Affairs Committees, the veterans service organizations (VSOs), and VA itself. In other words, the experts believed that the system was not functioning nearly as well as it should. Prior to the creation of the Commission, experts, most notably the Blue Ribbon Panel, had made and implemented a number of recommendations to improve the system's functioning. Despite these and many other initiatives undertaken by VA, there have been only marginal measurable improvements, and the perception that the system is not functioning nearly as well as it should continues.

Under these circumstances, the first question to be asked by an informed and objective but non-expert observer is whether the common perception of the experts is, in fact, accurate. Given the constraints of the adjudication system as currently constructed and operated, and given what VA is asked to do with the resources provided, is it reasonable to expect significant improvement in the systems' functioning? This is the kind of fundamental question that has not been asked by the experts but which the Commission believes Congress wants very much to be asked and answered. But in order to answer that question several others must be asked about the current system:

- Who are the clients of VA's claims adjudication system?
- What are the issues presented by their claims?
- What kind of a product is generated to resolve those issues?
- What is the process by which claims are adjudicated?

Other more pointed questions also need to be asked: What are the factors that have caused much higher remand rates and increased processing times, and were these anticipated and acceptable trade-offs that are

in line with the kind of claims adjudication system Congress wants? Is it the entire system, both product and process, that has caused the problems or is it simply a case of a potentially effective system being poorly managed and operated?

In large part, the Commission's Preliminary Findings and Conclusions were an attempt to answer these questions. In learning about the adjudicative product and process, two things became apparent:

(1) The system was created by VA to process the benefits legislated by Congress. Layer upon layer of changes have been added to the benefits and, therefore, to the processing system over many years, but there has never been a wholesale revision to bring all the changes into a harmonious whole. Therefore, the nature of the products/benefits have helped lead to a system which is perceived as inefficient, untimely, and inaccurate, etc.

(2) Because of the nature of the system, individual improvements will not produce significant productivity increases. Individual changes to the system can and have resulted in incremental improvements but have not, and probably cannot, remove the perception of an inefficient system.

Congress must therefore decide whether the existing benefits, concommitant processing system, and the level of performance is proximate to what it wants and intends. To be sure, incremental improvements can be made and several are recommended in this report, but the constraints of the existing system of benefits and of processes significantly limit VA's capacity to improve its performance.

The VA system does not exist in a vacuum. Benefits, resources, and expectations all change over time—whether through war, legislation, the national economic picture, or cultural changes throughout society. Each of these significantly changes VA's job and the nature of the system required to perform the job.

For example, there is common agreement that claims are now much more complex than they were five or ten years ago. This added complexity is reflected in VA's workload data; for instance, the average task time per decision both in the regional offices (ROs) and at the Board of Veterans' Appeals (BVA) has more than doubled, and the length of the adjudication and appeals process has increased enormously. The deterioration in productivity and timeliness appears to be due to cases being more complex rather than any loss of competence on the part of VA adjudicators. The Commission observes that training efforts have increased significantly over historical standards, RO adjudication officers report that the expertise of their adjudication personnel is better than it has been in years, and that all BVA decisions are written by attorneys. Yet, statistics provided to the Commission by Chief Judge Nebeker disclose that the Court of Veterans Appeals (CVA) finds "prejudicial error" in over 60 percent of BVA cases it reviews, and VA statistics show that BVA remands or reverses over 60 percent of the ROs' decisions it reviews.[1]

Why have claims become more complex, and why have VA's knowledgeable and experienced adjudicators been unable to cope with this new complexity, as evidenced by the results of CVA and BVA reviews? Is the complexity self-generated by the system, or has there been a fundamental change in the nature of the claims VA adjudicates? Does Congress intend that veterans claims be so complex and difficult to adjudicate? If so, what else can VA do that it is not doing to reduce remand rates drastically, and what is the trade-off in additional costs and processing times? If not, what fundamental changes in the system are needed and how can they be implemented successfully? These are the questions the Commission addresses in this report.

In addressing these questions within the context of the specific areas Congress directed the Commission to study, two overriding themes emerged, which are reflected throughout this report: (1) the absence of a coherent and accepted process and mechanism for policymaking; and (2) the consequent lack of strategic

[1] See Appendix J.

management. This is not a new development. For example, the report issued on June 19, 1956, by The President's Commission on Veterans Pensions (the Bradley Report) contained the following conclusion:

Throughout the VA analysis of legislation and other problems there is a noticeable lack of basic factual data and analysis bearing on such key factors as:

- the economic and social characteristics of the veterans who would be affected by the proposals;
- the measures of the effectiveness of existing programs, in meeting the needs of veterans;
- the relationship between program features in VA programs and those of other agencies, especially in terms of long-run, Government-wide policies and costs; and
- the intrinsic merits of the proposals in terms of the basic philosophy of veterans programs and the changes in such philosophy which may be required as underlying economic, social, and military factors change.

Today this Bradley Report conclusion is as relevant as, or even more relevant than, it was 40 years ago, and just as correct. The data and the answers to key questions essential to effective policymaking have neither been asked for nor provided over the years. The reason is that, from its creation, the policymaking role of VA has not been clearly defined by Congress. To be sure, Congress has given VA broad authority to administer all aspects of veterans benefits programs, particularly the compensation program, but this authority has been delegated without specific policy direction. Traditionally, VA has not fully exercised the huge delegation of authority it has, with its policymaking implications, presumably because it believes that the making of fundamental program policy has traditionally been regarded as a legislative function. The result has been confusion about the respective policymaking roles of Congress and VA, with the consequence that the key factors identified in the Bradley report have never been thoroughly resolved with regard to the making of public policy relating to veterans programs.

Within the scope of its limited resources, the Commission has attempted to compile and analyze the kind of data on the compensation and pension programs that is referenced in the Bradley Report. This is nothing more nor less than the natural adjunct of the fact-finding needed to reach conclusions and make judgments regarding the effectiveness of benefits programs and the efficiency of the system for delivering them. The Commission believes that this should be an ongoing and coordinated activity between Congress and VA. The data, in Chapter I of this report, *VA's Customer: Who Claims Benefits and Why?*, may be revealing even to those who are familiar with the system. For instance, among a sample of recently pending repeat claims, an average of 69 percent of claimants were receiving disability compensation or pension at the time they filed repeat claims.[2] Another noteworthy fact is the extent to which zero and 10 percent rated disabilities dominated among veterans added to the disability compensation rolls in FY 1995.[3]

Some program policy implications of the data on claims product issues, which of course directly affect the process, are discussed in Chapter VI, *Product Issues: Driving the System?* The Commission believes that it would be remiss if it did not discuss these issues. However, the Commission has purposely refrained from making specific program policy recommendations in these areas because it believes it would be beyond the scope of its charge (and authority) to do so. Instead, it has identified and analyzed the issues and provided pros and cons for them. Much more needs to be done, however, before these issues can be resolved within the legislative process.

[2] Table 33 in Appendix B contains repeat disability compensation claims data.

[3] See Chapter I, Section 5, *Veterans Added to the Disability Compensation Rolls During Fiscal Year 1995.*

Effective policymaking and strategic management go hand-in-hand; neither is possible without the other. VA's compensation and pension programs are deficient in both areas, which is perhaps the single greatest cause of the problems the Commission has been charged to address. With the advantage of "20/20 hindsight," it is clear that neither Congress nor VA anticipated the effects judicial review would have on the claims adjudication system. But it is also clear that the reason for this was the lack of effective policymaking and strategic management mechanisms. For example, with an extensive strategic management process in place, the VA would have planned to capture data on the impacts of court decisions and to use that data to develop legislative and policy changes. Such mechanisms are still not in place and functioning, and until they are, there is no reason to believe that the current state of the adjudication and appeals system will change discernibly.

The reality is that in its review of a minuscule percentage of cases that VA decides, CVA is making program and adjudicative policy. CVA has assumed this policymaking role by default, if not necessity, because neither Congress nor VA has fulfilled this role, which traditionally belongs to them. This may be what Congress wants, but, if so, it represents a major public policy decision that appears to be the result of events rather than an informed decisionmaking process. The Commission believes that such decisions should be made only after the kind of analyses referenced in the Bradley report, which only effective policymaking and strategic management mechanisms can provide. The need for these mechanisms cannot be overemphasized.

Chapter IV, *Directions: The Strategic Perspective*, and Chapter V, *Process Design: Claims Adjudication and Appeals*, discuss in considerable depth policymaking and strategic management issues and the Commission is making major recommendations in these areas (among them are an expanded role for the hearing officer and changing the role of BVA review from *de novo* to appellate). These recommendations are the cornerstone of this report because they are intended to provide the framework for informed planning and decisionmaking by the experts—the Veterans' Affairs Committees and VA—on behalf of the constituencies they serve and represent. Effective policymaking and strategic management mechanisms allow the many forms of specialized expertise to be purposeful and focused on the common goal of providing the best possible service to veterans, consistent with program purpose and intent, at the least possible cost. Service and cost, however, are finite considerations, and reaching the optimum level for both simultaneously is the product of the continuous application of public policy and administrative expertise.

Chapter V also introduces broad conceptual recommendations for a redesigned adjudication and appeals process. The Commission endorses the conceptual redesign in principle but acknowledges that further expert analysis is needed before the net effects of the proposed changes can be projected accurately. The Commission's process recommendations reflect the Commission's view that fundamental changes in the existing process are necessary and describe a conceptual framework for the direction those changes should take. The Commission notes that the VBA has recently completed a Business Process Reengineering (BPR) project that has produced a very promising process redesign plan as well. The VBA's plan contains several elements that parallel Commission proposals. The Commission encourages the VBA's BPR efforts but also identifies additional issues to be addressed within the context of the BPR methodology.

The Commission believes that its chief value is the broad perspective it brought to its deliberations. This fits the mandate of P.L. 103-446, which in addition to requiring the Commission to report on eight specific areas, directed that the final report include recommendations "for means of improving the Department of Veterans Affairs system for the disposition of claims for veterans benefits" and "[s]uch other information and recommendations with respect to the system as the commission considers appropriate." Recognizing its limitations, the Commission has attempted to comply as fully as possible with its Congressional mandate. The Commission lacked both the resources and expertise that would be required to develop and analyze all the data needed to make definitive recommendations in many of the areas it studied. Given these constraints, however, the Commission believes it went as far as it could go.

Much remains to be done. The Commission hopes that this report is a good beginning.

I. THE VETERAN. VA'S CUSTOMER: WHO CLAIMS BENEFITS AND WHY?

Introduction

All the processes, policies, activities, procedures, and operations of the system for administering VA benefits exist for only one fundamental purpose: *serving veterans*. It is this purpose—serving veterans—that the Commission believes should direct its review of the system. Understanding how to serve most effectively and responsively begins with knowing the people who do or may receive the service.

The Commission found that, while much about veterans is known within the system for administering VA benefits, a great deal remains unknown. Consequently, in addition to studying existing data describing the veteran population, the Commission developed original data in the following areas:

- demographic characteristics of VA's clientele;
- distribution of claims and appeals;
- issues involved in claims and appeals;
- outcomes of claimant contacts with VA;
- potential claims from veterans in the future;
- disability compensation beneficiaries and the nature of their disabilities;
- characteristics of knee conditions for which VA granted service connection; and
- consistency of death rates among veterans receiving disability compensation with those in the general veteran population and male U.S. population.

VA-maintained compensation and pension data, though plentiful, pertained mostly to workload management activities. For most other purposes, the Commission developed and analyzed its own data. The most significant of the Commission's data and analyses are described below.
Although the Commission produced new information in several areas, some types of data expected to be useful could not be constructed or inferred by means within the Commission's scope. Among the kinds of data the Commission was unable to produce were:

- the distribution of claims outcomes (*i.e.*, the number of grants and denials of benefits) by VBA regional offices—VA tracks the number of claims processed, but not whether they resulted in grant or denial of benefits;
- the incidence of disabilities "progressing" in severity over time;
- the magnitude of progression in severity of disabilities over time;
- the distribution of certain types of claims common to both compensation and pension programs (*e.g.*, the actual number of dependency work actions attributable to the pension program and those attributable to the compensation program is unknown. VBA has provided estimates of this distribution.);

- the distribution of claims submitted in person to VA regional offices *vs.* the number submitted by mail;
- the distribution of combat-related *vs.* noncombat-related conditions for which compensation is paid; and
- the length of time after discharge that veterans first claimed disability compensation.

These examples of data the Commission was unable to procure illustrate the complexity of the issues involved in, and the difficulty associated with, conducting a comprehensive review of the system for processing veterans benefits claims and appeals.

Section 1 – Overview of the Veteran Universe

Major Findings and Conclusions

- *The number of veterans receiving disability compensation (i.e., those with compensable service-connected disabilities) is expected to peak at about 2,257,000 in 1997. After that, it is likely to decrease every year.*
- *The projected short-term increase in the number of veterans receiving disability compensation contrasts with the consistent downward trend in the projected total veteran population.*
- *For the various periods of service, population trends among veterans receiving disability compensation are generally consistent with those observed among the total veteran population of the corresponding period of service.*
- *A minor variation from the general trend is seen among Vietnam Era veterans. Those receiving disability compensation will likely peak at 764,000 in the year 2001. By contrast, the estimated total Vietnam Era veteran population peaked at 8.3 million in 1993.*
- *Another minor variation from the general trend among compensable and non-compensable veterans is seen in the Peacetime population. In general, the estimated number of Peacetime veterans receiving disability compensation is expected to increase from 1990 through 2001. The estimated total Peacetime veteran population is expected to decline during most of this same period.*

As of September 30, 1995—

- *2,235,675 veterans—8.6 percent of the total veteran population—were receiving disability compensation. Almost 40 percent of those were evaluated 10 percent disabled. Seventy percent were evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent).*
- *134,160 Persian Gulf veterans—9.3 percent of the total Persian Gulf veteran population—were receiving disability compensation. Almost 50 percent of those were evaluated 10 percent disabled. Eighty-four percent were evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent).*
- *704,785 Vietnam Era veterans—8.8 percent of the total Vietnam Era veteran population—were receiving disability compensation. Almost 35 percent of those were evaluated 10 percent disabled. Sixty-five percent were evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent).*
- *190,531 Korean Conflict veterans—4.8 percent of the total Korean Conflict veteran population—were receiving disability compensation. Almost 35 percent of those were evaluated 10 percent disabled. Sixty-three percent were evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent).*
- *691,942 World War II veterans—10.4 percent of the total World War II veteran population—were receiving disability compensation. Thirty-nine percent of those were evaluated 10 percent disabled. Sixty-nine percent were evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent).*
- *613 World War I veterans—4.6 percent of the total World War I veteran population—were receiving disability compensation. Almost 21 percent of those were evaluated 10 percent disabled. Sixty-two percent were evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent).*

- *513,644 Peacetime veterans—8.6 percent of the total Peacetime veteran population—were receiving disability compensation. Almost 46 percent of those were evaluated 10 percent disabled. Seventy-six percent were evaluated 30 percent disabled or less (i.e., 10, 20, or 30 percent).*
- *the major service-connected disabilities of veterans receiving disability compensation were classified as follows:*
  - *79.61 percent had general medical or surgical conditions;*
  - *13.54 percent had psychiatric diseases;*
  - *5.56 percent had neurological diseases; and*
  - *1.29 percent had tuberculosis of the lungs and pleura.*

I. Background

Compensating veterans for service-connected disabilities represents a long-standing moral and financial obligation of the government. The system by which government performs this obligation has varied over time, most often corresponding with economic, political, and military circumstances.[4] However, the current disability compensation program has been in place for over 50 years. An injury or illness incurred during active military service, whether wartime or peacetime, is considered to be service connected, and a veteran having such a condition is entitled to VA disability compensation.

A servicemember need not be performing official duty at the time of injury for it to be considered service connected. Injury or illness incurred on or off a duty station at any time of day or night during a tour of active duty, including during periods of authorized leave, is considered service connected unless it is the result of the servicemember's willful misconduct. Disability compensation is payable *only* for disabilities that are determined to be service connected.

Disability compensation payment amounts vary according to the severity of disability. VA applies its Schedule for Rating Disabilities[5] to arrive at a *combined* disability rating (*i.e.*, a measure of the extent to which all of a veteran's service-related conditions disable him or her—from zero percent, the least severe—to 100 percent, the most severe). VA's rating schedule is intended by law[6] to represent *average* impairment in earning capacity among similarly disabled persons in the civilian population.

Since its inception, VA has provided financial assistance to millions of veterans with service-connected disabilities. In Fiscal Year (FY) 1995, VA paid nearly $11.6 billion in disability compensation to over 2.2 million veterans, making the program one of VA's largest.

This section describes the veteran universe and projects veteran populations. The Commission asked VA's National Center for Veterans Analysis and Statistics (NCVAS), in April 1995, to provide data and projections for the years 1990 to 2015, a period of expected change.[7] All estimates of future populations and population trends in this section are based on projections furnished by the NCVAS. Those projections make no attempt to "adjust" for future events, which are by definition unknown. They extend current demographic trends into the future. They do not allow, for example, for the possibility of future military actions or significant changes in public health.

The projections and other statistical data are classified according to:

- wartime or peacetime service;
- degree of disability;
- types of major disabilities; and
- other distinguishing criteria.

[4] Chapter II of this volume contains summary highlights of veterans benefits history.

[5] Title 38, Code of Federal Regulations, Part 4.

[6] Title 38, United States Code, §1155.

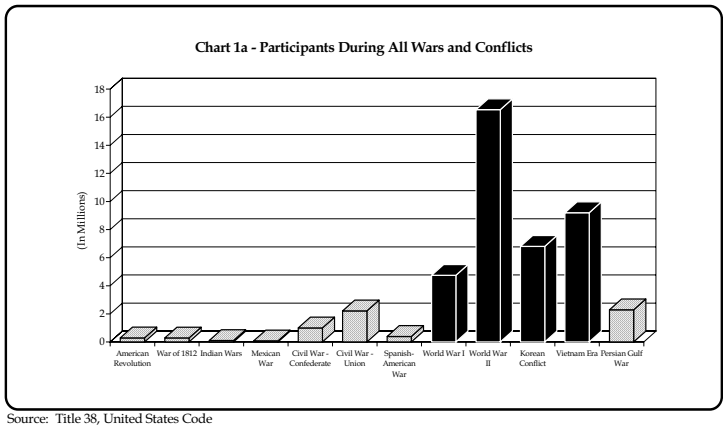
[7] The NCVAS provided most of the projections presented in this section, and in Appendix A, on behalf of the Commission.

Over the next 20 years, dramatic changes are likely in veteran demographics, including the proportions of veterans with wartime and peacetime service. Age distribution in the veteran population will have a great impact on the demand for services and benefits. As of June 30, 1996, 77 percent of the veterans receiving disability compensation had wartime service. That proportion is expected to decline with the aging of the World War II and Vietnam Era veteran populations, who currently make up 61 percent of the wartime veterans receiving disability compensation, or about 47 percent of all (*i.e.*, wartime *and* peacetime) veterans receiving compensation.[8]

II. Findings and Conclusions

1. Demographic Characteristics of the Veteran Population (see Charts 1a through 1c below).[9]

(a) Wartime Veterans. Since the American Revolution, approximately 42 million men and women have served our country during periods of war. Most of them (about 85 percent) served during one or more of the four major conflicts of the 20th century. More than 40 percent served during World War II. Over 20 million living veterans served during at least one wartime period.[10] Service during wartime does not necessarily mean that a veteran was involved in combat. The term "wartime service" denotes the time, rather than the circumstances, of service. A veteran who served from 1968 to 1970 is considered a Vietnam Era veteran, even if he or she were stationed only in the U.S., or only Europe, for example. Conversely, some "peacetime" veterans do have combat experience (*e.g.,* service in Grenada or Panama). The available aggregate data do not distinguish between combat and noncombat service.



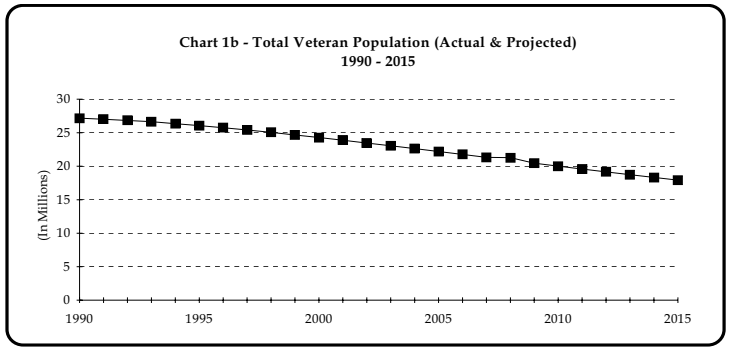
Source: Title 38, United States Code

[8] VA RCS 20-0221 Report, June 1996, pp. 1-2.

[9] Tables 1a and 1b in Appendix A contain additional data.

[10] *Annual Report of the Secretary of Veterans Affairs*, Fiscal Year 1995, pg. 1.

(b) Total Veteran Population. The veteran population is dynamic. As older members die, younger members are constantly added. The estimated United States veteran population as of July 1, 1995, was 26.2 million and is likely to decrease to 17.9 million by 2015. From 1995 to 2015, the rate of decline among the veteran population is expected to average 1.4 percent per year.



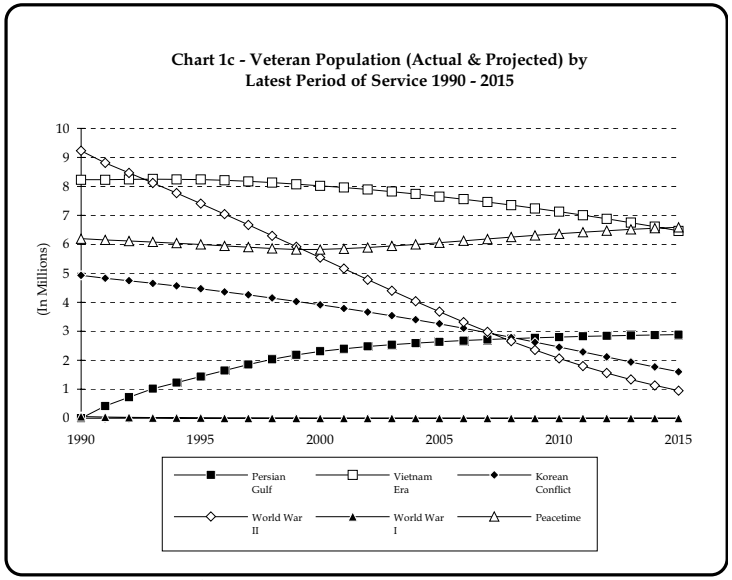
Source: NCVAS, Demographics Division

(c) World War II and Vietnam Era Veterans. Vietnam Era veterans, numbering 8.2 million in 1995, are the largest sector of the living veteran population; World War II veterans are the second largest, with 7.4 million veterans. The estimated number of Vietnam Era veterans declined for the first time in 1994.

(d) Korean Conflict Veterans. Korean Conflict veterans, down to 4.5 million in 1995, are expected to outnumber World War II veterans in 2008 (2.8 million to 2.7 million). Their number is expected to decline steadily to 1.6 million in 2015.

(e) Persian Gulf War Veterans. The population of Persian Gulf War veterans is expected to almost double from 1.4 million in 1995 to 2.9 million in 2015.

(f) World War I Veterans. Fewer than 20 World War I veterans are expected to survive to 2015, down from 13,400 living in 1995.



Source: NCVAS, Demographics Division

2. Service-Connected Disability Compensation Trends (see Chart 2a below).[11]

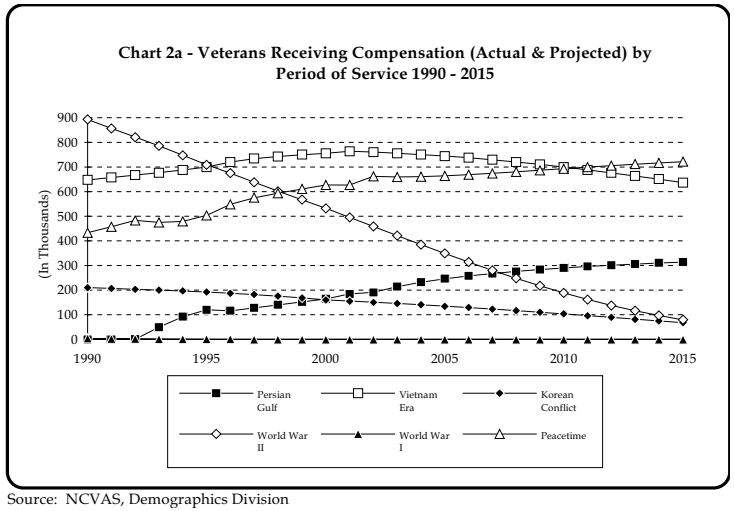
(a) The number of veterans receiving disability compensation (*i.e.,* those with compensable service-connected disabilities) is expected to peak at about 2,257,000 in 1997. After that, it is likely to decrease every year.

(b) The projected short-term increase in the number of veterans receiving disability compensation contrasts with the consistent downward trend in the projected total veteran population.

(c) For the various periods of service, population trends among veterans receiving disability compensation are generally consistent with those observed among the total veteran population of the corresponding period of service.

(d) A minor variation from the general trend is seen among Vietnam Era veterans. Those receiving disability compensation will likely peak at 764,000 in the year 2001. By contrast, the estimated total Vietnam Era veteran population peaked at 8.3 million in 1993.

[11] Table 2 in Appendix A contains additional data.



Source: NCVAS, Demographics Division

(e) The number of Peacetime veterans receiving disability compensation declined between 1992 and 1993, probably because some were reclassified. Prior to 1993, no "Persian Gulf" code existed to identify Gulf War veterans in VA's computer system. When the code was introduced in 1993, veterans with Gulf War service were recoded from "Peacetime" to "Persian Gulf."

(f) Another minor variation from the general trend among compensable and non-compensable veterans is seen in the Peacetime population. In general, the estimated number of Peacetime veterans receiving disability compensation is expected to increase from 1990 through 2001. The estimated total Peacetime veteran population is expected to decline during most of this same period.

(g) After the turn of the century, numbers of both Peacetime veterans receiving disability compensation and all Peacetime veterans are likely to show gradual increases.

3. Characteristics of Veterans Receiving Disability Compensation as of September 30, 1995.[12]

General Veteran Population. As of September 30, 1995, 2,235,675 veterans—8.6 percent of the total veteran population—were receiving disability compensation. Almost 40 percent of those were evaluated 10 percent disabled. Seventy percent were evaluated 30 percent disabled or less (*i.e.,* 10, 20, or 30 percent). See Table 3 and Charts 2b and 3 below.

[12] Tables 4 through 9 and Charts 4 through 9 in Appendix A contain additional data by periods of service (*e.g.,* Vietnam Era, Persian Gulf, etc.).

Total Veterans Receiving Disability Compensation by Combined Degree of Disability as of September 30, 1995

	Veterans	Percent
Zero %	19,968	0.89%
10%	886,279	39.64%
20%	365,241	16.34%
30%	306,997	13.73%
40%	183,679	8.22%
50%	108,583	4.86%
60%	106,798	4.78%
70%	60,770	2.72%
80%	37,488	1.68%
90%	16,592	0.74%
100%	143,280	6.41%
Total	2,235,675	100.00%

Table 3

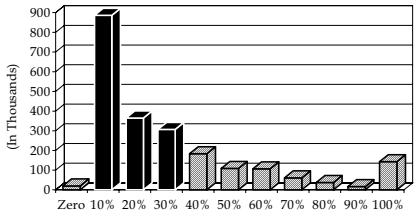
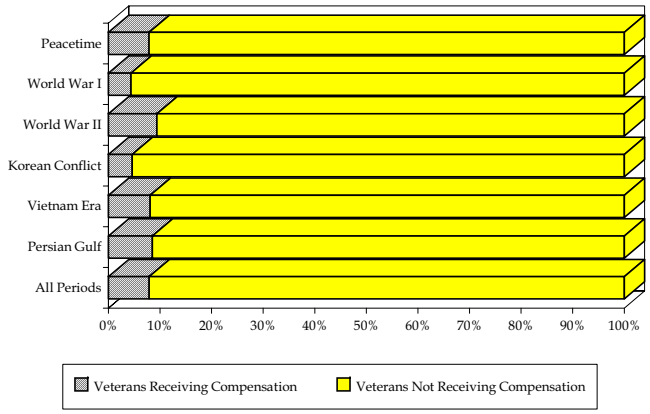


Chart 3

Source: RCS 20-0223 Report, September 1995



Source: NCVAS, Demographics Division and RCS 20-0223 Report, September 1995

4. Veterans by Class of Major Service-Connected Disability and Combined Degree.[13]

All Disabilities. As of September 30, 1995, the major service-connected disabilities of veterans receiving disability compensation were classified as follows:[14]

- 79.61 percent had general medical or surgical conditions;[15]
- 13.54 percent had psychiatric diseases;[16]
- 5.56 percent had neurological diseases;[17] and
- 1.29 percent had tuberculosis of the lungs and pleura.

[13] VA produces a monthly report, RCS 20-0223, Disability Compensation – Class of Major Disability by Combined Degree, that shows the number of veterans receiving disability compensation in four classes of major disability and the combined degree of disability. The four classes are: (1) tuberculosis of the lungs and pleura; (2) neurological diseases; (3) psychiatric diseases; and (4) general medical and surgical conditions.

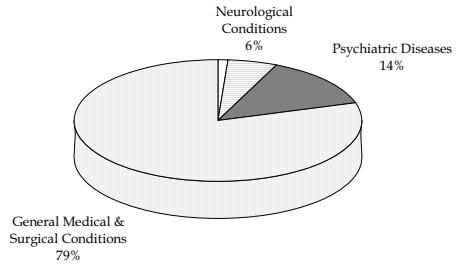
[14] Table 10 in Appendix A contains additional data.

[15] Tables 11 through 17 and Charts 11 through 17 in Appendix A contain additional data by periods of service (*e.g.,* Vietnam Era, Persian Gulf, etc.).

[16] Tables 18 through 24 and Charts 18 through 24 in Appendix A contain additional data by periods of service (*e.g.,* Vietnam Era, Persian Gulf, etc.).

[17] Tables 25 through 31 and Charts 25 through 31 in Appendix A contain additional data by periods of service (*e.g.,* Vietnam Era, Persian Gulf, etc.).

Chart 10 - Total Veterans Receiving Disability Compensation by Category of Major Disability as of September 30, 1995



Source: RCS 20-0223 Report, September 1995

5. Comparison of Two Groups of Veterans: Those Receiving Disability Compensation and Those Not Receiving Disability Compensation.[18]

(a) The proportion of veterans receiving compensation is expected to increase from 8.05 percent in FY 1990 to 10.14 percent in FY 2015.

(b) During the same period, the veteran population is expected to decline by an average of 1.4 percent per year, or about 34 percent.

(c) From FYs 1990 through 1995, the number of veterans receiving compensation increased. This trend is expected to continue through FYs 1996 and 1997.

(d) In FYs 1998 through 2015, the number of veterans receiving compensation is expected to decline.

Section 2 – Characteristics of Pending Repeat Disability Compensation Claims and Pending Appeals

Major Findings and Conclusions

Among pending repeat disability compensation claims and pending appeals certified to the BVA on seven dates between September 1, 1995, through April 25, 1996:

Pending Repeat Claims:

[18] Table 32 and Chart 32 in Appendix A contain additional data.

- ***An average of 69 percent of claimants were receiving disability compensation or pension at the time they filed repeat claims.***

Pending Appeals:

- ***An average of 67 percent of claimants were receiving disability compensation or pension at the time they filed appeals.***

Majority of Beneficiaries with Pending Repeat Claims or Appeals Evaluated 10, 20, or 30 Percent.

In each of the separate populations of veterans who had pending:

- ***repeat disability compensation claims, or***
- ***appeals certified to the BVA,***

and who were receiving compensation at the time they filed, an average of 56 percent had service-connected conditions evaluated either 10, 20, or 30 percent disabling in combination.

I. Background

A. Significance of Repeat Claims.

"Repeat" claims (as reported in Chapter I, Section 4) comprise about 75 percent of the VBA's disability compensation workload.[19] Upon discovering the significance of these claims, Commissioners sought more information about them and about appeals to the Board of Veterans Appeals (BVA). The Veterans Benefits Administration (VBA) does not routinely preserve data that describe the characteristics of claims and claimants. As claims are completed, the associated claim-identifying information is discarded. Most information related to any given claim is retained only if the claim is granted. Even in those cases, however, the material that is retained is relevant primarily to compensation payment and maintenance activities, not to the characteristics of the claim that preceded the decision to grant benefits.

To study the characteristics of disability compensation claims and appeals, the Commission assembled data abstracts pertaining to 100 percent of *pending*[20] repeat claims and *pending* appeals certified[21] to the BVA from various VBA databases on seven dates between September 1, 1995, and April 25, 1996. On each occasion, the Commission collected the following data for this evaluation:

- the number of pending repeat disability compensation claims and pending appeals;
- the number of claimants (and appellants) receiving disability compensation at the time they filed repeat claims (or appeals) and, for each of those who were receiving compensation, their:
  - combined disability rating,
  - period of service,
  - age, and
  - type of major disability;
- the number of claimants (and appellants) not receiving disability compensation at the time they filed repeat claims (or appeals) and, for each of those who were not receiving compensation:

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[19] "Repeat claims" are claims from "repeat" customers. For purposes of this report, the term means any application involving a disability determination submitted by a veteran and received after one (or more) prior VA disability decision(s) pertaining to the same claimant. VBA once referred to any such claim as "reopened." However, VBA redefined the term "reopened claim" in November 1995, prompting the Commission to adopt a generic equivalent. Repeat compensation claims would include claims for increased evaluation, claims for service connection following prior denial, and claims for service connection of additional disabilities. "Repeat appeals" are second and subsequent appeals.

[20] "Pending" claims and appeals are work in progress. They have been received in VBA and recorded as items to be processed. They may have had one or more work actions taken on them but are not yet completed.

[21] An appeal is "certified" to the BVA when the regional office has completed all review and due process required at that level, and the appeal is in final condition for BVA review.

- the reason for termination or disallowance of benefits, if available.

The following findings and conclusions are based on the Commission's analysis of these data.

B. Zero Percent Disability Ratings: Background Information.

Commission research shows that many conditions found to be service connected are rated zero percent disabling:

- In FY 1995, service-connected disability compensation was awarded to 98,664 veterans.[22] These veterans were found to have a total of 262,774 service-connected disabilities, an average of 2.7 per veteran. About half (49.65 percent) of those conditions were rated zero percent disabling.

- Zero percent disabling service-connected conditions also appear frequently among veterans who file repeat disability compensation claims. The Commission observed that conditions evaluated zero percent disabling accounted for an average of almost 35 percent (68,682) of all service-connected disabilities among veterans in receipt of benefits with pending repeat compensation claims between September 1995 and April 1996.[23] Zero percent was the most frequent rating for existing service-connected disabilities among these veterans. The next most frequent disability rating in that group was 10 percent, which was found in an average of 34.4 percent of disabilities. Each of the other disability levels accounted for less than 10 percent of the total service-connected disabilities among that group.

The term "zero percent disabling" is a convention for describing a medical condition that is shown to exist but not shown to be so disabling as to impair earning capacity. Disability compensation is not payable for service-connected conditions evaluated zero percent disabling. Entitlement to disability compensation is established when service-connected disabilities are 10 percent or more disabling.

Traditionally, a rating of zero percent carried two significant advantages for veterans even though no compensation is payable for such conditions. First, the zero percent rating establishes that the condition exists and that it is service connected. This is important in the event that the veteran feels the condition has worsened and wishes to claim compensation for it. In this case, all that must be proven is the degree of disability, not its existence or origin.

The second advantage was that a zero percent rating entitled veterans to priority medical treatment for *nonservice-connected* conditions at VA medical facilities. Public Law 104-262, enacted on October 9, 1996, changed the criteria for medical treatment. Veterans may still receive priority treatment for their zero percent *service-connected* disabilities. However, having a zero percent service-connected disability no longer entitles veterans to priority medical treatment for *nonservice-connected* conditions.

Zero percent service-connected disability ratings are significant to the system for processing disability claims:

- A large number of all service-connected conditions are rated zero percent disabling.

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[22] The Commission used data from VBA's COIN CP-145 report, *Service-Connected Accessions by Disability.* These data are discussed in detail in Section 5 of this chapter.

[23] Table 43 in Appendix B shows the breakdown of disabilities among veterans with repeat disability compensation claims pending on seven dates between September 1995 and April 1996.

- Each zero percent rating represents full application of the adjudicative process to that disability (*i.e.*, determination of whether a condition exists, whether it is service connected, and the current degree of impairment).

- Zero percent ratings appear at all stages of the system (original claims, repeat claims, and appeals).

The significance of zero percent ratings is difficult to quantify. VA estimates that in 1995 approximately 1.2 million veterans had zero percent service-connected disability ratings. However, VA does not routinely maintain data that would allow analysts to determine the total number of veterans with zero-percent disabilities, the number whose only service-connected disabilities are zero percent, the number of zero percent disabilities that are subsequently rated higher, or the number of repeat claims for increased rating of zero percent disabilities.

The law[24] declares that ratings, as far as practicable, be based on " . . . the average impairments of earning capacity resulting from such injuries in civil occupations." The provision also states that there shall be no more than 10 grades of disability " . . . upon which payments of compensation shall be based," commencing with 10 percent. No mention of zero percent ratings, which are not compensated, is contained in the provision.

The Commission found references to "No percent (0 %)" ratings in an archival copy of VA's 1925 rating schedule. The next reference was found in a 1961 VA "Schedule of Ratings Transmittal Sheet." It stated that, "In every instance where the minimum schedular evaluation requires residuals and the schedule does not provide a no-percent evaluation, a no-percent evaluation will be assigned when the required residuals are not shown." The Court of Veterans Appeals (CVA) addressed this issue in *Rabideau v. Derwinski*. The decision in that case found, in part that if . . .

> schedular criteria . . . do not require residuals, a zero-percent would not be authorized under 38 CFR . . . (where the minimum schedular evaluation requires residuals and the schedule does not provide a zero-percent evaluation, a zero-percent evaluation will be assigned when required residuals are not shown).

In response to the Court's decision in *Rabideau*, VA formalized its practice with regard to zero percent evaluations in these instances by revising 38 CFR §4.31. That regulation now provides that, in every instance where the schedule does not provide a zero percent evaluation for a diagnostic code, zero percent is to be assigned when the requirements for a compensable evaluation are not met.

No subsequent CVA decision directly addressing the fundamental principle of zero-percent ratings was found. Although the statute is silent regarding the principle of zero-percent ratings, the CVA has issued no decisions faulting VA's implementation of the statute regarding this issue.

II. Findings and Conclusions

1. Noteworthy Characteristics of Repeat Claims and Appeals.

(a) Number of Pending Repeat Disability Compensation Claims and Appeals Certified to the BVA. Among pending repeat disability compensation claims and pending appeals certified to the BVA on seven dates (specified in charts below and tables in Appendix B) between September 1, 1995, and April 25, 1996:
Pending Repeat *Compensation* Claims (see Chart 33 below):[25]

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[24] 38 USC §1155.

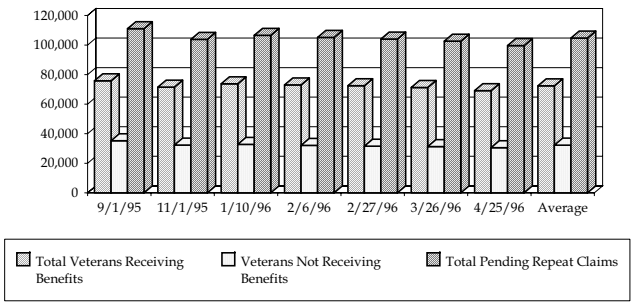
[25] Table 33 in Appendix B contains repeat disability compensation claims data.

- average pending was 104,712,
- the high was 111,101 on September 1, 1995, and
- the low was 99,648 on April 25, 1996.

Pending *Appeals* (see Chart 34 below):[26]

- average pending was 40,698,
- the high was 41,597 on April 25, 1996, and
- the low was 38,685 on September 1, 1995.

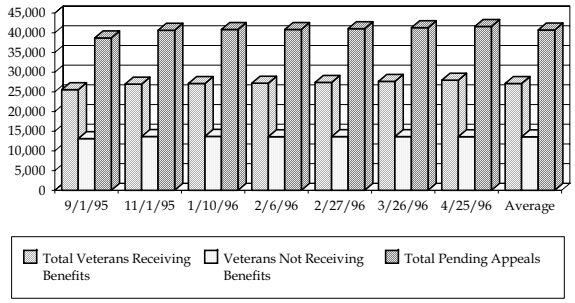
Chart 33 - Pending Repeat Disability Compensation Claims



Source: Veterans' Claims Adjudication Commission

[26] Table 34 in Appendix B contains data pertaining to appeals certified to the BVA.

Chart 34 - Pending Appeals Certified to BVA



Source: Veterans' Claims Adjudication Commission

(b) Benefit Payments to Claimants with Pending Repeat Disability Compensation Claims and to Appellants with Appeals Certified to the BVA. Among pending repeat disability compensation claims and pending appeals certified to the BVA on seven dates between September 1, 1995, through April 25, 1996:

Pending Repeat *Compensation* Claims (see Chart 33 above):[27]

- An average of 69 percent of claimants were receiving disability compensation or pension at the time they filed repeat claims.

Pending *Appeals* (see Chart 34 above):[28]

- An average of 67 percent of claimants were receiving disability compensation or pension at the time they filed appeals.

(c) Age Distribution Among Veterans with Pending Repeat Disability Compensation Claims or Pending Appeals Certified to the BVA and Receiving Compensation or Pension.

(1) Among veterans who were receiving compensation or pension at the time they filed and who had pending:

- repeat disability compensation claims, an average of 31 percent were between ages 61 and 85 (see Chart 35 below).[29]

[27] Table 33 in Appendix B contains repeat disability compensation claims data.

[28] Table 34 in Appendix B contains data pertaining to appeals certified to the BVA.

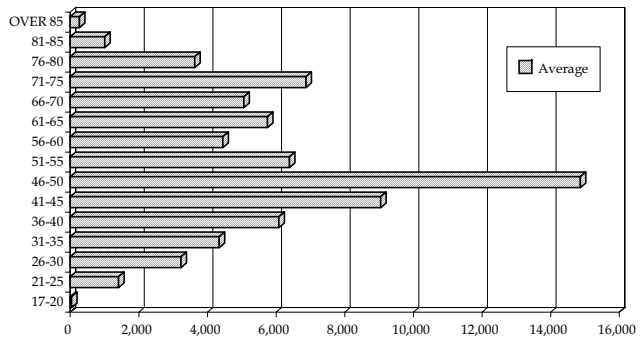
[29] Table 35 in Appendix B contains repeat disability compensation claims data.

- appeals certified to the BVA, an average of 29 percent were between ages 61 and 85 (see Chart 36 below).[30]

(2) Among the total estimated veteran population as of July 1, 1995, 42 percent were between ages 61 and 85 (see Chart 37 below).[31]

(3) Among all veterans receiving disability compensation as of September 30, 1995, 47 percent were between ages 61 and 85 (see Chart 37 below).[32]

Chart 35 - Pending Repeat Disability Compensation Claims from Veterans Receiving Benefits -- by Age Groups



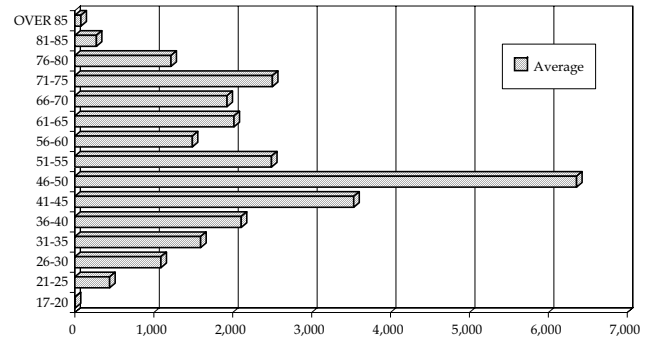
Source: Veterans' Claims Adjudication Commission

[30] Table 36 in Appendix B contains data pertaining to appeals certified to the BVA.

[31] Table 37 in Appendix B contains repeat disability compensation claims data and data pertaining to appeals certified to the BVA.

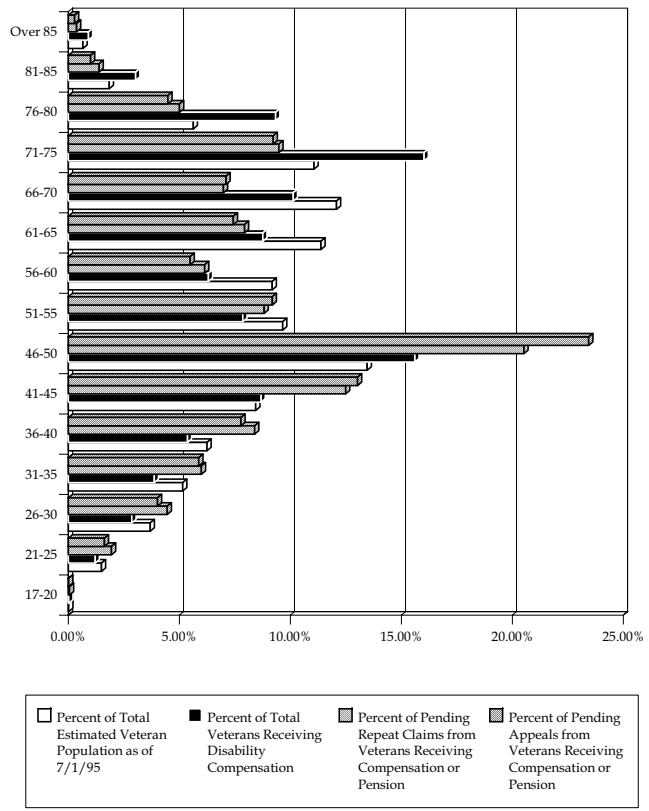
[32] Table 37 in Appendix B contains repeat disability compensation claims data and data pertaining to appeals certified to the BVA.

Chart 36 - Pending Appeals Certified to BVA from Veterans Receiving Benefits -- by Age Groups



Source: Veterans' Claims Adjudication Commission

Chart 37 - Veteran Population and Claims Activity by Age Groups



Source: Veterans' Claims Adjudication Commission

(d) Age Distribution Among Veterans with Pending Repeat Disability Compensation Claims or Pending Appeals Certified to the BVA and Receiving Compensation or Pension.

(1) Among veterans who were receiving compensation or pension at the time they filed and who had pending:

- repeat disability compensation claims, on average, 47 percent were between ages 31 and 50.
- appeals certified to the BVA, on average, 50 percent were between ages 31 and 50.

(2) Among the total estimated veteran population as of July 1, 1995, 33 percent were between ages 31 and 50.

(3) Among all veterans receiving disability compensation as of September 30, 1995, 34 percent were between ages 31 and 50.

(e) Largest Single Standard Age Group Among Veterans.

(1) Among veterans who were receiving compensation or pension at the time they filed and who had pending:

- repeat disability compensation claims, on average, 21 percent were between ages 46 and 50.
- appeals certified to the BVA, on average, 23 percent were between ages 46 and 50.

(2) Among the total estimated veteran population as of July 1, 1995, 14 percent were between ages 46 and 50.

(3) Among all veterans receiving disability compensation as of September 30, 1995, 16 percent were between ages 46 and 50.

(f) Vietnam-Era Veterans' Repeat Claims and Appeals. Among veterans who were receiving compensation or pension at the time they filed *and* who had pending:

- repeat disability compensation claims, 39 percent were filed by Vietnam-era veterans (see Chart 38 below).[33]
- appeals certified to the BVA, 40 percent were filed by Vietnam-era veterans (see Chart 39 below).[34]

(g) Peacetime Veterans' Repeat Claims and Appeals. Among veterans who were receiving compensation or pension at the time they filed *and* who had pending:

- repeat disability compensation claims, 28 percent were filed by Peacetime veterans (see Chart 38 below).[35]

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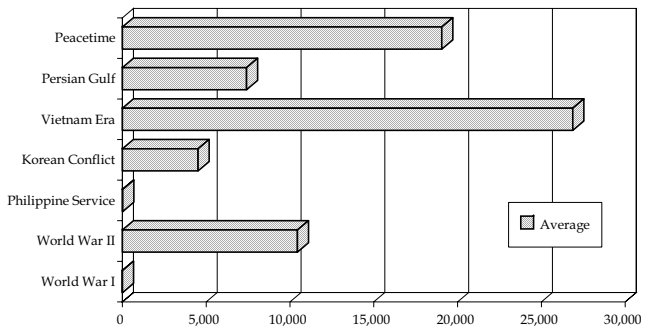
[33] Table 38 in Appendix B contains repeat disability compensation claims data.

[34] Table 39 in Appendix B contains data pertaining to appeals certified to the BVA.

[35] Table 38 in Appendix B contains repeat disability compensation claims data.

- appeals certified to the BVA, 27 percent were filed by Peacetime veterans (see Chart 39 below).[36]

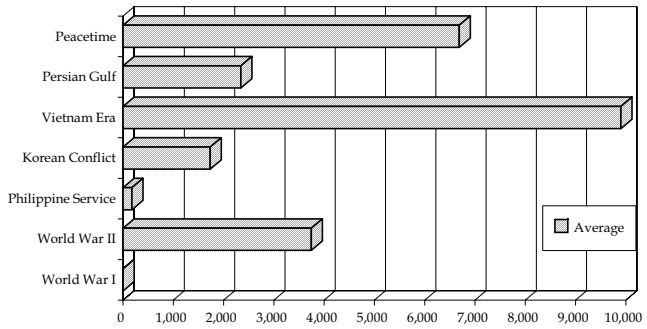
Chart 38 - Pending Repeat Disability Compensation Claims from Veterans Receiving Compensation -- by Period of Service



Source: Veterans' Claims Adjudication Commission

[36] Table 39 in Appendix B contains data pertaining to appeals certified to the BVA.

Chart 39 - Pending Appeals Certified to BVA from Veterans Receiving Compensation -- by Period of Service



Source: Veterans' Claims Adjudication Commission

(h) Majority of Beneficiaries with Pending Repeat Claims or Appeals were Evaluated 10, 20, or 30 Percent. In each of the separate populations of veterans who had pending:

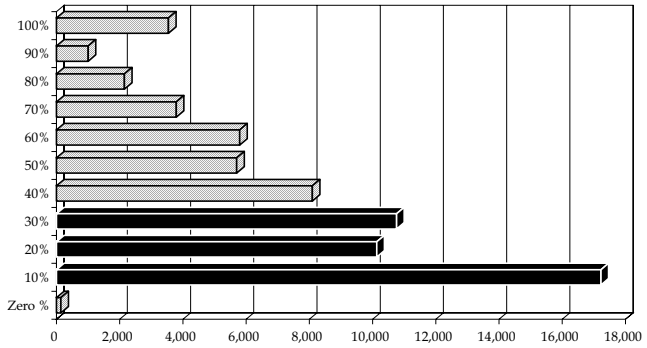
- repeat disability compensation claims (see Chart 40 below),[37] or
- appeals certified to the BVA (see Chart 41 below),[38]

and who were receiving compensation at the time they filed, an average of 56 percent had service-connected conditions evaluated either 10, 20, or 30 percent disabling in combination.

[37] Table 40 in Appendix B contains repeat disability compensation claims data.

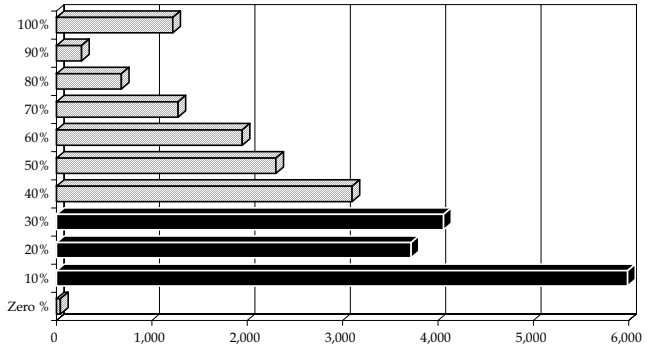
[38] Table 41 in Appendix B contains data pertaining to appeals certified to the BVA.

Chart 40 - Pending Repeat Disability Compensation Claims from Veterans Receiving Compensation -- by Combined Degree



Source: Veterans' Claims Adjudication Commission

Chart 41 - Pending Appeals Certified to BVA from Veterans Receiving Compensation -- by Combined Degree



Source: Veterans' Claims Adjudication Commission

(i) Previous Denials—Noncompensable Evaluations (Service-Connected Condition Existed but was Evaluated Zero Percent Disabling). Among veterans who were *not* receiving VA benefits at the time they filed ***and*** who had pending:

- repeat disability compensation claims,[39] an average of 34 percent . . .
- appeals certified to the BVA,[40] an average of 22 percent . . .

. . . had a service-connected disability (or disabilities) evaluated noncompensable (zero percent disabling). See Table 42c and Charts 42a and 42b (reason code 05) below.

(j) Previous Denials—Not Service Connected. Among veterans who were *not* receiving VA benefits at the time they filed ***and*** who had pending:

- repeat disability compensation claims,[41] an average of 31 percent . . .
- appeals certified to the BVA,[42] an average of 54 percent . . .

. . . were previously denied benefits because VA ruled that they did not incur or aggravate any disability in military service. See Table 42c and Charts 42a and 42b (reason codes 06, 07, and 08) below.

Table 42c - Narrative Summary of Disallowance or Termination Reasosn Codes

01	No Military Service	**16**	Failure to Prosecute
02	No/Insufficient Qualifying Service	**17**	Failure to Report for Examination
03	Character of Discharge	**19**	On Active Duty/In Receipt of Retired Pay
04	Entitlement Forfeited	**20**	Claim Withdrawn
05	Zero Percent Service-Connected Disability	**21**	Whereabouts Unknown
06	Disability Not Due to Service	**22**	Death of Claimant
07	Not Shown Last Exam - No Rating	**24**	Child Over Age 18
08	Not Shown by Evidence of Record - No Rating	**28**	Claimant Incarcerated
09	Willful Misconduct/Not Line of Duty	**30**	Elected Other Benefit
10	Disability Not Permanent/Total (Pension)	**Unk**	Termination/Disallowance Reason Not Shown
11	Excess Income (Pension)	**Oth**	Other Termination/Disallowance Reasons
12	Excess Net Worth (Pension)		

Source: VBA Manual M21-1

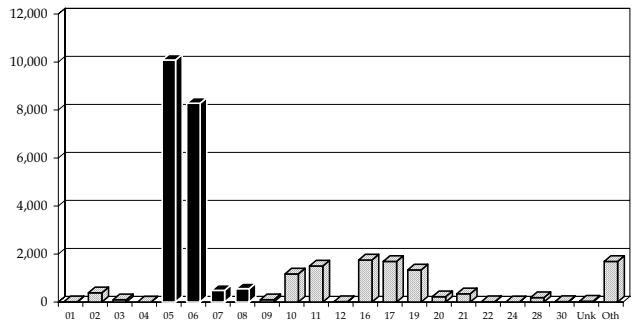
[39] Tables 42a and 42c in Appendix B contain repeat disability compensation claims data.

[40] Tables 42b and 42c in Appendix B contain data pertaining to appeals certified to the BVA.

[41] Tables 42a and 42c in Appendix B contain repeat disability compensation claims data..

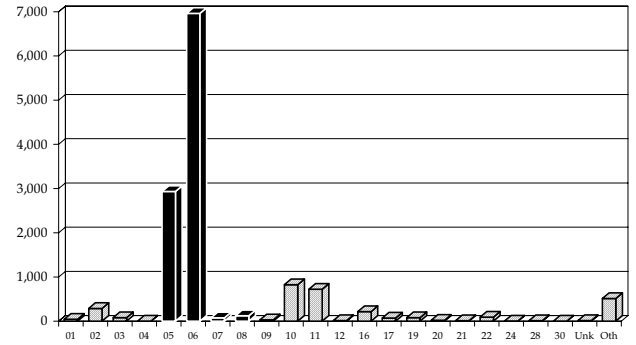
[42] Tables 42b and 42c in Appendix B contain data pertaining to appeals certified to the BVA.

Chart 42a - Pending Repeat Disability Compensation Claims from Veterans Not Receiving Benefits -- by Disallowance or Termination Reason



Source: Veterans' Claims Adjudication Commission

Chart 42b - Pending Appeals Certified to BVA from Veterans Not Receiving Benefits -- by Disallowance or Termination Reason



Source: Veterans' Claims Adjudication Commission

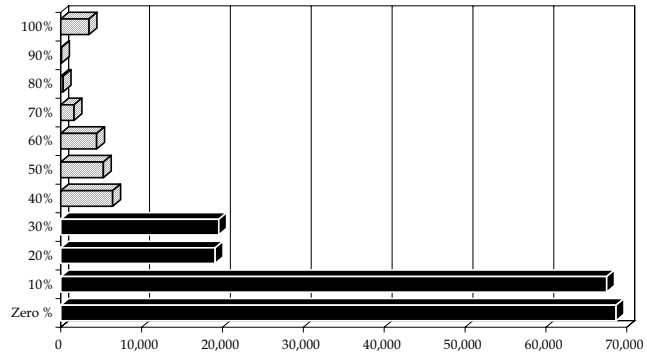
2. Noteworthy Characteristics of Disabilities Among Veterans with Repeat Claims or Appeals Pending.

(a) All Service-Connected Conditions. Among all veterans who were receiving disability compensation ***and*** who had pending:

- repeat disability compensation claims (see Chart 43 below),[43] or
- appeals certified to the BVA (see Chart 44 below),[44]

an average of 89 percent of their *separate*[45] service-connected conditions are evaluated either 0, 10, 20, or 30 percent disabling.

Chart 43 - Total Number of Disabilities -- by Degree of Disability -- Among Veterans Receiving Benefits and with Repeat Compensation Claims Pending



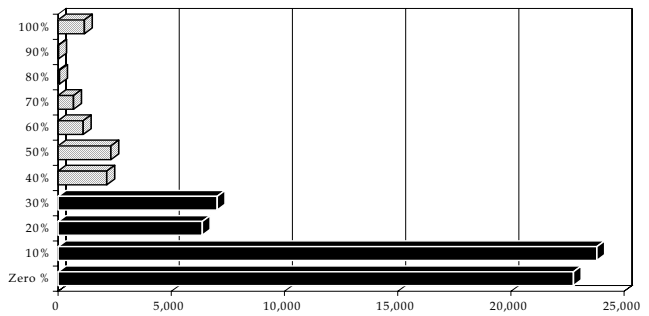
Source: Veterans' Claims Adjudication Commission

[43] Table 43 in Appendix B contains repeat disability compensation claims data.

[44] Table 44 in Appendix B contains data pertaining to appeals certified to the BVA.

[45] A veteran may have more than one disability. Accordingly, in the population of veterans with service-connected disabilities, there are more disabilities than there are veterans. Where the word "separate" appears in the remainder of this section, it means that each disability diagnosis, instead of each veteran, is considered the unit of measurement.

Chart 44 - Total Number of Disabilities -- by Degree of Disability -- Among Veterans Receiving Benefits and with Pending Appeals Certified to BVA



Source: Veterans' Claims Adjudication Commission

(b) General Medical & Surgical Conditions. Among all *separate* disabilities of veterans who were receiving disability compensation ***and*** who had pending:

- repeat disability compensation claims, an average of 85 percent were general medical and surgical conditions.
- appeals certified to the BVA, an average of 84 percent were general medical and surgical conditions.

Among all *separate* general medical and surgical conditions of veterans who were receiving disability compensation ***and*** who had pending . . .

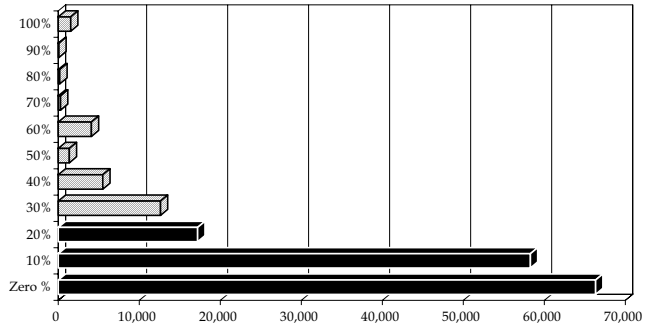
- repeat disability compensation claims, an average of 85 percent[46] . . .
- appeals certified to the BVA, an average of 86 percent[47] . . .

. . . are rated either 0, 10, or 20 percent disabled. See Charts 45 and 46 below.

[46] Table 45 in Appendix B contains repeat disability compensation claims data.

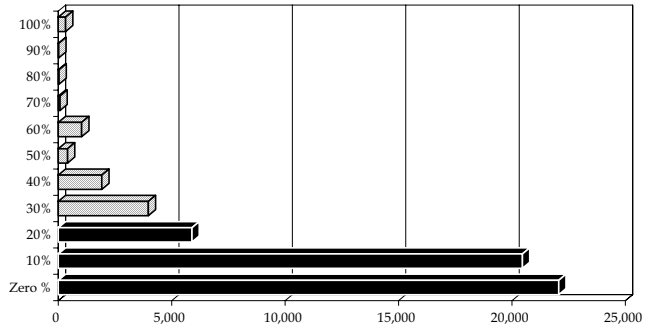
[47] Table 46 in Appendix B contains data pertaining to appeals certified to the BVA.

Chart 45 - Number of General Medical & Surgical Conditions -- by Degree of Disability -- Among Veterans Receiving Benefits and with Repeat Compensation Claims Pending



Source: Veterans' Claims Adjudication Commission

Chart 46 - Number of General Medical & Surgical Conditions -- by Degree of Disability -- Among Veterans Receiving Benefits and with Pending Appeals Certified to BVA



Source: Veterans' Claims Adjudication Commission

(c) Psychiatric Conditions. Among all *separate* disabilities of veterans who were receiving disability compensation ***and*** who had pending:

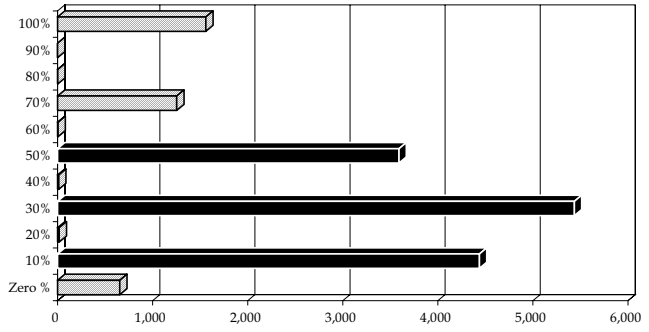
- repeat disability compensation claims, an average of nine percent were psychiatric diseases.
- appeals certified to the BVA, an average of 11 percent were psychiatric diseases.

Among all *separate* psychiatric disabilities of veterans who were receiving disability compensation ***and*** who had pending . . .

- repeat disability compensation claims (see Chart 47 below)[48] . . .
- appeals certified to the BVA (see Chart 48 below)[49] . . .

. . . an average of 80 percent were rated either 10, 30, or 50 percent disabling.

Chart 47 - Number of Psychiatric Conditions -- by Degree of Disability -- Among Veterans Receiving Benefits and with Pending Repeat Compensation Claims

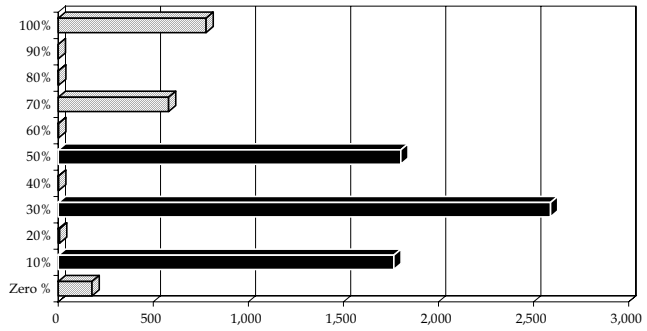


Source: Veterans' Claims Adjudication Commission

[48] Table 47 in Appendix B contains repeat disability compensation claims data.

[49] Table 48 in Appendix B contains data pertaining to appeals certified to the BVA.

Chart 48 - Number of Psychiatric Conditions -- by Degree of Disability -- Among Veterans Receiving Benefits and with Pending Appeals Certified to BVA



Source: Veterans' Claims Adjudication Commission

(d) Neurological Conditions. Among all *separate* disabilities of veterans who were receiving disability compensation ***and*** who had pending:

- repeat disability compensation claims, an average of six percent were neurological diseases.
- appeals certified to the BVA, an average of five percent were neurological diseases.

Among all *separate* neurological disabilities of veterans who were receiving disability compensation ***and*** who had pending . . .

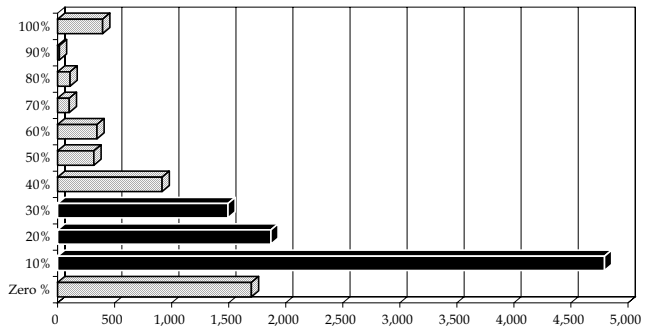
- repeat disability compensation claims, an average of 68 percent[50] . . .
- appeals certified to BVA, an average of 70 percent[51] . . .

. . . were rated either 10, 20, or 30 percent disabling. See Charts 49 and 50 below.

[50] Table 49 in Appendix B contains repeat disability compensation claims data.

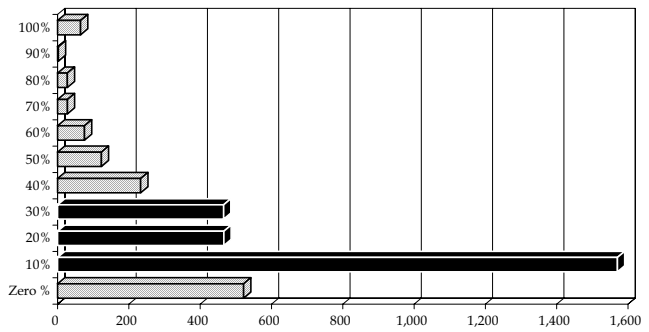
[51] Table 50 in Appendix B contains data pertaining to appeals certified to the BVA.

Chart 49 - Number of Neurological Conditions -- by Degree of Disability -- Among Veterans Receiving Benefits and with Repeat Compensation Claims Pending



Source: Veterans' Claims Adjudication Commission

Chart 50 - Number of Neurological Conditions -- by Degree of Disability -- Among Veterans Receiving Benefits and with Pending Appeals Certified to BVA



Source: Veterans' Claims Adjudication Commission

Section 3 – Data Analysis of Completed Original and Repeat Disability Compensation Claims

Major Findings and Conclusions

The Commission collected data representing recent original and repeat claims for compensation benefits from a random sample of claims folders at six regional offices. The purpose of the survey was to collect information about the claims development process. Veterans' claims typically require supporting information or evidence that is unavailable to them at the time they apply. For original claims, it took, on average, 23 days from date of receipt until the regional office's first request for development information. The regional offices' elapsed time for development was 107 days, on average. The average time from completion of development to regional office decision was 80 days. For repeat claims, it took regional offices, on average, 48 days from date of receipt until the first request for development information. Elapsed development time was 73 days. The average time from completion of development to regional office decision was 95 days.

I. Background

The Commission asked six representative regional offices to review randomly selected claims folders to add to the Commission's understanding about certain aspects of the adjudication process. The sample size for each station was sized to yield an accuracy rate of 95 percent or better with a 95 percent level of confidence.[52]

The regional offices completed usable data collection instruments for 299 claims. The following limited analysis suggests certain findings concerning original and repeat claims. We have used a small set of statistical tools to support the analysis: mean, median, and standard deviation.

This information is based upon data obtained during the review of the 299 randomly selected cases.

[52] The sample size was chosen on the basis of the Compensation and Pension (C&P) Service's quality review program statistical data.

II. Findings

1. Original Claims.

(a) Decisions. Of the 299 claims, 74 were original claims for compensation. Of these, VA granted benefits[53] in 48 cases. This is 64.9 percent of all original claims. The likelihood of a grant increased substantially if the veteran raised more issues. The critical break point seemed to be four issues. Thirteen, or 39.4 percent, of 33 claims with fewer than four issues were granted. In cases with four or more issues, benefits were granted in 35, or 85.4 percent, of 41 cases.

(b) Timeliness. Original claims took an average of 205 days to complete and a median of 193 days. The standard deviation of 120 days is high, indicating a wide range of completion times among the cases, especially at the high end. Timeliness for original compensation claims that involved one to seven issues was significantly better than for original compensation claims involving more than seven issues. The median timeliness for these cases was 170 and 307 days, respectively. Clearly, the more complex cases took longer to complete, but the claimants were more likely to be granted benefits.

(c) Development. Veterans' claims typically require supporting information or evidence[54] that is unavailable to them at the time they apply. Some evidence necessary to consider a claim, such as VA examinations, generally are VA's responsibility to obtain. Therefore, original claims for service connection usually require additional development before a rating specialist can make a decision. Development often takes the form of a letter to the veteran or to some third party, such as a private physician. Other common development includes requests for military medical records or for VA medical examinations. The need for additional information can add substantially to claim processing time. Development generally occurs concurrently so that multiple requests are sent at the same time. Therefore, the elapsed time to complete all development actions is usually less than the sum of the separate parts.

- Most veterans responded to requests for information timely or not at all. Veterans did not respond 35.1 percent of the time (13 cases). In 75 percent (15 of 20) of the remaining cases, the veteran responded in 30 days or less. The average response time was 51 days and the median was 23 days.
- Third party requests, such as private physician reports and VA medical records, were also received timely, with 73.7 percent (14 of 19) received in 30 days or less. The average was 36 days, and the median was 16 days.
- Military medical records take longer to receive. Fewer than 50 percent, 16 of 34, were received in 60 days or less. The average was 89 days, and the median was 59 days.
- Only 16 (37.2 percent) of 43 VA medical examinations were completed in 30 days or fewer. The average was 60 days, and the median was 35 days. In September 1991 VBA and VHA executed a memorandum of understanding establishing a timeliness standard of 35 days, on average, for completion of compensation examinations. The memorandum was enhanced in December 1994 to incorporate quality as an important element.

[53] For purposes of this survey, a "grant" is defined as approval of service connection for any one disability, regardless of how many disabilities were claimed.

[54] That is, they lack such information or evidence as medical records from the military (service medical records) required by law or regulation to decide entitlement.

VA does not advise claimants of the evidence that:

- is necessary to decide a claim or
- the claimant may submit to assist in the development of the claim.

Traditionally, VA accepted only the results of VA examinations when rating disabilities. Since August 1994 VA may use examinations from private sources for rating disabilities as a step toward speeding the claims development process. VA does not, however, explain to veterans or their physicians the kinds of information and testing that are necessary for examination reports to be adequate for rating purposes.

(d) Incremental Timeliness. On average it took 23 days from date of receipt of a claim until the first request for additional information was sent. Elapsed development time was 107 days, on average. The average time from completion of development to regional office decision was 80 days. The median for each increment was 11 days from date of receipt of a claim until the first request for development information was sent, 87 days for elapsed development time, and 39 days from completion of development to regional office decision, respectively. The increments do not add to the overall timeliness total because 15 cases did not require any development as defined here.

(e) Time Since Separation. Over 63 percent of original claims (47 of 74) were filed within one year of separation. However, a significant number, 16 (21.6 percent), were filed more than 20 years after separation.

2. Repeat Claims.

(a) Decisions. Of the 299 claims, 225 were repeat claims for compensation. Of these, VA granted benefits in 36.9 percent of the claims (83 cases). In cases when the prior decision was a denial, the repeat case was also denied nearly 90 percent of the time (26 of 29).

(b) Timeliness. On average VA took 204 days to complete repeat claims, with a median of 201 days and a standard deviation of 116 days.

(c) Development. Development of repeat claims was less time consuming than for original claims primarily because there was less need to request military medical records, which were needed in only 14 cases (6.2 percent).

- Although most veterans responded timely when they did so, over 47 percent (30 of 63) did not respond at all. Veterans responded to requests on average in 47 days, and the median was 21 days.
- Third parties responded less timely for repeat claims than for original claims. Only 62.4 percent (63 of 101) of these requests were answered in 30 days or less. The average was 66 days, and the median was 21 days.
- Over 50 percent (52 of 101) of VA medical examinations were completed in 30 days or less. The average was 43 days and the median was 31 days. As stated above, VBA and VHA executed a memorandum of understanding establishing a timeliness standard of 35 days, on average, for completion of compensation examinations.

(d) Incremental Timeliness. Although development time for repeat claims was better than for original claims, the other increments took longer. On average it took 48 days from date of receipt until the first request for additional information was sent. Elapsed development time was 73 days, on average. The average time for completion of development to regional office decision was 95 days. The median for

each increment was 24 days from date of receipt until the first request for development information, 34 days for elapsed development time, and 67 days for completion of development to regional office decision. The increments do not add to the overall timeliness total because 43 cases did not require any development as defined here.

Section 4 – Concept Paper on Repeat Disability Compensation Claims

2015 Repeat Compensation Claims Model Projections

To better understand the impact of repeat claims on the VA claims processing system, the Commission developed a model that uses current data to project long-term claim filing patterns. The Commission also analyzed the nature and incidence of repeat claims in the present to shed light on the reasons for the significant proportion of repeat claims in the overall mix of applications for VA benefits.

1. ***IF VA were to receive NO first-time compensation claims after October 1, 1995, AND repeat claims activity diminishes as veterans age, then*** **184,371 repeat compensation claims (55 percent of FY 1995 level) would still be expected in FY 2015.**

2. ***IF VA were to receive NO first-time compensation claims after October 1, 1995, AND repeat claims activity remains consistent with current levels, then*** **241,790 repeat compensation claims (72 percent of FY 1995 level) would be expected in FY 2015.**

3. ***IF first-time compensation claims continue to be received, AND repeat claims activity diminishes as veterans age, then*** **301,822 repeat compensation claims (89 percent of FY 1995 level) would be expected in FY 2015.**

4. ***IF first-time compensation claims continue to be received, AND repeat claims activity remains consistent with current levels, then*** **370,853 repeat compensation claims (110 percent of FY 1995 level) would be expected in FY 2015.**

Major Findings and Conclusions

"Repeat" compensation claims accounted for 38 percent of all FY 1995 compensation claims initiated by veterans in all categories: original, repeat, dependency, and all other issues.

More repeat compensation claims were received during FY 1995 than any other broad category of either compensation or pension claims.

At least 46 percent of all pending repeat claims were from veterans who had service-connected disabilities rated 30 percent or lower.

- ***At least 76 percent of all pending repeat compensation claims were from veterans who had previously established at least one service-connected disability.***
- ***65 percent of pending repeat compensation claims were from veterans who were receiving monthly VA compensation at the time they reapplied.***

Among the 76 percent of repeat claims filed by service-connected veterans, 61 percent had combined disability evaluations of 0 percent to 30 percent.

In its current design, the VA compensation product provides life-long benefits to all veterans with disabilities unless the disabling effects disappear (for example, a wound scar may heal to the point that it no longer impairs earning capacity). This long-term approach to compensation for service-connected disabilities applies equally to the severely, the moderately, and the minimally disabled.

In combination with the long-term perspective of the compensation product, the incremental nature of the disability rating schedule appears to provide an incentive for veterans with lower disability ratings to reapply for increased benefits.

I. Introduction

The long-term population of veterans is difficult to project, since it is subject to variation on the basis of unpredictable political and military factors. Consequently, it is also difficult to estimate long-term workload demands on VA's benefits claims processing system. However, claims behavior patterns from the past several years show substantial claims activity among veterans who were discharged 10, 20, or even 50 years ago. By studying these patterns and appropriately projecting them into the future, it may be possible to estimate a long-term workload baseline that will represent minimum likely claims activity.

At first glance, this exercise may seem insignificant in the context of some unknown number of future claimants submitting initial claims for VA benefits. Commission research has established, however, that "repeat" compensation claims (defined in footnote 56 below) historically:

- outnumber initial claims by about three to one;
- account for more applications than any other broad category of compensation claims; and
- consume disproportionately more worker hours to process than "average" compensation claims.

VA's *process* for adjudicating claims and appeals has received considerable attention over the years from various oversight and review bodies. This commission examines the process once again. The process does not, however, exist in a vacuum, separate from and independent of its *product*. This is true not only for VA. Contemporary public administration authors acknowledge a "complex and intimate relationship between process and product. . . ."[55] VA's process is custom designed to deliver the product defined in statute, and it is the nature of this product that permits reapplication for benefits.

This paper addresses the relationship between VA's process and product and uses the resulting analysis to support practical, data-based projections about VA's future workload. The purpose is to provoke thoughtful discussion about the dynamics that give the system its shape and motivate the behavior of the parties to it, as well as to provide insight to long-term demands on the system.

[55] Barzelay, Michael, *Breaking Through Bureaucracy: A New Vision for Managing in Government*, pg. 123; University of California Press: Berkeley, 1992.

II. Future Workloads

While VA's claims adjudication process has a distinct beginning, this paper will present evidence that it has no distinct end. Several factors contribute to this unique condition. Among them are the following:

- The product is designed to conform to a veteran's changing disability status. [When a veteran's service-connected disability status changes, the process is reinvoked to bring the benefit into conformity with his or her current condition.]
- Provisions for reopening and/or appealing claims are such that virtually any decision can be further pursued.
- No time limit exists for filing benefit claims.

As a result of these and other factors, repeat claims dominate the compensation workload and, absent some fundamental change in program or policy, can be expected to do so well into the future. To examine the future effect of this phenomenon, the Commission combined certain demographic information assembled from pending claims with general claims and demographic data to project repeat compensation claims activity in 2015. The Commission's analysis was based on existing program characteristics (except where otherwise noted) and moderate assumptions about unknown future conditions. Assumptions are identified and discussed in Appendix D, which describes the methodology used for this analysis. The results of the analysis under the two scenarios studied show:

Scenario 1: If VA continues to receive new compensation claims over the next 20 years, at least 89 percent—potentially as many as 110 percent—of the number of repeat claims received during Fiscal Year (FY) 1995 could be expected in FY 2015.

Scenario 2: Even if no new compensation claims were received for 20 years beginning October 1, 1995, over half (55 percent of) the number of repeat claims received during FY 1995 could be expected in FY 2015.

Obviously, Scenario 2 is hypothetical. VA *has* continued to receive initial disability compensation claims since October 1995. However, the scenario is useful for the purpose of examining the effect of repeat claims on VA's overall workload.

III. Definitions

While the terms "process" and "product" may seem self-evident, it is not safe to assume that they each mean the same thing to everyone. Accordingly, we will attempt to give them brief, practical definitions for the purposes of this paper.

1. VA's Disability Benefit "Product."

To focus the discussion, and for other reasons described in detail below, the sole VA product addressed here is *service-connected disability compensation* (or, simply, "compensation").

(a) Definition. Service-connected disability compensation (the "product") is, fundamentally, a monthly payment to veterans who became disabled during or as a result of active military service.

(b) Discussion. The amount of compensation corresponds with the extent to which the veteran remains disabled, as determined under criteria described in VA's disability rating schedule. The rating schedule measures disability in increments of 10 percent.

The law requires that VA's rating schedule be "based . . . upon the average impairments of earning capacity resulting from such injuries in civil occupations."[56] Compensation is paid monthly until the disability improves or the veteran dies.

The disabling effects of a service-connected disability may change over the course of a veteran's lifetime. The compensation product is designed to accommodate such changes. A veteran may at any time apply for increased compensation on the grounds that his or her service-connected disability has worsened. The law does not explicitly limit the frequency with which applications for increased compensation may be filed, although it does require that such applications be supported with evidence. In practice, the Commission believes this provision is most often liberally interpreted to include credible statements from the veteran or other non-medical sources.

The product philosophy, as inferred from the law, is that compensation payments should "track" any change or progression in a veteran's service-connected disability. In practice, payment of compensation is based on the latest rating. Thus, if a service-connected disability was initially evaluated 10 percent disabling 40 years ago and the same disability is reevaluated today as 30 percent disabling, appropriate current payment is for 30 percent disability.

The fact that the product of the system is designed to "track" with a veteran's disability status inherently bonds the product to the process. Under the current statutory definition of the product as a dynamic, rather than a static, entitlement, repeated application of the process is necessary to achieve product integrity. This tacit engagement of the process by the product underscores Barzelay's observation concerning the complexity and intimacy of their relationship.

Disability compensation payments represent substantial current and future fiscal obligations. Effective December 1, 1995, the monthly compensation rate for 10 percent service-connected disability was $91. A veteran with a 10 percent service-connected disability is entitled to $1,092 per year.[57]

Projected over a lifetime, an "average" veteran (*i.e.,* one who lives to 77 years of age) first awarded 10-percent disability compensation at age 25 is entitled to $56,784.[58] An average veteran first awarded disability compensation at age 45 is entitled to $34,944.

2. VA's Disability Benefit Process.

(a) Definition. VA's process may be broadly defined, for purposes of this paper, as the means by which VA:

- identifies the issues requiring entitlement decisions;
- decides what evidence it needs to resolve a claim;
- obtains the evidence;
- evaluates entitlement;

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[56] Title 38, United States Code, §1155.

[57] See Table 61 in Section 6 of this chapter for a description of 10 percent disabilities for knee conditions.

[58] Assumptions used in these projections are: (1) average life expectancy of 77 years, (2) no cost-of-living adjustments (COLAs), and (3) no change in disability rating.

- awards or disallows compensation; and
- notifies the claimant of VA's decision, including the reasons and bases for it.

(b) Discussion. The process is designed to provide definitive answers to all or some of the following fundamental eligibility questions:

- Does a disability exist?
- Is it service connected? That is, was it incurred or aggravated during a period of active military service from which the veteran was honorably discharged?
- Was it a result of willful misconduct?
- To what extent does it disable the claimant?
- To what extent does the array of service-connected conditions disable the veteran?

Doing so inherently requires the following evidence:

- General military service records (to establish that the claimant's service meets the entitlement criteria).
- Current general medical evidence (to establish that a disability currently exists and adequate to medically relate the current condition to the period of service).
- Military medical records (to establish that the disability was related to service).
- Specific military service records (if existing evidence indicates the disability may have resulted from willful misconduct).
- Current specific medical evidence (to establish the degree of disability, in increments of 10 percent).

Should a claim arrive at VA without all evidence needed to answer every eligibility question, additional evidence is requested from the veteran, the military, and/or other sources, such as a VA medical center, a private physician, or a private hospital.
Once sufficient evidence is available, a VA decision maker resolves the claim on the basis of the answers to the questions asked above, in accordance with law, regulations, case law, and procedural guidance. Some parts of VA's process are prescribed in law. For example, if VA denies a benefit, the claimant must be informed of all evidence on which the decision was based and the "reasons and bases" for VA's decisions.

There is no time limit for filing a claim for service-connected disability compensation. However, evidence must show that the disability was incurred or aggravated during service (including any applicable presumptive period) and that a residual disability is present. Some initial claims are filed decades after discharge. In such cases, pertinent evidence is often difficult to locate and/or is incomplete.

Because the product is designed to track the veteran's disability status, assignment of a service-connected disability evaluation is seldom final. If the condition worsens or improves, a reevaluation is in order to reflect its current disabling effect. A veteran who believes his or her service-connected disability has worsened may request an increased evaluation at any time.

A veteran may appeal VA's decision, in which case VA reviews its actions and refers the appeal to the Board of Veterans Appeals (BVA). In addition to the veteran, the appeal process involves both the regional office, which conducts the preliminary review and notification to the appellant, and the BVA, which ultimately decides the appeal.

Apart from the appeal process, a veteran may submit "new and material" evidence to claim benefits which were previously denied by VA. New and material evidence may be submitted to support a finding of service connection or to support an increased evaluation of a service-connected disability. Each time a veteran reapplies for compensation with new and material evidence, VA's decision process is set in motion (though issues previously decided in the veteran's favor, such as honorable qualifying service, need not be revisited).

IV. Findings and Conclusions

1. Basis for Focusing on Compensation in this Analysis.

The service-connected disability compensation program was selected for this analysis because it:

(a) accounts for about 84 percent ($11.6 billion in Fiscal Year 1995, compared to $2.2 billion in pension) of all VA disability benefits paid to veterans;

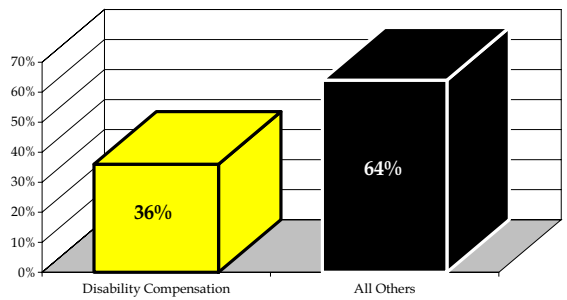
(b) is paid to over five times as many veterans as is pension (2.2 million receive compensation; 435,000 receive pension);

(c) consumes most of the worker hours available to process disability and death benefit claims;[59]

- In FY 1995, about 54 percent of all available worker hours were used to process compensation claims, which accounted for only about 36 percent of the completed cases that year (See Table 51 in Appendix C and Charts 51 and 52 below). Compensation cases are more labor intensive than average for other types of VA benefit claims.

[59] This statement applies to both claimant-generated *and* award maintenance actions. Fewer worker hours are attributable to compensation award *maintenance* than pension award *maintenance*. Overall, however, compensation worker hours exceed pension worker hours. Refer to Chapter VI, Section 9, and footnote 6 therein.

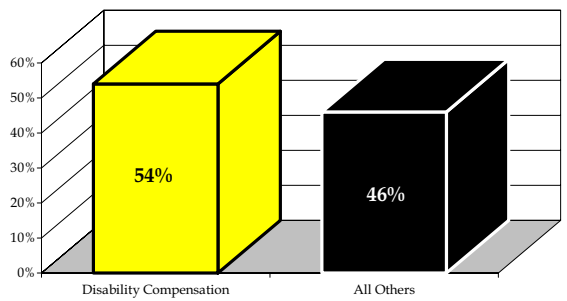
Chart 51 - Compensation & Pension Claims Completed in Fiscal Year 1995



Source: Appendix C, Table 51

(d) generally involves more complex decisional issues, in that disabilities must be traced to their origins in addition to being evaluated for their current disabling effects.

Chart 52 - Worker Hours Used to Work C&P Cases in Fiscal Year 1995



Source: Appendix C, Table 51

2. The Compensation Workload.

The three largest categories of compensation claims initiated by veterans are original claims, dependency claims, and repeat claims. Contrary to what many expect, repeat compensation claims consistently outnumber either original compensation or dependency claims. See Table 51 in Appendix C and Chart 53 below.

(a) *Original claims* are applications from veterans who have not previously applied for VA benefits. These claims accounted for 15 percent of all compensation claims received during FY 1995.

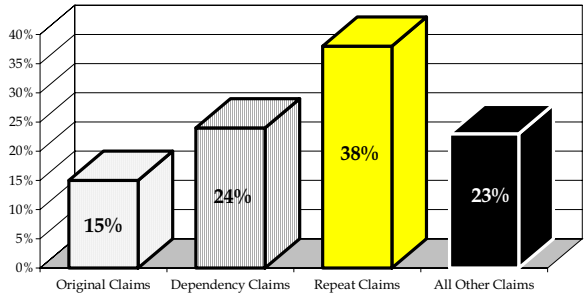
(b) *Dependency claims* are applications for additional compensation on the basis of marital and/or dependency status. These accounted for 24 percent of all FY 1995 compensation claim receipts.

(c) *Repeat claims*[60] are applications (excluding dependency claims) from veterans who have previously filed claims which VA either granted or denied. Veterans filing repeat claims may or may not already be receiving VA benefits. Repeat claims are applications for:

- increased evaluation of an established service-connected disability;
- service connection of a disability previously determined not to be service connected;
- service connection of a disability not previously claimed; or
- some combination of the first three categories.

These claims accounted for 38 percent of all FY 1995 compensation receipts.

Chart 53 - Compensation Issues Initiated by Veterans in Fiscal Year 1995



Source: Appendix C, Table 51

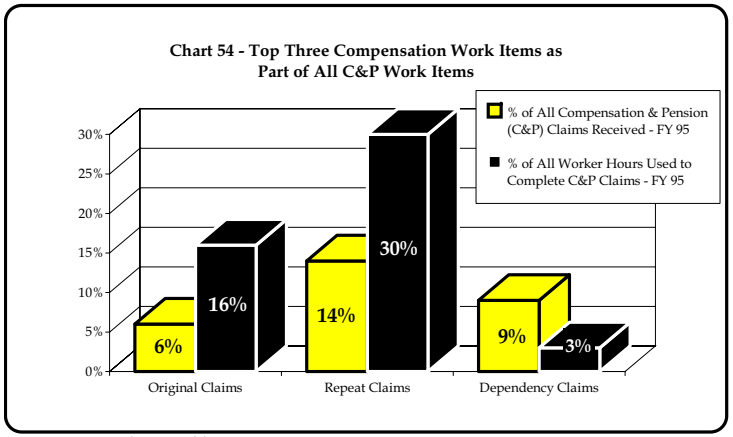
3. Repeat Compensation Claims Outnumbered All Other Claim Categories, Consume More Worker Hours.

[60] See footnote 16 in Section 2 of this Chapter for a description of the term "repeat claims."

More repeat compensation claims were received during FY 1995 than any other broad category of either compensation or pension claims. This is consistent with historical data. See Table 51 in Appendix C and Chart 54 below.

(a) Repeat compensation claims represented 14 percent of all compensation and pension claims received during FY 1995. The next largest category of compensation claims – applications for additional compensation based on dependency status – accounted for nine percent of all claims.

(b) Over half (about 55 percent) of the worker hours used to process all eight categories[61] of veteran-initiated compensation claims during FY 1995 were spent processing repeat compensation claims. Again, this is consistent with historical data. As a proportion of all categories of both compensation and pension issues, repeat compensation claims processing accounted for about 30 percent of all worker hours.



Source: Appendix C, Table 51

4. Compensation Claims in VA's Pending Workload.

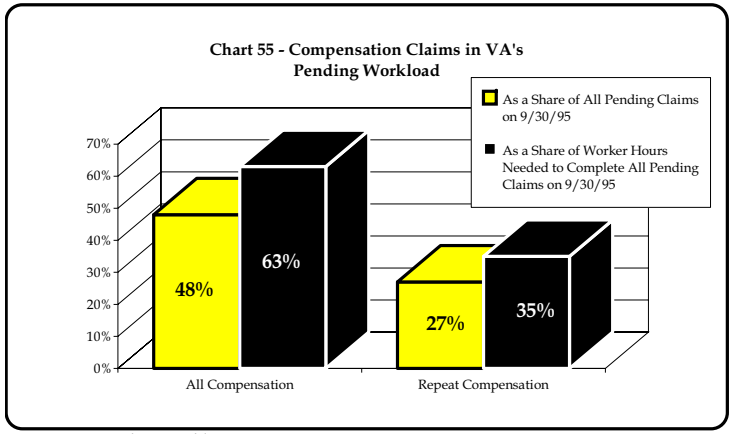
Data in this part were assembled from all claims pending as of September 30, 1995. The set of pending claims changes from day to day as new claims arrive and others are completed. Accordingly, all claims pending on any given date constitute a sample of all claims pending over time.

Compared with FY 1995 received claims, VA's pending workload had more compensation claims as a proportion of total claims. See Table 51 in Appendix C and Chart 55 below.

(a) As of September 30, 1995, compensation claims represented 48 percent of all pending claims. This is a considerably larger proportion than was observed in FY 1995 receipts. If this population of claims could be isolated and processed as a group, compensation issues would be expected to consume 63 percent of the total worker hours to completion.

[61] Refer to Table 51 in Appendix C for details concerning compensation claims categories.

(b) As of the same date, repeat compensation cases represented 27 percent of all pending claims. Again, this is a considerably larger proportion than observed in FY 1995 receipts. If, as above, repeat compensation claims could be isolated, they would be expected to consume 35 percent of the total worker hours to completion.



Source: Appendix C, Table 51

5. Characteristics of Repeat Compensation Claims.

Data in this part were assembled from all claims pending as of November 1, 1995. The set of pending claims changes from day to day as new claims arrive and others are completed. Accordingly, all claims pending on any given date constitute a sample of all claims pending over time.

(a) *At least 46 percent of **all** pending repeat claims were from veterans who had service-connected disabilities rated 30 percent or lower.*

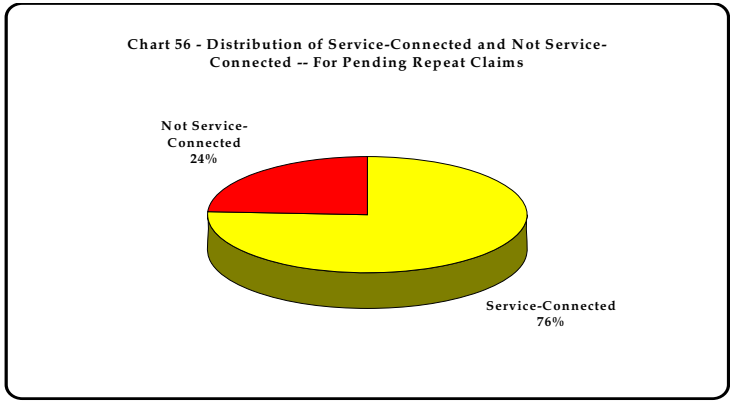
(1) *At least 76 percent of **all** pending repeat compensation claims were from veterans who had previously established at least one service-connected disability.*

(2) *65 percent of pending repeat compensation claims were from veterans who were receiving monthly VA compensation at the time they reapplied.*

(b) Detailed demographic information regarding claimants is not routinely available from VBA. While the distribution of age, period of service, and degree of disability is maintained for the population of veterans receiving compensation, it is not available for the population of veterans who submitted claims during any given time period. However, at the Commission's request, VBA was able to obtain this type of information for all claims pending as of November 1, 1995.

Demographic data extracted from the population of pending claims reveals the following information about *repeat claims pending as of November 1, 1995*:

(1) At least 76 percent (possibly as many as 80 percent)[62] were from veterans with VA-recognized service-connected disabilities. See Chart 56 below.



Source: Pending Issue File of 11/1/95

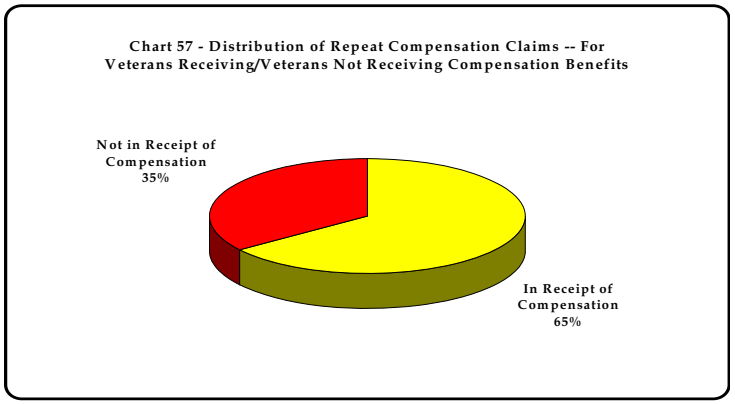
Service-Connected*	78,717
Not Service-Connected**	25,161
Total	103,878

*Note 1: The number of service-connected veterans includes: (1) those receiving disability compensation; (2) those previously disallowed because their only SC disability(ies) are rated zero percent; and (3) those in receipt of military retired pay in lieu of disability compensation.

**Note 2: The number of not service-connected includes 4,155 veterans receiving disability pension. While these veterans could have service-connected disabilities, the pending claims data do not show this information. If they had SC disability(ies), they were receiving disability pension as the greater benefit.

(2) 65 percent were from veterans receiving monthly compensation payments at the time they reapplied. See Chart 57 below.

[62] The Commission cannot precisely state the percentage of repeat claims from veterans with service-connected disabilities because four percent of repeat claims were from veterans receiving pension. These veterans could, but do not necessarily, have service-connected conditions in addition to their permanently and totally disabling nonservice-connected conditions. If ***all*** pension recipients with repeat claims on November 1, 1995, had service-connected disabilities, 80 percent of pending repeat claims would have been from service-connected veterans.



Source: Pending Issue File of 11/1/95

In Receipt of Compensation	67,372
Not in Receipt of Compensation	36,506
Total Pending Repeat Claims	103,878

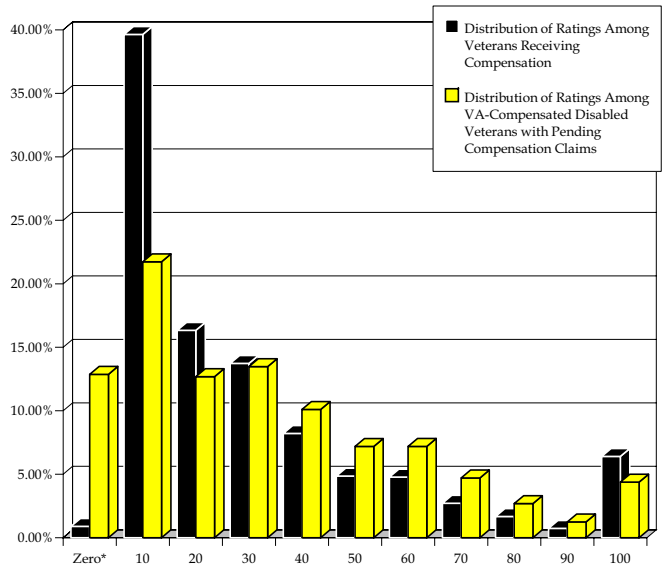
(3) As indicated above, at least 76 percent of repeat claims were filed by service-connected veterans. Among that 76 percent, at least 61 (possibly as many as 62)[63] percent (at least 46 percent of *all* repeat claimants) had combined disability evaluations of 0 percent to 30 percent.[64] See Table 52 in Appendix C and Chart 58 below.

(4) 56 percent were from veterans age 41 to 65; 23 percent were from veterans age 66 to 85. See Table 35 in Appendix B and Chart 35 in section 2 of this chapter.

[63] The Commission cannot precisely state the percentage of repeat claims from veterans with service-connected disabilities rated 30 percent or less because one percent of repeat claims were from veterans receiving military retired pay in lieu of compensation. Pending claims data do not show the service-connected disability ratings for these veterans. If ***all*** retired pay recipients of repeat claims on November 1, 1995, were rated 30 percent or less disabled by service-connected conditions, 62 percent of repeat claims from service-connected veterans would have been from those with combined ratings of 30 percent or less. Forty-seven percent of ***all*** repeat claims would have been from veterans with service-connected disabilities rated 30 percent or less.

[64] This finding is not remarkable in the sense that this group files a disproportionate number of claims. On the contrary, one would expect more claims from this group on that basis, since they account for 71 percent of the general population of service-connected veterans. Rather, the significance of this finding lies in the sheer number of claims emanating from this group.

Chart 58 - Combined Percentage of Service-Connected Disabilities

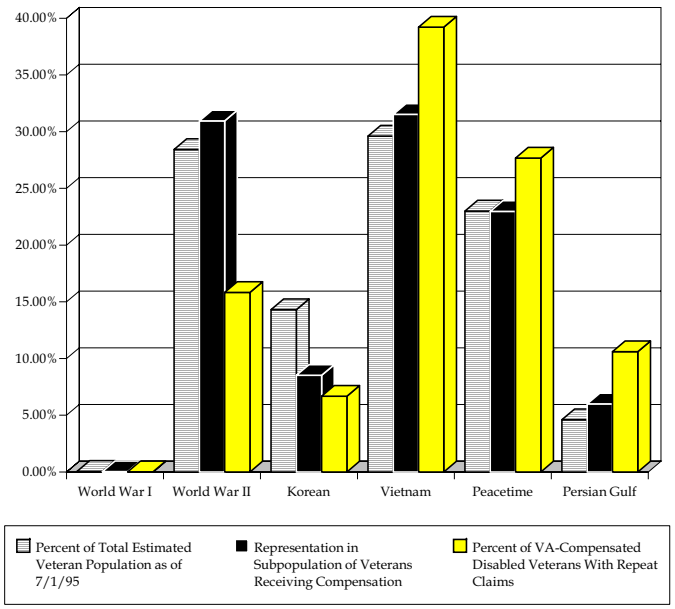


*19,968 veterans with 0% combined disabilities receive compensation for a statutorily protected disability, e.g., tuberculosis.

Source: Appendix C, Table 52

(5) 28 percent were from veterans of peacetime service. See Table 53 in Appendix C and Chart 59 below.

Chart 59 - Veterans Periods of Service



Source: Appendix C, Table 53

(c) Based on the one-day (November 1, 1995) sample[65] of all pending repeat compensation claims the Commission made the following observations.

(1) Repeat compensation claims were pending from veterans of all ages.

(2) There was a significant number of repeat claims pending from veterans of peacetime service. Payment of compensation is not limited to veterans of wartime service or those with combat experience. Any injury or disease incurred or aggravated during active military service is

[65] The Commission does not represent the data from the sample as being statistically valid in a pure or academic sense. Repeat claims filing behavior in the general veteran population may vary over time. However, the extensive data from this sample form a reasonable basis to support inferences in this report.

potentially compensable, regardless of its origin (unless it was the result of willful misconduct on the veteran's part). The disability compensation product as currently defined in law does not distinguish between a wartime combat gunshot wound, a peacetime knee injury incurred during an off-duty hours basketball game, or a case of adult-onset diabetes, except as to the extent of their disabling effects. If two such disabilities are equally disabling, they are equally compensable. The Commission does note, however, that military service members are "on duty" 24 hours per day and must obey military orders to report for any mission, hazardous or not.

(3) A significant number (nine percent) of pending repeat compensation claims were submitted by veterans who had previously been denied service connection for a disability.

(4) In its current design, the VA compensation product provides life-long benefits to all veterans with disabilities unless the disabling effects disappear (for example, a wound scar may heal to the point that it no longer impairs earning capacity). This long-term approach to compensation for service-connected disabilities applies equally to the severely, the moderately, and the minimally disabled.

(5) In combination with the long-term perspective of the compensation product, the incremental nature of the disability rating schedule appears to provide an incentive for veterans with lower disability ratings to reapply for increased benefits.

V. Preview of VA's Repeat Compensation Claims Expected in 2015

To examine the future effect of repeat claims on the system for processing service-connected disability compensation claims, the Commission combined certain demographic information assembled from pending claims with general and historical demographic data. These data were then analyzed to project repeat compensation claims activity in 2015. The Commission's analysis was based on existing program characteristics (except where otherwise noted) and moderate assumptions about unknown future conditions. Assumptions are identified and discussed in Appendix D, which describes the methodology used for this analysis.

If VA continues to receive new compensation claims over the next 20 years, at least 89 percent of the number of repeat claims received during FY 1995 could be expected in 2015.

Even if no new compensation claims were received for 20 years beginning October 1, 1995, over half (55 percent of) the number of repeat claims received during FY 1995 could be expected in FY 2015.

VI. 2015 Repeat Compensation Claims Model Projections

1. *IF* VA were to receive no first-time compensation claims after September 30, 1995, *AND* repeat claims activity diminishes as veterans age, then . . .

   - **184,371 repeat compensation claims (55 percent of the FY 1995 level) would still be expected in FY 2015.**

2. *IF* VA were to receive no first-time compensation claims after September 30, 1995, *AND* repeat claims activity remains consistent with current levels, then . . .

   - **241,790 repeat compensation claims (72 percent of the FY 1995 level) would be expected in FY 2015.**

3. *IF* first-time compensation claims continue to be received, *AND* repeat claims activity diminishes as veterans age, then . . .

   - **301,822 repeat compensation claims (89 percent of the FY 1995 level) would be expected in FY 2015.**

4. *IF* first-time compensation claims continue to be received, *AND* repeat claims activity remains consistent with current levels, then . . .

   - **370,853 repeat compensation claims (110 percent of the FY 1995 level) would be expected in FY 2015.**

Section 5 – Veterans Added to the Disability Compensation Rolls During Fiscal Year 1995

Major Findings and Conclusions

- ***In FY 1995, 98,664 veterans were added to the disability compensation rolls.***
- ***These veterans were found to have 262,775 service-connected disabilities, an average of 2.7 per veteran.***
- ***Fifty percent of the disabilities were rated non-compensable (zero percent disabling) by VA.***
- ***Thirty-six percent were evaluated 10 percent disabling.***
- ***In aggregate, 86 percent of the disabilities in this population of veterans were rated 10 percent disabling or less (i.e., 0 or 10 percent). Fourteen percent of the disabilities in this population were rated 20 percent disabling or more (i.e., 20, 30, 40, 50, 60, 70, 80, 90, or 100 percent).***
- ***Sixteen diagnostic codes (of the more than 700 codes in the Schedule for Rating Disabilities) accounted for almost 50 percent of all the conditions among the new accessions.***

I. Background

In essence, the disability compensation claims adjudication process is designed to:

- decide whether or not a veteran has a service-connected disability and, if so,
- evaluate the extent to which it impairs the veteran's earning capacity according to VA's Schedule for Rating Disabilities.

Basic outcomes of this process are:

- finding a claimant's disability(ies) not service connected;
- finding the disability(ies) service connected but not so disabling as to warrant compensation; or
- awarding compensation for service-connected disability(ies) that impairs earning capacity according to VA's rating schedule.

As part of their effort to understand the causes of the elevated claims backlog that, among other concerns, led Congress to create the Veterans' Claims Adjudication Commission, Commissioners sought demographic and disability data regarding veterans who recently filed compensation claims. A review of *all* claims was not possible, because the VBA does not keep this kind of information on claims that result in denial of compensation. Neither does VA presently have a public or internal collection of demographic and disability data describing its beneficiary population. Accordingly, the Commission elected to identify, assemble, and review available data concerning all FY 1995 claims resulting in *grants* of disability compensation.

The Commission collected various data from existing internal VA reports to profile the disabilities for which veterans were awarded disability compensation in FY 1995. The Commission used data from VBA's COIN CP-145 report, *Service-Connected Accessions by Disability*. This monthly report is cumulative within fiscal years and complete through the end of FY 1995 (September 30, 1995). It lists each diagnostic code (DC)[66] from *Title 38, Code of Federal Regulations, Part 4, Schedule for Rating Disabilities* and shows the distribution of ratings (from zero to 100 percent in increments of 10 percent) assigned during the year.

The following information applies to veterans added to the disability compensation rolls in FY 1995 with at least one *compensable* (*i.e.,* sufficiently disabling to warrant payment of compensation—10 percent or more according to the VA rating schedule) service-connected condition. These data do *not* reflect those cases in which VBA:

- awarded *increased* disability compensation (either as the result of an additional service-connected disability or increased evaluation of an existing disability) to veterans already on the rolls;
- denied service connection for the claimed condition(s); or
- rated all service-connected disabilities zero percent disabling and did not award compensation.

II. Findings

1. Fiscal Year 1995 Initial Disability Compensation Award Characteristics.

(a) In FY 1995, 98,664 veterans were added to the service-connected disability compensation rolls.

(b) These veterans were found to have 262,775 service-connected conditions, an average of 2.7 per veteran.

Each claimed condition had to be researched, examined, and rated. Consequently, 262,775 discrete, formally recorded decisions[67] were necessary for *only* those disabilities found service connected in these cases: about 2.7 per claim. This does not include the methodologically identical activities needed to support the unknown number of denials of service connection for separate claimed conditions in these same cases. Neither does it include, as noted in the Background, cases in which VBA awarded increased compensation, denied any service connection, or rated all service-connected conditions zero percent disabling and did not award compensation. Each of these separate rating decisions, whether benefits are granted or denied, is subject to appeal to the BVA and CVA.

2. Over 85 Percent of Disabilities Among New Compensation Awards in FY 1995 Were Rated Zero Percent or 10 Percent Disabling.[68]

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[66] A diagnostic code is a 4 digit number from 5000 through 9916 that corresponds with a listed ratable disability. VA's rating schedule contains over 700 diagnostic codes.

[67] Each decision must provide definitive answers to all or some of the following fundamental eligibility questions: (1) Does a disability exist? (2) Is it service-connected? (3) Was it a result of willful misconduct? (4) To what extent does it disable the claimant? (5) To what extent does the array of service-connected conditions disable the veteran? (6) To what extent do all disabilities, service-connected and nonservice-connected alike, disable the veteran?

[68] See Tables 59 and 60, and Chart 60 below, for additional information.

(a) 50 percent of the disabilities were rated noncompensable (zero percent disabling) by VA; and

(b) 36 percent were rated 10 percent disabling.

(c) In aggregate, 86 percent of all disabilities in this population of veterans were rated 10 percent disabling or less (*i.e.,* 0 or 10 percent). Fourteen percent of all disabilities in this population were rated 20 percent disabling or more (*i.e.,* 20, 30, 40, 50, 60, 70, 80, 90, or 100 percent).

The Commission's analysis of these data disclosed:

(d) Sixteen diagnostic codes (of the more than 700 codes in the *Schedule for Rating Disabilities*) accounted for nearly 50 percent of all conditions among new accessions. Table 59 contains summary information about these 16 diagnostic codes.

(e) Eight of the most commonly occurring conditions were musculoskeletal in nature and three others were related to scars or other skin conditions.

Table 59 - Sixteen Most Frequently Occurring Rating Codes -- New Accessions to the Compensation Rolls for FY 1995

Code	Description	Percentage Evaluation for Compensation				**% of All Disabilities
		Zero %	10%	100%	*Total	
5257	Knee, Impairment, Other	5,802	8,622	16	15,388	5.86%
5299	Skeletal, by Analogy***	9,646	4,390	6	14,714	5.60%
7805	Scars, Other	13,061	357	0	13,433	5.11%
5295	Lumbosacral Strain	3,166	5,762	1	10,254	3.90%
6100	Hearing Impairment	9,932	21	0	9,954	3.79%
5010	Arthritis, Due to Trauma	1,950	5,665	7	8,534	3.25%
6260	Tinnitus	1,868	6,233	0	8,101	3.08%
7101	Hypertension	1,448	6,063	12	7,871	3.00%
9411	Post Traumatic Stress Disorder	87	2,605	676	7,349	2.80%
7336	Hemorrhoids	6,434	350	1	6,819	2.59%
5293	Intervertebral Disc Syndrome	616	3,253	4	6,426	2.45%
5003	Arthritis, Degenerative	1,408	3,737	4	5,863	2.23%
5271	Limited Ankle Motion	2,641	2,052	1	4,928	1.88%
5284	Foot Injuries (Other)	3,022	892	1	4,014	1.53%
7899	Skin Condition	2,732	1,078	4	3,881	1.48%
7800	Scars, Disfiguring Head, Face or Neck	2,970	535	0	3,549	1.35%
	Totals	66,783	51,615	733	131,078	49.88%

Source: VBA COIN CP-145 Report, Cumulative through September 1995
* Total of all percentage evaluations for each diagnostic code (zero through 100 percent)
** Percent of all 262,775 disabilities
*** Diagnostic codes ending in "99" are used to rate, by analogy, to a more specific diagnostic code. This diagnostic code was frequently used to cover undiagnosed joint pain in Persian Gulf veterans. Effective May 7, 1996, diagnostic code 5025 for Fibromyalgia was added.

Number of Service-Connected Conditions by Degree of Disability for Accessions to Disability Compensation Rolls in Fiscal Year 1995

	Conditions	Percent
Zero %	130,463	49.65%
10%	95,814	36.46%
20%	13,384	5.09%
30%	12,357	4.70%
40%	2,157	0.82%
50%	2,571	0.98%
60%	1,379	0.52%
70%	423	0.16%
80%	81	0.03%
90%	31	0.01%
100%	4,115	1.57%
Total	262,775	100.00%
Average Number of SC Conditions per Veteran		2.66

Table 60

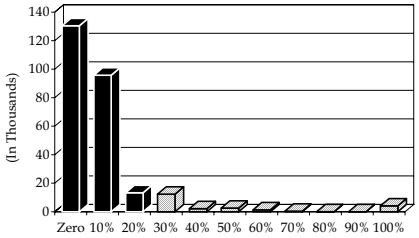

Chart 60

Source: VBA COIN CP-145 Report, Cumulative through September 1995

3. Knee Conditions Were the Most Frequently Service-Connected Disability Among New Accessions in FY 1995.[69]

Review of the FY 1995 disability compensation award data showed that knee conditions assigned DC 5257 in VA's rating schedule were the most frequently service-connected disability that year. The VA rating schedule narratively defines DC 5257 as "Knee, other impairment of." It is one of many codes in the schedule that describe impairment of the lower extremity, and one of six used to evaluate disability of the knee. It is often applied as a generic code for conditions that are not adequately described by a more specific diagnostic code.[70] Knee impairments under DC 5257 are rated as follows:

- *severe* clinical symptoms are to be rated 30 percent disabling;
- *moderate* clinical symptoms are to be rated 20 percent disabling; and
- *slight* clinical symptoms are to be rated 10 percent disabling;

Unless the evidence clearly shows ankylosis, cartilage damage or removal, limitation of flexion or extension, nonunion or malunion, claims for knee conditions are usually rated under this diagnostic code.

(a) 15,388 disabilities were granted service connection under DC 5257.

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[69] See Table 59, "Total" column above. Also, Section 6 of this Chapter, *Review of Cases Rated 10 Percent Service-Connected for Knee Condition* contains additional information regarding service-connection of knee disabilities during FY 1995.

[70] See Table 61 in Section 6 of this Chapter for a description of the diagnostic codes used for knee disabilities.

(b) This total could include service connection of both knees for one veteran.

(c) Conditions evaluated under DC 5257 represent nearly six percent of all disabilities for which service connection was granted in FY 1995.

(d) Over 50 percent of the disabilities granted service connection under DC 5257 in FY 1995 were evaluated 10 percent disabling.

4. New Accessions Represent Fiscal Obligations.[71]

Accessions to the disability compensation rolls represent current and future fiscal obligations. Effective December 1, 1995, the monthly compensation rate for 10 percent service-connected disability was $91. Assuming each of the 8,622 veterans granted a 10-percent evaluation for a knee condition under diagnostic code 5257 in FY 1995 had no other compensable condition(s):

(a) *each* is entitled to $1,092 per year, and,

(b) *in total*, they are entitled to $9,415,224 per year.

Projected over a lifetime:[72]

(c) an average veteran (*i.e.,* one who lives to 77 years of age) first awarded disability compensation at age 25 is entitled to $56,784,

(d) an average veteran first awarded disability compensation at age 45 is entitled to $34,944.
(e) *in total*, 8,622 veterans first awarded compensation at age 25 will be entitled to $489,592,648 during their lives for 10 percent disabilities of the knee.

III. Conclusions

1. The disability data concerning veterans newly awarded disability compensation in FY 1995 provide insight to the nature of disabilities for which compensation is paid, the complexity of the process by which compensation is awarded, and the fiscal significance of the process for adjudicating compensation claims.

[71] Congress has not required VA to conduct actuarial analyses to estimate future fiscal obligations of the compensation and pension programs (see Chapter IV, *Directions: The Strategic Perspective* for additional information on actuaries).

[72] Assumptions used in these projections are: (1) average life expectancy of 77 years, (2) no cost-of-living adjustments (COLAs), and (3) no change in disability rating.

Section 6 – Review of Cases Rated 10 Percent Service-Connected for Knee Condition

Major Findings and Conclusions

- ***Among all new awards of disability compensation during FY 1995, knee conditions comprised the single most common classification of service-connected disability. In the sample of service-connected knee conditions reviewed by the Commission, over half of these were unrelated to the service member's performance of duty.***
- ***Forty-one percent of the knee conditions reviewed were sports related.***
- ***Peacetime veterans constituted the largest service-period group of veterans awarded compensation for knee disabilities.***

I. Background

Veterans were awarded compensation for knee disabilities (diagnostic code (DC) 5257) more frequently than any other single condition during FY 1995.[73] Knee conditions under that diagnostic code accounted for 15,388 of the 262,775 disabilities for which service connection was granted to all 98,664 veterans who began receiving disability compensation during FY 1995. Section 5 of this chapter analyzes demographic and disability data pertaining to those veterans. The following analysis focuses on service-connected knee conditions because the Commission wanted information about disabilities that occur most often. Based on that criterion (disabilities that occur most often) and the FY 1995 distribution of disabilities among veterans newly awarded compensation, the Commission chose to develop additional information about veterans with service-connected knee conditions.

The Commission chose to examine the process and outcomes associated with the VBA's evaluation of knee disabilities as common, and therefore arguably representative, injuries. Because data in the form needed to pursue this line of study are not maintained in the VBA or other areas of the Department, the Commission requested an extract of targeted information from the VBA's Compensation and Pension (C&P) data base.

The extract revealed the following:

- The entire extract consisted of more than 9,500 pages;
- 247,100 veterans currently receiving compensation or pension have at least one service-connected knee disability;
- In all, those veterans have 283,813 service-connected knee conditions.

A timely national review of the identified cases, even by sampling, was not feasible. Instead, the Commission reviewed a small, statistically valid random sample of 107 of these cases[74] from a single field

[73] See Table 59 in Section 5 of this chapter for the 16 most frequently occurring rating codes for FY 1995.

[74] The sample is statistically valid to the universe of 6,788 matched records maintained at the field office.

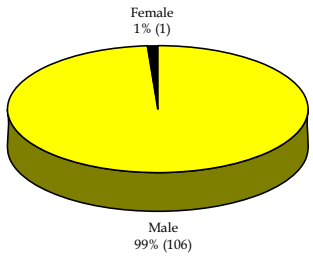
office to learn more about the veterans and about VA's process for evaluating their disabilities. The review was conducted according to a Commission-developed instrument for collecting the data. Based on the total of 6,788 matched C&P master records at the regional office, professional staff there applied a sampling process that achieved random selection and statistical validity.

II. Findings

1. About the Veterans.

(a) Sex of Veteran. In the sample, 99 percent of the veterans were male. The general veteran population in 1995 was over 95 percent male. The proportion of women in the general veteran population is expected to increase at a slow rate as the older, predominantly male, veteran population declines.[75]

Chart 61 - Sex of Veteran



(b) Branch of Service. Army veterans made up 45 percent of this group (see Chart 62a below). To judge the significance of this finding, the Commission sought branch of service data for the general veteran population. However, no such data were available. At the end of FY 1993, 34 percent of active duty service personnel were in the Army (see Chart 62b).

[75] *Annual Report of the Secretary of Veterans Affairs*, Fiscal Year 1995, pg. 2.

Chart 62a - Branch of Service -- Sampled Veterans with Service-Connected Knee Conditions

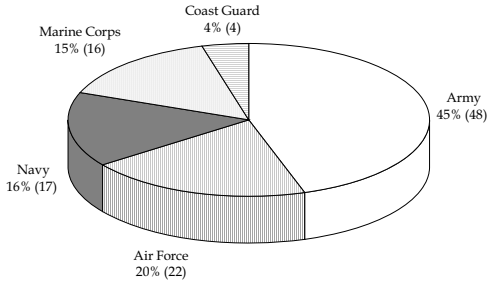
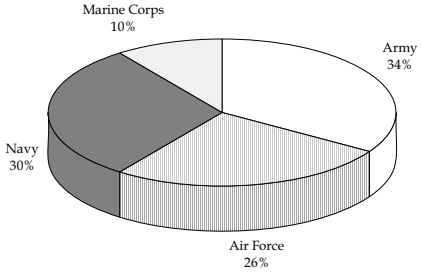
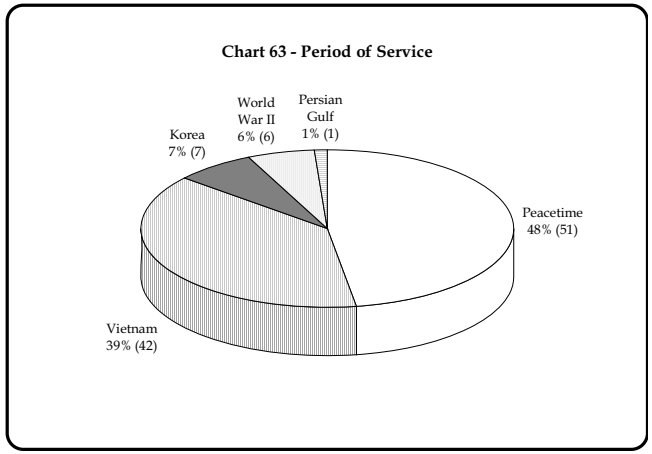


Chart 62b - Branch of Service -- Active Duty Personnel -- End of FY 1993*

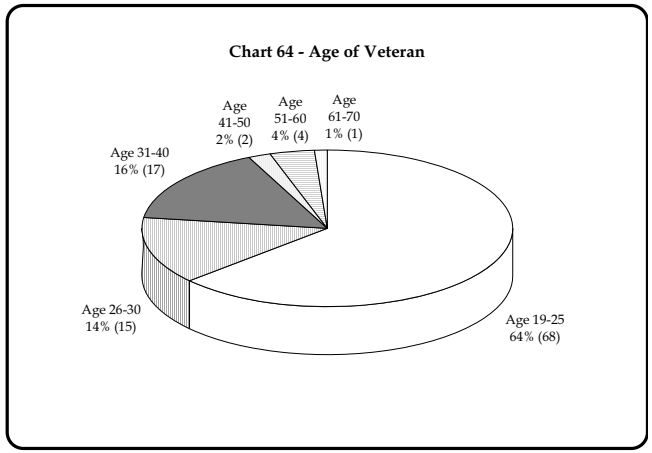


*Coast Guard included in Navy.

(c) Period of Service. Forty-eight percent of this group had Peacetime service.

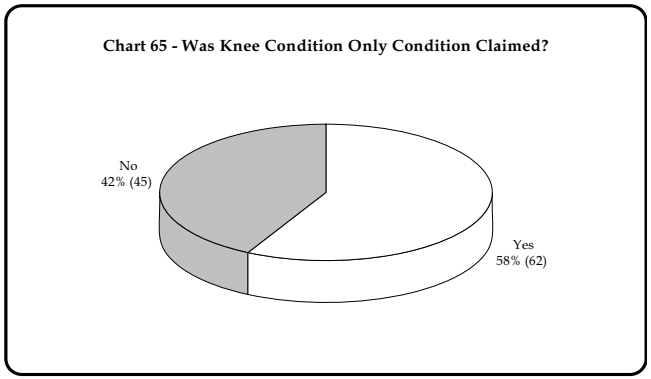


(d) Age of Claimant When Filing for Knee Condition. Sixty-four percent (68 cases) of this group were between ages 19 and 25 when they first claimed service connection for knee disability. The 19 to 40 age group makes up 94 percent of the sample.



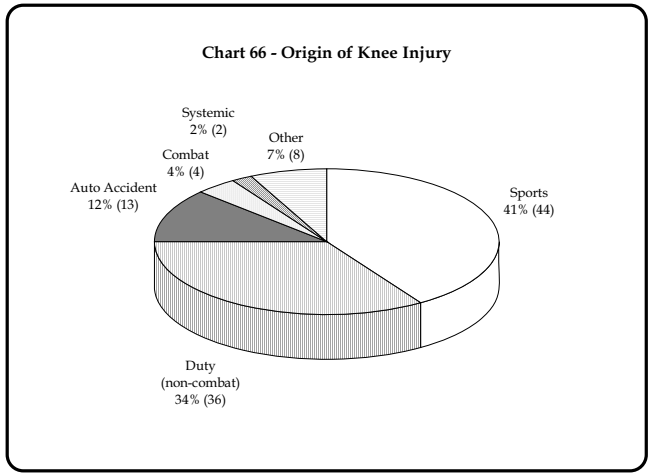
2. About the Knee Conditions.

(a) In 58 percent (62 cases) of the cases, the knee condition was the only condition claimed.



(b) Origin of Injury. Forty-one percent (44 cases) of the knee conditions were sports related, 34 percent (36) were duty related (noncombat), and 12 percent (13) were related to auto accidents. Only four percent (four) of the knee conditions were combat related.[76]

[76] VBA Manual M21-1, Part VI, paragraph 3.26b, defines "combat disability" as "any injury received in action against an enemy of the United States or as a result of an act of such an enemy. This definition includes wounds by missiles and/or injuries received in accidents, explosions, airplane crashes, etc., during a period when the veteran was in combat. Diseases directly attributable to exposure to the elements as an incident of action against the enemy, or the result of acts of the enemy (including exposure following airplane crash, shipwreck, etc.) are to be held as of combat origin."

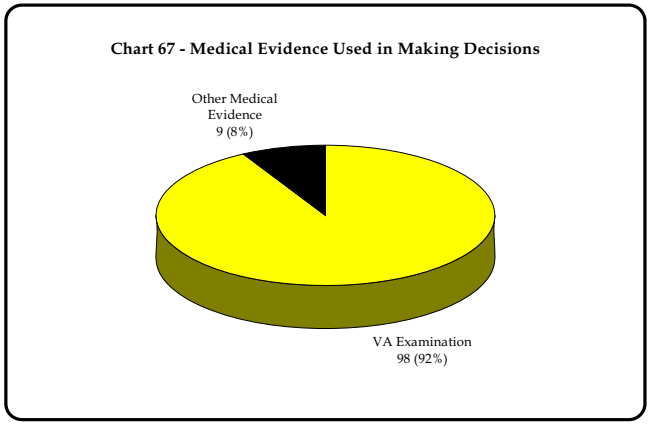


3. About the Process.

The Commission also learned:

(a) Service medical records and VA examinations were the primary evidence used in deciding claims for service connection of knee disabilities.

(b) A VA examination was conducted in 98 (or 92 percent) of the cases reviewed. Military hospital summaries, outpatient treatment records, or separation examinations were used in place of a VA examination in the other nine (eight percent) of the cases.



(c) In the 98 cases including a VA examination, all 98 examinations were performed by a VA medical center. No examination was performed by a contract or private physician.

(d) In 96 percent of the VA examination cases, three or more diagnostic and evaluative tests were completed.[77]

(e) An X-ray of the knee was taken in 93 percent of the cases reviewed.

(f) In 42 percent of the cases, the X-ray showed no abnormality of the knee. However, other diagnostic and evaluative tests produced findings that were found to warrant 10 percent evaluations.

(g) In 98 percent of the cases reviewed, service medical records were fully documented. This indicated the veteran had either:

- received numerous medical treatments for the knee during service,
- had surgery on the knee during service, or
- had a cast on the knee during service.

[77] See Table 62 below for a listing of tests.

Table 61 - The Knee and Leg

Code	Description	Percent Disability
5256	Knee, ankylosis of:	
	Extremely unfavorable, in flexion at an angle of 45° or more	60
	In flexion between 20° and 45°	50
	In flexion between 10° and 20°	40
	Favorable angle in full extension, or in slight flexion between 0° and 10°	30
5257	Knee, other impairment of:	
	Recurrent subluxation or lateral instability:	
	Severe	30
	Moderate	20
	Slight	10
5258	Cartilage, semilunar, dislocated, with frequent episodes of "locking," pain, and effusion into the joint	20
5259	Cartilage, semilunar, removal of, symptomatic	10
5260	Leg, limitation of flexion of:	
	Flexion limited to 15°	30
	Flexion limited to 30°	20
	Flexion limited to 45°	10
	Flexion limited to 60°	0
5261	Leg, limitation of extension of:	
	Extension limited to 45°	50
	Extension limited to 30°	40
	Extension limited to 20°	30
	Extension limited to 15°	20
	Extension limited to 10°	10
	Extension limited to 5°	0
5262	Tibia and fibula, impairment of:	
	Nonunion of, with loose motion, requiring brace	40
	Malunion of:	
	With marked knee or ankle disability	30
	With moderate knee or ankle disability	20
	With slight knee or ankle disability	10
5263	Genu recurvatum (acquired, traumatic, with weakness and insecurity in weight-bearing objectively demonstrated)	10

Source: Title 38, Code of Federal Regulations, Part 4, Schedule for Rating Disabilities, §4.71a

Table 62 - Listing of Diagnostic and Evaluative Tests

Diagnostic and Evaluative Tests

1. Range of motion
2. X-ray or other radiographic test (MRI, bone scan, etc.)
3. Ligament test, e.g., Lachman
4. Meniscus test, e.g., McMurray
5. Observation and description of tenderness or pain on motion
6. Lack of, or presence and description of, effusion
7. Lack of, or presence and description of, grinding on motion

Suggested Ranking of Criteria to Diagnose a Knee Disability

1. X-ray or other radiographic test (MRI, bone scan, etc.).
2. Ligament or meniscus test (Lachman, McMurray, Apley, Drawer Sign, etc.) which can determine the internal damage.
3. Lack of, or presence of, grinding on motion as felt by an examiner and not reported as a subjective complaint.
4. Lack of, or presence of, effusion.
5. Observation and description of tenderness or pain on motion.

Suggested Ranking of Criteria to Determine the Assignment of the Correct Percentage Evaluation

1. Range of motion and Observation and description of tenderness or pain on motion. There should be objective indications of pain on motion noted by the examiner.
2. Ligament or meniscus test to determine chronic instability of the knee joint or tears within the knee.
3. X-rays to determine any new onset of arthritis warranting a compensable evaluation in the absence of limitation of motion.
4. Lack of, or presence of, grinding on motion as felt by an examiner.
5. Lack of, or presence of, effusion.

Source: Developed by the VCAC based on discussions with doctors in the C&P Service and in consultation with an orthopedic doctor at the VARO St. Petersburg, Fl.

III. Conclusions

1. Among all new awards of disability compensation during FY 1995, knee conditions comprised the single most common classification of service-connected disability. In the sample of service-connected knee conditions reviewed by the Commission, over half of these were unrelated to the service member's performance of duty.

2. Peacetime veterans constituted the largest service-period group of veterans awarded compensation for knee disabilities.

3. Relevant information needed to assess knee disabilities can be divided into two separate categories.[78]

   (a) Objective tests such as x-ray or other radiographic tests (MRI, bone scan, etc.) are most useful for *diagnosing* a knee disability.

   (b) Accurate physical descriptions by the examiner, to include such findings as range of motion, observation and description of tenderness or pain on motion, and ligament tests, are useful for evaluating *degree* of disability.

[78] See Table 62 above.

Section 7 – Comparison of Death Rates Among:

Veterans Receiving Disability Compensation, Veterans with Service-Disabled Veterans Life Insurance, and the United States Male Population

Major Findings and Conclusions

- ***When no adjustment is made for age, the average death rate from 1990 through 1995 for all veterans receiving disability compensation is two and one-half times the death rate of the male U.S. population in 1992.***
- ***When adjusted for age, the number of actual deaths in FY 1995 among veterans receiving disability compensation was almost equal to (within two percent less than) the expected number.***
- ***Even when adjusted for age, the number of actual deaths among veterans with SDVI in FY 1995 was more than double the expected number.***
- ***Among all veterans receiving disability compensation, 31 percent are over age 70. This compares to seven percent of the 1992 male U.S. population and 22 percent of the general veteran population in that age group.***
- ***Among all veterans receiving disability compensation, 17 percent are age 70 to 74. This compares to three percent of the 1992 male U.S. population and 12 percent of the general veteran population in that age group.***
- ***Death rates by age group among the U.S. male population in 1992 accurately predicted deaths among veterans receiving disability compensation in 1995. The same data did not accurately predict deaths among veterans with SDVI, a substantially smaller population.***
- ***The difference in the general death rates—without regard to age groups—for the male U.S. population over age 20 and veterans receiving disability compensation is probably attributable to the significantly different demographic characteristics of the two populations. Compared with the age distribution among the general male population in the U.S., the veteran population has a significantly higher proportion of older members.***

I. Background

Commissioners raised questions about existing data on veterans receiving disability compensation, which appeared to suggest inconsistency between rates of death among veterans and those among the general U.S. male population. With no detailed mortality data specific to the veteran population available, the Commission developed a model to compare death rates among:

- veterans receiving disability compensation;

- veterans with Service-Disabled Veterans Insurance (SDVI);[79] and
- males 20 years or older in the U.S. population.

II. Methodology

The Commission's model for comparing death rates among veterans with those among males in the general population is intended to raise rather than answer questions. It will not yield a precise representation of reality, but it should provide a broad, general basis for comparison. For example, the Commission controlled only superficially for gender (95.4 percent of veterans are male, so the male population was used as a comparison group) and not at all for race.

The Commission used the following information obtained from the VBA to construct its model.

- The report "Deaths and Death Rates by Age, Race, and Sex; United States, 1992" published by the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics, U.S. Department of Health and Human Services;
- the number of veterans receiving disability compensation for FYs 1990 through 1995 and the number of deaths among them each year;
- the number of veterans with SDVI for FYs 1990 through 1995 and the number of deaths among them each year; and
- the ages of veterans receiving disability compensation and those with SDVI as of September 30, 1994.

The Commission constructed its model by:[80]

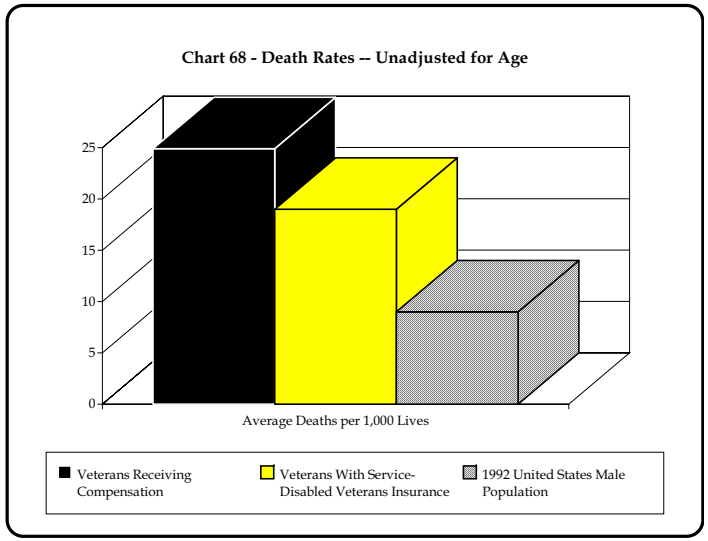
- grouping veterans receiving disability compensation and those with SDVI into the same five-year age groups as were used by the CDC in their 1992 study (*i.e.,* 20-24, 25-29, etc.);
- discarding data applicable to males under age 20;
- determining the expected deaths by age groups in the two veteran populations by calculating the products of:
  - (a) the population of veterans receiving disability compensation by age group and CDC death rates by age group among the general male population in the U.S.; and
  - (b) the population of veterans with SDVI by age group and CDC death rates by age group among the general male population in the U.S.; and
- comparing expected deaths among veterans receiving disability compensation and those with SDVI for FY 1995 with actual deaths among these groups.

III. Findings

[79] The SDVI program provides life insurance for veterans who have service-connected disabilities and who had service during or after 1951 for the same premiums as those charged to healthy insureds.

[80] See Tables 63 to 66 in Appendix E for complete data.

1. When no adjustment is made for age, the average death rate from 1990 through 1995 for all veterans receiving disability compensation is two and one-half times the death rate of the male U.S. population in 1992 (see Chart 68 below).[81]
2. When no adjustment is made for age, the average death rate from 1990 through 1995 for all veterans with SDVI is twice the death rate of the male U.S. population in 1992 (see Chart 68 below).[82]



Source: Veterans' Claims Adjudication Commission

3. When adjusted for age, the number of actual deaths in FY 1995 among veterans receiving disability compensation was almost equal to (within two percent less than) the expected number (55,791 actual and 56,611 projected by the model).[83] See Chart 69 below.
4. Even when adjusted for age, the number of actual deaths among veterans with SDVI in FY 1995 was more than double the expected number (4,060 actual and 1,984 projected).[84] See Chart 69 below.

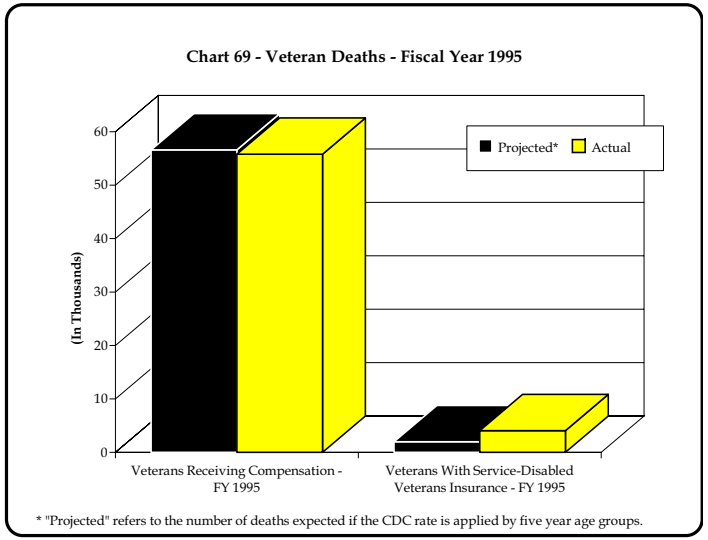
[81] See Tables 63 and 66 in Appendix E for additional data.

[82] See Tables 63 and 66 in Appendix E for additional data.

[83] See Table 64 in Appendix E for additional data.

[84] See Table 65 in Appendix E for additional data.

5. Among all veterans receiving disability compensation, 31 percent are over age 70. This compares to seven percent of the 1992 male U.S. population and 22 percent of the general veteran population in that age group (see Chart 70 below).[85]



Source: Veterans' Claims Adjudication Commission

6. Among all veterans receiving disability compensation, 17 percent are age 70 to 74. This compares to three percent of the 1992 male U.S. population and 12 percent of the general veteran population in that age group (see Chart 70 below).[86]

7. Among all veterans with SDVI, five percent are over age 70. This compares to seven percent of the 1992 male U.S. population and 22 percent of the general veteran population in that age group (see Chart 70 below).[87]

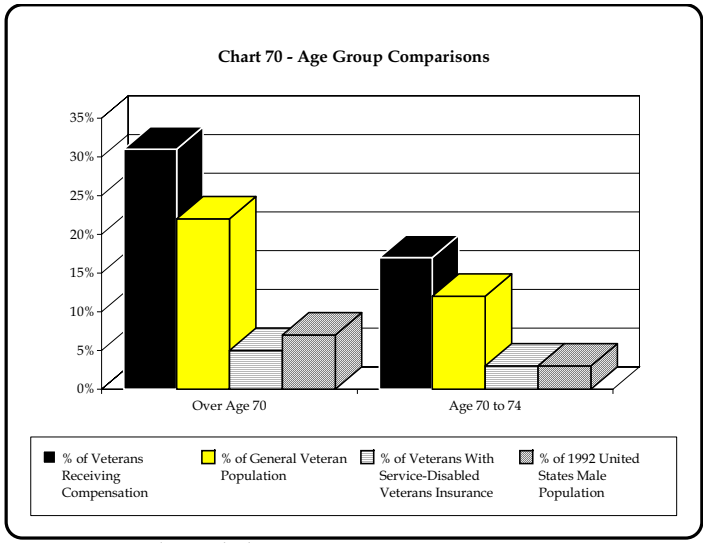
8. Among all veterans with SDVI, three percent are age 70 to 74. This compares to three percent of the 1992 male U.S. population and 12 percent of the general veteran population in that age group (see Chart 70 below).[88]

[85] See Tables 63, 64, and 67 in Appendix E for additional data.

[86] See Tables 63, 64, and 67 in Appendix E for additional data.

[87] See Tables 63, 65, and 67 in Appendix E for additional data.

[88] See Tables 63, 65, and 67 in Appendix E for additional data.



Source: Veterans' Claims Adjudication Commission

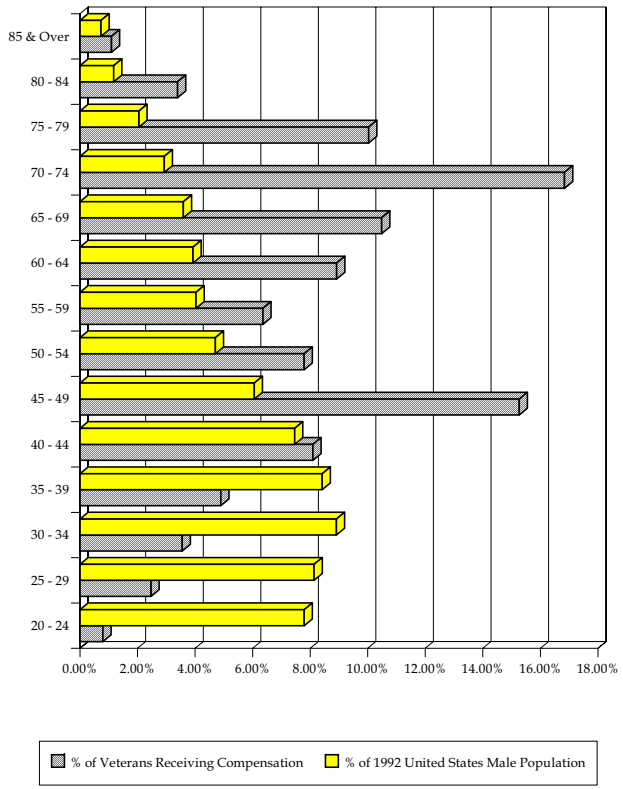
IV. Conclusions

1. Death rates by age group among the U.S. male population in 1992 accurately predicted deaths among veterans receiving disability compensation in 1995. The same data did not accurately predict deaths among veterans with SDVI, a substantially smaller population.

2. The difference in the general death rates—*without regard to age groups*—for the male U.S. population over age 20 and veterans receiving disability compensation is probably attributable to the significantly different demographic characteristics of the two populations. Compared with the age distribution among the general male population in the U.S., the veteran population has a significantly higher proportion of older members.[89]

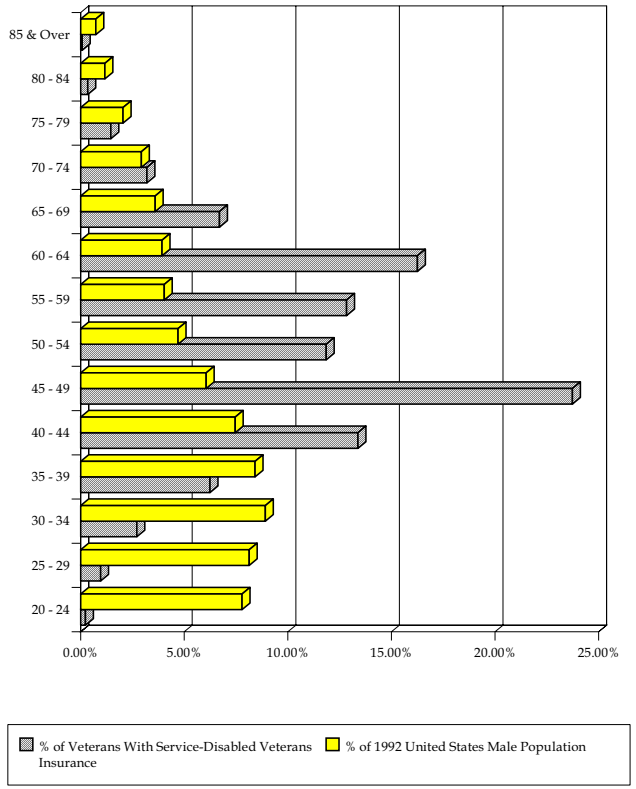
[89] See Charts 71 and 72 below.

Chart 71 - Comparison of Age Groups -- Veterans Receving Compensation and the U.S. Male Population



Source: Veterans' Claims Adjudication Commission

Chart 72 - Comparison of Age Groups -- Veterans With SDVI and the U.S. Male Population



Source: Veterans' Claims Adjudication Commission

III. Interaction: The Veteran Meets the System

Major Findings and Conclusions

The Compensation and Pension Service is conducting a business process reengineering (BPR) project for claims processing which may address some of the Commission's findings. However, because the VBA has not implemented a new process, the Commission cannot evaluate the project's effect.

The VBA can improve its explanation to veterans about what happens after a claim is filed and can keep the claimants better informed about the status of their claims.

There are ample opportunities to build a partnership with veterans and their agents as part of claims processing. However, any partnership relationship must be sensitive to the legal requirements of agents to provide effective representation to their clients. Because of the potential liability of agents, the partnership may have some limitations. In any event, the responsibility of agents and other representatives is different from that of VA employees.

The claims application process is very complex and frustrating to veterans. The application form is in need of serious revision both for ease of use by veterans and by adjudication division employees. Veterans need more information about what evidence is required to support a claim and how to get it. They also need better information about the steps in the claims process, how long an average claim should take, and how long their claim will take if different from the average.

VSO representatives provide valuable services to claimants at no charge. Claimants represented by these organizations appear to be more disposed than other claimants to appeal decisions to the Board of Veterans' Appeals but not consistently more likely to succeed. It is in the interests of both VSOs and the government to identify and cultivate new ways to work together for the benefit of all claimants.

Given the availability, popularity, and capability of VSOs, the effect on the system of attorneys and agents functioning as claimant representatives is significant only at the level of judicial appeal.

Veterans who appoint representatives overwhelmingly choose VSOs for representation before regional offices and the Board of Veterans Appeals.

The benefit of maintaining the system for compensating attorneys from past-due benefits in its current form appears to be outweighed by the cost of operating it, particularly in an environment of scarce resources.

Major Recommendations

1. VA and VSOs Should Build Explicit Claims-Processing Partnership

Meaningful partnerships must be built by the partners themselves. The Commission recommends that the Secretary invite representatives of VSOs to join VBA in discussions leading to establishment of a formal VA-VSO claims processing partnership. These discussions would be conducted in the context of the VBA's promising BPR framework.

Because VA and VSOs have been known to have legitimate, often strongly held, differences of professional opinion regarding claims processing issues, the Commission believes establishing a cooperative tone for these discussions is critical to their success. To that end, the Commission offers the following explicit suggestions for the conduct of these discussions:

- *The partnership group's first order of business would be to specifically and clearly define VA's and VSOs' respective roles and responsibilities with regard to processing veterans benefits claims. Clarifying the roles and responsibilities of the parties to the claims processing system is an explicit concern of the Commission.*
- *Based on these definitions, the group could then identify those roles and responsibilities that are complementary and that conform with the organizations' respective missions.*
- *VA and the VSOs may then agree to explore ways of building partnership only around those roles and responsibilities that are complementary. Roles and responsibilities that are not complementary could be off the table; no negotiation would be necessary. Efforts could then focus on the areas where progress is most possible, and the parties could simply agree to disagree on (or ignore) areas of conflict.*

This approach would build on the positive. The parties may enter the discussions confident of preserving their principles and retaining their unique identities. Attitude adjustments would not be prerequisite to reaching a successful agreement. Moreover, this approach would tap the claims-processing experience of both VA and the VSOs.

Ideally, the broad partnership agreement reached in these discussions at the national level would provide a framework or model for constructing case-by-case partnerships among claimants, regional offices, and VSO representatives nationwide. The purpose of partnerships at the claims processing level would be to provide the highest quality, most timely decisions by determining, with the claimant, what is being claimed, what evidence is required to support the claim, and who is best able to acquire the evidence.

2. Simplify the Application Form and Claims Filing Procedures

VA should revise the compensation and pension application form and claims filing procedures such that each benefit is claimed on a separate form and the veteran is told why each item of information is needed and who is responsible for acquiring each piece of evidence. VA should give each claimant a pamphlet explaining the adjudication process, including the estimated length of time to reach a decision, at the time of application.

3. Improve the Partnership Environment

VA should publish processing timeliness standards and commit to deciding claims within set time frames when claimants or their representatives submit all the evidence necessary for a decision.

Case management is a promising claims processing technique, especially for complex cases or for veterans who have difficulty understanding the adjudication process. The VBA has many experiments under way testing this concept. However, the VBA needs to collect data about the cost and effectiveness of this method. The VBA should conduct carefully controlled tests to ensure the efficacy of case management, both as to service improvements and cost.

These issues should be considered by the claims processing partnership group.

4. Establish VBA-Wide Process to Keep Claimants Informed of the Status of Claims

VBA should develop a common process for all its regional offices to keep claimants informed of the status of their claims. This will assure claimants that their claims are being worked on and it will greatly reduce the need for claimants to contact the regional offices seeking status of their claims. It will also provide VBA adjudication staff with greater contact with claimants, affording them the opportunity to assess changes in claimants' situations, medical or otherwise, that could materially affect their claims. This communication should start with a lay language description of the entire claims adjudication process so claimants have a clear understanding of how their claims will be processed.

5. Eliminate the Provision for Paying Attorney Fees from Past-Due VA Benefits

The Commission regards the availability of representation of veterans by attorneys during the claims and appeals processes as a legitimate feature of the system. Lifting the archaic fee restrictions applicable to attorney representatives was an appropriate measure. However, the provision for payment by VA of attorney fees from past-due benefits is administratively cumbersome and distorts the role of government. Attorney representatives and veterans should be expected to transact fee payments between themselves. VA should not be involved in these transactions. This is particularly true in view of the availability and overwhelming popularity of representation at no charge by VSOs.

The provision for VA to compensate attorneys from awards of past-due benefits thrusts VA into a business that is excessively far from its central purpose. VA is not well suited to perform this function, and the requirement that it do so represents a significant opportunity cost. The resources used for this purpose would be better spent in activities of more direct benefit to veterans. Experience during the last seven years in this area shows that participation of attorneys as claim advocates in the system is not so significant, in terms of either frequency or results, that the administrative expense of this program can be justified. Eliminating this provision is consistent with the National Performance Review's admonition to rethink "what government should do, and how."

I. Background

The Commission devotes a major portion of this chapter to a proposed improved partnership among VA, veterans, and their agents. Chapter V, *Process Design: Claims Adjudication and Appeals*, discusses potential elements of a partnership and their application in a redesigned adjudication process which is embraced in principle by the Commission.

1. Veterans Report Frustrations with the System.

As custodian of a public trust, the Department of Veterans Affairs is designated to provide benefits and services to eligible veterans on behalf of the American people. Under this arrangement, veterans seeking veterans' benefits must communicate with VA in some way. Many forms of communication are possible: mail, telephone, face-to-face, through a representative, even by computer via the Internet. In any case, contact *must* occur, and information *must* be exchanged.

Anecdotal and research[90] evidence show that veterans have expressed frustration about their experiences with VA's benefits entitlement decision process. Commissioners noted that many of the frustrations involved issues of communication and interaction between veterans and VA. Information exchange is a critical part of the claims decision process. Not only is the manner of the exchange defining for purposes of veterans' satisfaction, but the substance of the exchange can expedite or impede the entire decision process. Consequently, the Commission reasoned that the points of contact between veterans and VA hold considerable potential for improvement in veterans' experiences with VA. This chapter reports on the Commission's work in the area where the veteran meets the system. See Appendix Z for responses by VA employees to survey questions about the preparation and submission of claims (questions 1 to 9 and 109 to 111).

2. Summary Review of Findings from the Preliminary Report.

The Commission studied the processes and procedures of claims adjudication and the effect of attorneys, veterans services organizations, and other advocates on the process. In its preliminary report, the Commission came to the following conclusions:

- "[T]he Commission finds that the VA claims adjudication and appellate processes are time consuming and frustrating for veteran claimants. The existing process has become too complex and burdensome for all parties to it. The 'rules that drive' the development and decision-making processes for compensation and pension programs are complex."[91]

- "VA fails to advise claimants: of the specific criteria for granting benefits; of the nature of the evidence required to meet those criteria; of the need to provide authorization for VA to obtain medical records; and that providing records with claims will speed the adjudication process. There is currently no formal concurrence between VA and the claimant as to:

    - what must be proved;

[90] For example, the VBA conducted a series of focus groups with veterans and VBA employees in Spring 1995. The *Claims Processing Focus Group Report* of May 16, 1995, describes the feedback generated by those sessions.

[91] Veterans' Claims Adjudication Commission, *Preliminary Findings and Conclusions*, February 1996, p. 25.

    - what is the best evidence to do so;

    - what evidence is available;

    - depending on its source, who is responsible for obtaining it; and/or

    - who is in the best position to obtain it."[92]

- "[Veterans Service Organizations (VSOs)] provide valuable services to claimants at no charge. However, claimants represented by these organizations appear to be more disposed than other claimants to appeal decisions to the Board of Veterans' Appeals. It is in the interests of both VSOs and the government to identify and cultivate new ways to work together for the benefit of all claimants."[93]

Following publication of the Preliminary Report, the Commission identified interaction with the veteran as a special area of inquiry, needing additional research and development of specific recommendations to address the root causes of the problems.

II. Findings

Focus Group Results

The Commission conducted three focus groups at the St. Louis Regional Office during April 1996, one each with:

- veterans who recently filed a claim for compensation,

- veterans service officers who represent veterans in their dealings with VA, and

[92] Ibid., p. 55.

[93] Ibid., p. 61.

- employees who process or help veterans submit claims.

Ten veterans, representing all branches of military service, participated. Their periods of service ranged from the Vietnam conflict era to the present. Some had additional service in the active reserves. Several were applying for disabilities that were incurred many years earlier. Some applied for original compensation, some reopened an old claim. Seven claimant representatives participated. They worked for all the major veterans service organizations: Missouri Veterans Commission; American Legion; Veterans of Foreign Wars; Disabled American Veterans; Paralyzed Veterans of America; American Veterans of W.W. II, Korea and Vietnam. Another was a private attorney. Nine VA employees participated: three rating specialists, three senior claims examiners (one had recently been promoted to the rating board), and three from the veterans assistance staff. All were asked to participate in the focus group by the St. Louis Regional Office.

A separate set of questions was prepared for each group. The Commission was interested in the following areas:

- What problems do veterans encounter in preparing their applications for service-connected disability benefits?
- Do veterans understand the requirements for filing a complete application?
- Do veterans have a clear understanding of what happens to their claims after they file?
- Does VA keep veterans informed about the status of their claims?
- What is the nature of the relationship between VA and veterans?

All participants were asked to make a single recommendation for improving the claims intake process. The sessions were organized and facilitated by St. Louis Regional Office staff.

1. The Voice of the Veterans

a. Veterans Were Frustrated by the Adjudication Process.

The veterans who participated in this focus group did not have difficulty with the initial application for benefits, but they were frustrated with the process because they did not understand

what happens to their claims. Most of the veterans said a VA employee or service organization representative helped them with their application, so this was not problematical for them. However, they did not know what supporting documentation was necessary for a complete claim, and the adjudication process was not explained to them.

Several participants expressed dismay about the difficulty that VA frequently has in acquiring service records from the military. Many had received a letter from VA informing them that military records had not been received and that a decision would be made on the basis of available information. The participants did not understand why one government agency cannot get necessary records from another. These veterans did not think VA should ask them for any information that should already be part of their service records.

One veteran expressed a view agreed to by others when he said he was told to "hold something back" because his claim would be denied on first consideration. He felt a need to have some "ammunition" for a second and third round.

b. Veterans Wanted More Information About the Status of Their Claims.

Veterans said that unless they sought information on their own, they were not informed about the status of their claims. Most of the participants were not informed about the status until they received a decision letter. One veteran said he was well informed because he called at least once every two weeks. He said he had visited or called the regional office at least twenty times and talked with a different person every time who was consequently unfamiliar with his previous visits.

c. Veterans Wanted More Human Interaction with VA.

Veterans said they wanted the adjudication process to have a human face. When asked whether VA's customer service was adequate, the consensus was "no." One veteran suggested that VA assign a "customer service representative" to each claimant. The representative would become familiar with the case and deal with that claimant at every contact. Another veteran said a counselor should "stick with" each claimant until the claim is complete. Some anticipated that this approach would be too costly and recommended assigning a case manager for certain types of claims, such as PTSD. For example, one of the participants reported flashbacks of his combat experience while preparing supporting evidence for his claim. He said VA should have helped him in this task to make it less painful for him.

2. The Voice of the Veterans Service Organization Representatives

a. The Veterans Service Organization Representatives Reported Good Working Relationships with the Regional Office.

Each of the VSO representatives described his or her working relationship with regional office staff as good. None of the service organization representatives view the relationship as adversarial. One participant said the partnership is great because both the VA and the service officers have the same goal—to furnish benefits to eligible veterans. Several of the service officers said the regional office staff was always available to them and that they could always get their questions answered. They also cited the previous director and the chief of the Veterans Services Division for their efforts to maintain a good partnership.

b. VA Does Not Do a Very Good Job Explaining the Claims Process to Veterans.

The VSO representatives said veterans have difficulty filing for claims without assistance because they do not understand what is necessary to support a claim. VA uses the same application form for pension and compensation claims, which is a source of difficulty because veterans do not know the difference between the two benefits. This is especially true for older claimants who may be intimidated by the process and are afraid of getting into trouble with the government. On the other hand, veterans who are assisted by service officers do not experience the same difficulties because the agents are able to explain the requirements and help veterans acquire necessary records.
The VSO representatives claimed that VA telephone unit personnel do not always give out correct information when veterans call the regional office. They said veterans benefits counselors do not explain the claims process very well and are not informed about adjudication division timeliness. Consequently, they cannot always give good information.

According to the service officers, veterans do not know what evidence is necessary to support a claim. The instructions for completing the application form were described as difficult to read and follow. The veterans' agents were equivocal about who is responsible for acquiring documentation. Some recognized that records are not always readily available but think the veteran is the most reliable source as to their location. One participant said VA has the

responsibility to secure the records, but the agency needs to explain why the records are necessary.

The participants made a number of recommendations to improve this aspect of claims processing. VA can provide a clearly written explanation of the adjudication process, including a description of the evidence needed to support a claim. The agency could provide a checklist with the application to help veterans assemble evidence for their claims. Communication between the adjudication division and the veterans services division can be improved so regional office staff can give more reliable information to claimants who call or visit the office. Another recommendation was that "customer service representatives" be assigned to every claimant's case.

3. The Voice of the Employees

a. The Claims Application Process is Very Complex and Confusing to Claimants.

The employees thought the application form is too complex and not at all clear to claimants. Because the form is designed to serve as the application medium for both compensation and pension benefits, veterans frequently supply too much or too little information. The form is also confusing to VA employees who have to develop and make claims decisions. The request for information is mixed up on the form and hard to understand. Employees described the instructions as overwhelming. Employees cited the Social Security Administration as a good example of how to design forms for ease of use by claimants.

Employees said veterans do not know what happens to their claims because VA does not explain the application process well. One employee said he did not understand the process, so how could a veteran? The employees said letters to veterans requesting supporting documentation do not explain why VA needs the information. They believed the agency should write its instructions and communications with veterans in clearer and simpler language.

Employees said that because VA's communications do not explain the process well, veterans do not understand what is required of them to support a claim. The employees said all necessary documentation seldom comes with the claims. The development letters were said to be confusing to veterans who may not understand what is being asked of them, nor that other parties are being asked for information. One employee suggested that the application form include a checklist of documentation so the veteran is aware of what may be needed at the time of application.

Employees said veterans are not aware of difficulties VA experiences in acquiring records from the military and from third parties.

b. Employees Reported Mixed Feelings About the Relationship Among VA, Veterans, and Their Representatives.

The employees reported that veterans who are assisted in preparing their applications by either VA benefits counselors or VSO representatives file more complete claims. However, their perception of the relationship between VA on the one hand and veterans and their agents on the other was ambivalent. They acknowledged the value of the service that representatives provide to veterans in preparing applications and appeals, but the employees also thought the agents sometimes lead veterans in the wrong direction. For example, the employees said the agents will encourage a veteran to file a claim that the agent knows will be denied, but prefer the VA to make the denial. This clogs the system with frivolous claims. Another employee said one agent has veterans file an appeal for every denial, citing one case where the agent filed the appeal on behalf of the veteran before the veteran received the decision letter.

Nevertheless, employees acknowledged that service organization representatives can provide service to veterans who are unable to visit a regional office or prefer to have other assistance. This is especially true for veterans who live in rural areas. Veterans who are assisted by an able representative submit better claims because agents can explain the process, describe what evidence is needed to support a claim, and say why specific documents are requested. VA instructions are unclear and development letters generally do not explain why evidence is needed, leaving veterans uninformed.

c. The Negative Public Image of the Civil Service was said to be a Problem for Employees.

Several employees talked about the bad public image of civil servants as a source of difficulty. The public tends to lump all civil servants together and think less kindly of VA employees because of it. The employees said veterans believe VA staff are rewarded for denying claims. They very strongly stated that VA counselors and adjudication division staff represent veterans interests in the claims process.

The Effect of Attorneys, Veterans Service Organizations, and Other Advocates

Persons wishing to apply for VA benefits are free to present claims directly to VA field office employees, or they may choose to designate an individual or organization to help them. Under the law, representatives, agents, and attorneys must be accredited for this purpose by the Secretary of Veterans Affairs.

In this context, a *representative* is a person who has been recommended by a recognized organization and is accredited to assist claimants. Recognized organizations include national organizations, such as the American Legion, AMVETS, the Disabled American Veterans, the Veterans of Foreign Wars, the Paralyzed Veterans of America, the Vietnam Veterans of America, *et al*; state organizations, such as the Illinois Department of Veterans Affairs and the New Mexico Veterans Service Commission; and organizations that are neither national nor affiliated with a state government, but the activities of which are primarily geared toward veterans service.

Attorneys who are members in good standing of state bar organizations may be authorized by the Secretary to represent claimants in matters before VA.

To act as a claimant's *agent* before VA, a person must file an application with the Office of the General Counsel; establish that he or she is of good character and reputation; and pass a written examination.

Judicial Review Act of 1988 and the Nonadversarial Process.

The process for seeking veterans benefits was originally designed to be, and was traditionally preserved as, nonadversarial and informal. Since the Judicial Review Act of 1988, and partly as the result of subsequent decisions of the Court of Veterans Appeals, the process has become more formal, and the tone of official communications is somewhat more adversarial. This phenomenon is illustrated by:

- increased complexity of rating decisions and notification letters;
- representation of VA by professional attorneys in adversarial matters before the CVA.

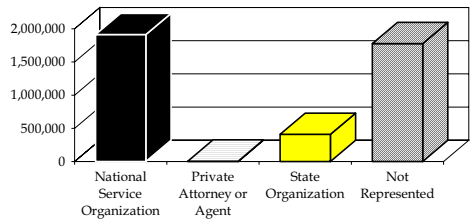
Participation of attorneys in the system appears to have increased somewhat since the Judicial Review Act of 1988 revised the limitation on attorney fees and created the CVA.

Claimant Representation.

Representation by either a recognized organization, an attorney, or an agent at the regional office, BVA, and CVA levels are as follows:[94]

- about 57 percent of *all* claimants are currently represented at the regional office level;

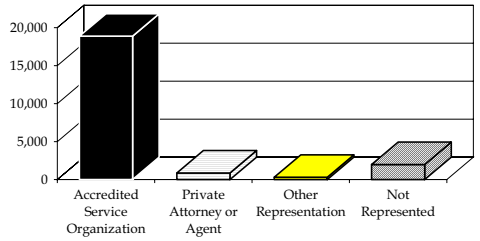
Chart 1 - Representation among all beneficiaries with active VA records as of December 1994



- about 91 percent of *all* appellants are currently represented at the BVA level;

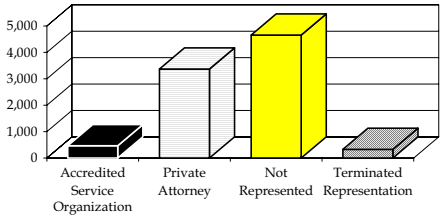
[94] Veterans' Claims Adjudication Commission, *Preliminary Findings and Conclusions,* February 1996, p. 62.

Chart 2 - FY 1994 Appellant Representation before BVA



- about 45 percent of *all* appellants are currently represented at the CVA level.

Chart 3 - Appellant Representation before the Court as of March 1995



The preponderance of claimants are represented by VSOs or state organizations.[95]

- Fewer than 1 percent of *represented claimants* designate attorneys or agents at the regional office level; over 99 percent are represented by VSOs or state organizations.

[95] Ibid.

- About 5 percent of *represented appellants* designate attorneys or agents at the BVA; about 95 percent are represented by VSOs or state organizations.

- At the CVA, 87.9 percent of *represented* appellants designate private attorneys.

- At the CVA, about 55 percent of *all* appellants are unrepresented.

The Commission cannot assess the effectiveness of claimant representation at the regional office level because records that would correlate claim outcomes with representation are not routinely kept.

At the BVA, the grant rate during FY 1996 through June for unrepresented appellants is well below the average for all appeals, nearly 15 percent compared with over 20 percent. Denial rates for unrepresented appellants are higher than the average for all cases, over 38 percent compared with less than 30 percent. The third appeal disposition category, remand, accounts for the remaining cases among both represented and unrepresented appellants. Unrepresented appellants are somewhat less likely to have their appeals remanded for additional information. It is not clear whether the grant and denial rate differentials are more closely related to the effectiveness of representation or to a likelihood that claimants whose appeals are more meritorious are more likely to seek representation.

Payment of Attorney Fees from Awards of Past-Due Benefits.

The Veterans' Judicial Review Act of 1988 established administrative VA payment of attorney fees to claimant representatives in some cases. Payment *by* VA of attorney fees is not required. In most cases involving attorney representation, the fee payment is transacted between the veteran and the attorney. Although payment of attorney fees by VA is not common, it consumes considerable administrative resources. To make a single attorney payment from past-due VA benefits that have been awarded to an appellant:

- three administrative activities are involved at the regional office, all of these on more than one occasion in a single payment case;

- a procedural activity is involved in Central Office; and

- an administrative activity and an appeals board are involved at the BVA.

In its study of this issue, the Commission learned that the cases involving VA payment of fees represent a small percentage of all cases, but are disproportionately costly because of the cumbersome authorization and processing steps needed to implement the law. Agents who represent veterans are entitled to payment for the services they provide. However, the Commission believes that payment should be made routinely by the veterans directly to their agents.

As indicated above, paying attorney fees from past-due benefits involves a complicated administrative process which includes the BVA. A 55-page circular is dedicated to the activity, as well as periodic telephone conferences with regional office personnel.

Principles of a Partnership Between VA and Veterans and Their Representatives

The Commission recognizes that VA employees are dedicated to serving veterans and their survivors and that VSO representatives, and other agents, provide an extremely valuable service as agents for veteran claimants. Each party shares a mutual obligation to ensure that veterans receive due process at every stage of the claims adjudication and appellate processes. However, they each have different roles and responsibilities. VA employees must apply laws and regulations to the case at hand, resolving all doubts in favor of the veteran, in a dispassionate manner. Agents and representatives must always act in the best interest of the claimants. It is entirely proper for agents to be passionate in their advocacy. All parties are entitled to respect and courtesy from the others.

The concept of "partnership" to replace often adversarial relationships, such as between labor and management, is much in vogue. These partnerships are characterized by formal agreements that bind both parties to certain actions and responsibilities. The Commission does not view the relationship among VA, veterans, and their agents as fundamentally adversarial. Historically, the adjudication and appellate processes have been described as paternalistic. Although the nature of the relationship has changed somewhat[96] since the Court of Veterans' Appeals began deciding cases, the Commission believes the relationship should remain non-adversarial. The relationship can change in ways that are beneficial to both claimants and VA.

[96] This new relationship is described as "adversarial paternalism" in chapter V.

What the Commission Means By "Partnership."

By "partnership" the Commission means a new working relationship, based on mutual respect, that seeks to provide timely, high quality adjudication by determining with the claimant, on a case-by-case basis, what evidence is required to support the claim and who is best able to acquire the evidence. It prescribes greater responsibility for both parties. VA must speak more clearly to veterans about the adjudication process, and the veteran must do more to clarify what is being claimed. VA can commit to deciding a claim within a fixed, relatively short time frame if certain conditions are met by the veteran, such as providing all necessary development information when the claim is filed. This commitment may be more appropriate for some benefits, such as death pension, than others. The Muskogee Regional Office has implemented such a program.

A new partnership with the VSO representatives will be governed by the principle that, as an agent of the claimant, the representative must always act in the best interest of the claimant and that VA will never ask a representative to do anything that may not be in the best interest of the claimant.

On receipt of a claim, VA should acknowledge the claim and send to the claimant an information package that includes a lay-person description of the claims adjudication process. The Board of Veterans' Appeals sends appellants a similar document that may serve as a model.

It is the claimant's right to decide whether to be represented. VA should inform claimants of their right to representation and its advantages so the claimants can make an informed decision on this matter. However, the decisional outcome should not rest on whether a representative presents the veteran's case.

Partnership Through Case Management.

Throughout the adjudication process, veterans should be informed of the status of their claims. This can be accomplished by informing the claimant when key milestones are passed, such as when important documentation is received. To the extent practicable, VA should inform claimants as to the expected time to come to a decision on the claim.

Case management is a principle that has great promise for improving the interaction between claimants and VA. However, for many routine claims the level of interaction does not have to be intense. There may be certain types of issues, such as Persian Gulf Syndrome, that are very complex and require more interaction; there may be some veterans who have difficulty understanding the adjudication process and will need more

interaction to insure the best outcome for their claims. To the extent practicable, adjudication division staff, or service organization representatives, can identify claimants in need of special assistance so they can be afforded closer case management than other veterans. Careful documentation will need to be part of the record whenever any special assistance is requested or granted.

VA should not expect veterans to have a clear understanding of what evidence is required to support their claims or how to acquire it. It is VA's responsibility to provide necessary assistance to veterans in acquiring evidence. VA cannot abdicate its responsibility to complete all development before deciding a claim, but veterans and their representatives can play a more active role in acquiring documentary evidence, especially from third parties.

As part of case management, claimants are entitled to know what evidence is necessary to support the proper decision and who is in the best position to acquire the evidence. Acquisition of certain evidence, such as military service medical records or VA hospital records, is clearly the responsibility of VA adjudication division staff. Other types of evidence, such as dependency information or private medical information, can best be obtained by veterans or their representatives. In all cases, VA has an obligation to assist claimants so that all the evidence necessary for a decision is available to the decision maker at the earliest possible time. The case manager can complete a pre-decision checklist with the claimant, and his or her representative, that assures each party that all necessary development has been completed. Disagreements can either be resolved before the decision or addressed in the decision notification letter.

The Commission notes it does not endorse the idea, expressed by some veterans advocates, that representatives should never act as partners with VA, but the Commission does recognize that VA must respect the legal obligation agents have to their clients.

Current Tests.

The Commission is aware of tests of both case management and partnership that are underway in the VBA, but it is not able to assess effectiveness of these practices. Closer, more frequent interaction with claimants and their representatives may carry a high cost in terms of personnel and other resources. The Commission has done no analysis of the potential cost of case management or partnership initiatives, either to VA or to VSOs. This type of analysis is a necessary component of any test.

The Compensation and Pension Service is conducting a business process reengineering project[97] for claims processing which may address many of the Commission's findings. However, because this project is still in development, the Commission cannot evaluate its impact on claims processing.

The VA regional office in St. Petersburg has created a "partnership" with the Florida Department of Veterans Affairs to improve both service to the veteran public and their claims processing functions.[98] A VA/VSO "partnership" also is discussed in the Adjudication and Appeals section under Recommendations.

III. Conclusions

1. The Compensation and Pension Service is conducting a BPR project for claims processing which may address some of the Commission's findings. However, because the VBA has not implemented a new process, the Commission cannot evaluate the project's effect.

2. The VBA can improve its explanation to veterans about what happens after a claim is filed and can keep the claimants better informed about the status of their claims.

3. There are ample opportunities to build a partnership with veterans and their agents as part of claims processing. However, any partnership relationship must be sensitive to the legal requirements of agents to provide effective representation to their clients.

4. The claims application process is very complex and frustrating to veterans. The application form is in need of serious revision both for ease of use by veterans and by adjudication division employees. Veterans need more information about what evidence is required to support a claim and how to get it. They also need better information about the steps in the claims process, how long an average claim should take, and how long their claim will take if different from the average.

5. VSO representatives provide valuable services to claimants at no charge. Claimants represented by these organizations appear to be more disposed than other claimants to appeal decisions to the Board

[97] Veterans Benefits Administration, *Reengineering Claims Processing: A Case for Change*, Presentation to the Veterans' Claims Adjudication Commission, July 15, 1996. This project contemplates that every claimant will have the opportunity to work one-on-one with a skilled customer service representative.

[98] Department of Veterans Affairs, Veterans Benefits Administration, Letter from Director Southern Area, subject: *Southern Area Initiative I.B.2—Partnership with State Service Organization.*

of Veterans' Appeals but not consistently more likely to succeed. It is in the interests of both VSOs and the government to identify and cultivate new ways to work together for the benefit of all claimants.

6. The benefit of maintaining the system for compensating attorneys from past-due benefits in its current form appears to be outweighed by the cost of operating it, particularly in an environment of scarce resources. The administrative process for making each payment is very complex, involving regional offices, Central Office, and the Board of Veterans' Appeals. A 53-page circular is devoted to this activity.[99]

IV. Recommendations

1. **VA and VSOs Should Build Explicit Claims-Processing Partnership.**

   Meaningful partnerships must be built by the partners themselves. The Commission recommends that the Secretary invite representatives of VSOs to join VBA in discussions leading to establishment of a formal VA-VSO claims processing partnership. These discussions would be conducted in the context of the VBA's promising BPR framework.

   Because VA and VSOs have been known to have legitimate, often strongly held, differences of professional opinion regarding claims processing issues, the Commission believes establishing a cooperative tone for these discussions is critical to their success. To that end, the Commission offers the following explicit *suggestions* for the conduct of these discussions:

   A. The partnership group's first order of business would be to specifically and clearly define VA's and VSOs' respective roles and responsibilities with regard to processing veterans benefits claims. Clarifying the roles and responsibilities of the parties to the claims processing system is an explicit concern of the Commission.

   B. Based on these definitions, the group could then identify those roles and responsibilities that are *complementary* and that conform with the organizations' respective missions.

   C. VA and the VSOs may then agree to explore ways of building partnership *only* around those roles and responsibilities that *are* complementary. Roles and responsibilities that are *not* complementary could be off the table; no negotiation would be necessary. Efforts could then focus on the areas where progress is most possible, and the parties could simply agree to disagree on (or ignore) areas of conflict.

   This approach would *build on the positive*. The parties may enter the discussions confident of preserving their principles and retaining their unique identities. Attitude adjustments would not be prerequisite to reaching a successful agreement. Moreover, this approach would tap the claims-processing experience of both VA and the VSOs.

[99] Veterans' Claims Adjudication Commission, *Preliminary Findings and Conclusions,* pp. 63-64, and Appendix D.

Ideally, the broad partnership agreement reached in these discussions at the national level would provide a framework or model for constructing case-by-case partnerships among claimants, regional offices, and VSO representatives nationwide. The purpose of partnerships at the claims processing level would be to provide the highest quality, most timely decisions by determining, with the claimant, what is being claimed, what evidence is required to support the claim, and who is best able to acquire the evidence.

Chapter V discusses key claims-processing elements to be addressed and negotiated during partnership discussions.

2. Simplify the Application Form and Claims Filing Procedures.

VA should revise the compensation and pension application form and claims-filing procedures such that each benefit is claimed on a separate form and the veteran is told why each item of information is needed and who is responsible for acquiring each piece of evidence. VA should give each claimant a pamphlet explaining the adjudication process, including the estimated length of time to reach a decision, at the time of application.[100]

3. Improve the Partnership Environment.

VA should publish processing timeliness standards and commit to deciding claims within set time frames when claimants or their representatives submit all the evidence necessary for a decision.

Case management is a promising claims processing technique, especially for complex cases or for veterans who have difficulty understanding the adjudication process. The VBA has many experiments under way testing this concept. However, the VBA needs to collect data about the cost and effectiveness of this method. The VBA should conduct carefully controlled tests to ensure the efficacy of case management, both as to service improvements and cost.

These issues should be considered by the claims processing partnership group.

4. Establish VBA-Wide Process to Keep Claimants Informed of the Status of Claims.

[100] The Commission notes as an outstanding example of such pamphlet: Department of Veterans Affairs, Board of Veterans' Appeals, *Understanding the Appeal Process—Putting Veterans First,* Washington, D.C.

The VBA should develop a common process for all its regional offices to keep claimants informed of the status of their claims. This will assure claimants that their claims are being worked on, and it will greatly reduce the need for claimants to contact the regional offices seeking status of their claims. It will also provide VBA adjudication staff with greater contact with claimants, affording them the opportunity to assess changes in claimants' situations, medical or otherwise, that could materially affect their claims. This communication should start with a lay language description of the entire claims adjudication process so claimants have a clear understanding of how their claims will be processed.

5. Eliminate the Provision for Paying Attorney Fees from Past-Due VA Benefits.

The Commission supports the availability of representation of veterans by attorneys as currently provided by law. However, attorney representation does not logically require VA involvement in the payment of fees to an attorney representative. Attorney representation became a practical alternative in 1988, when Congress lifted the archaic fee restrictions applicable to attorney representatives of VA claimants. The accompanying provision that allows payment by VA of attorney fees from past-due benefits, however, is costly, administratively cumbersome, distorts the role of government, and does not directly benefit veterans. Attorney representatives and veterans should be expected to transact fee payments between themselves. VA should not be involved in these transactions.

The provision for VA to compensate attorneys from awards of past-due benefits thrusts VA into a business that is excessively far from its central purpose. VA is not well suited to perform this function, and the requirement that it do so represents a considerable opportunity cost. The resources used for this purpose would be better spent in activities of more direct benefit to veterans. The Commission regards the experience during the last seven years in this area as strong evidence that participation of attorneys as claim advocates in the system is not so significant, in terms of either frequency or results, that the administrative expense of payment of attorney fees *by VA* can be justified.[101] Eliminating this provision is consistent with the National Performance Review's admonition to rethink "what government *should* do, and *how*."[102]

[101] Veterans' Claims Adjudication Commission, *Preliminary Findings and Conclusions*, pp. 61-65, and Appendix D.

[102] Third Report of the National Performance Review, *Common Sense Government Works Better & Costs Less*, September 1995, p. 12. Also see p. 77, which advises policy makers to ask, "What business *should* the government be in?"

IV. DIRECTIONS: THE STRATEGIC PERSPECTIVE

Major Findings and Conclusions

Effectiveness of VA's Strategic Planning:

- *Many executives are aware of the need for strong strategic management and recognize that much remains to be done.*
- *VHA has moved well along in developing a strategic management agenda, setting a model for others.*
- *Under Secretary Vogel announced the formation of a Strategic Management Committee on April 26, 1996.*
- *Deputy Secretary Gober convenes biweekly meetings with Under Secretary Vogel, Chairman Cragin, and Deputy Under Secretary Garthwaite to promote coordination among the Department's component organizations.*
- *The Business Process Reengineering (BPR) project incorporates elements of strategic planning and is built on a vision of an alternative future claims processing system.*

Detrimental Effects of the Lack of VA Strategic Planning:

- *Executives in the VBA, VHA, and BVA do not see an advantage in working at the Department level and have not been committed to doing so.*
- *The embryonic Department strategic management infrastructure is not yet driving VBA, VHA, and BVA directions.*
- *Department officials do not regard the BVA as an operations component and have not encouraged integrating its activities, such as technology planning and performance measure development, with the VBA's.*

- *While the new VBA Strategic Management Committee holds promise, integration of major initiatives has not yet occurred.*
- *The Federal government has long relied on advisory committees of private citizens as a means of bringing the best resources and experience available in all fields of business, society, government, and the professions to the Federal government at little cost. However, VA currently has no advisory committee whose mission encompasses the disability compensation program as a whole and the entire population receiving these benefits.*
- *The Commission knows of no regular report that presents consolidated, comprehensive information about VA's $15 billion disability compensation program. Collection and publication of these data would be of significant value to VA, Congress, veterans service organizations, and other stakeholders.*

Major Recommendations

1. Congressional Oversight Needed on an Ongoing Basis.

Only the Congress, particularly the authorizing and appropriations committees concerned with veterans benefits programs, can create the external force needed to give VA adequate incentive to put in place and continue to utilize an effective strategic management process.

2. Accelerate Development of an Integrated Department Strategic Management Infrastructure.

The Secretary and Deputy Secretary must take the lead in setting strategic goals and embracing the accelerated development of an integrated strategic management process. Responsibilities of the Assistant Secretaries for Policy and Planning, and for Management, need to be clarified and strengthened in order for them to ensure that all components' efforts are integrated.

3. Clarify Program Purpose.

The compensation program has evolved over the years in such a way that the program's purpose is no longer clear. While some process improvements can be made within the existing program, legislative and judicial mandates must be reviewed to ensure consistency of purpose and ease of administration. The obvious political sensitivity of addressing this issue may require that the Congress establish a commission for this purpose alone.

4. Implement Ongoing Actuarial Analysis.

There should be an actuarial staff at the Department level, with direct access to the Secretary, that is responsible for this analysis. All VA components would participate in developing the assumptions used by the actuaries and would use the same assumptions in program and operations planning and budgeting.

5. Empower a Corporate Data Collection and Analysis Focus.

A strong central focus for identifying data needs, collecting data, and analyzing data should be established at the Department level. All components should be required to collaborate with this entity to ensure use of common understanding about future workloads and the needs of current and future customers. Such data are essential for ongoing actuarial analysis.

6. Require an Annual Report that Focuses Solely on the Disability Compensation Program.

VA should publish a comprehensive annual report on all aspects of the disability compensation program utilizing the corporate database and actuarial analysis. The Commission believes that detailed analysis and publication of the characteristics of VA's compensation program, and its beneficiaries and claimants, will enable VA to predict more reliably its future program and training needs.

7. Establish a Disability Compensation Advisory Committee to Provide Independent Advice.

Congress should establish a disability compensation advisory committee to ensure that the Congressional concerns that led to the Commission's creation continue to receive independent examination and evaluation. The committee's mission should include program policy and strategic management issues related to the compensation and economic recovery of veterans with service-connected disabilities.

I. Background

1. Danger and Opportunity.

As the 21st Century approaches, VA finds itself in an environment of accelerating change. This is an era of redesign, reinvention, reengineering, and scarce resources. The public has expressed great dissatisfaction with the performance of the federal government. There is a palpable impatience for government to "work better and cost less." No agency of government can expect to do business next year in exactly the same way it did business last year, and the pace of change shows no sign of slowing for years to come. The future holds both uncommon danger and uncommon opportunity for VA's mission and its performance of that mission.

VA is a large, diverse organization. Its size and variety make it unwieldy to manage even in relatively stable conditions. Nevertheless, VA, as custodian of a public trust, is responsible to taxpayers for providing efficient and effective service to veterans under any circumstances. This chapter is about how VA has addressed the strategic and planning aspects of this responsibility in the past and its plans and options for doing so in the future.

2. Summary Review of Findings from the Commission's Preliminary Report.

Findings and conclusions throughout the Preliminary Report raised questions about VA's willingness or ability to manage strategically. Of 12 major findings presented in its Executive Summary, seven related directly to weaknesses in strategic management.[103]

"Data needs of strategic planners and upper management have not been adequately identified and defined. Consequently, strategic, planning, and management assessments and decisions have been based on information that has not been deliberately collected and impartially analyzed to support a rational, businesslike management process.

"VA's internal organizations are not coordinated so as to reciprocally support one another's business needs, leading to an organizational culture of insufficient communication and cooperation among organizational elements, specifically among the Veterans Benefits Administration, the Board of Veterans' Appeals, and the Veterans Health Administration.

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[103] Veterans' Claims Adjudication Commission, *Report of Preliminary Findings and Conclusions,* February 7, 1996, pp. 3-5.

"Strategic and business planning activities have been weak in both VBA and BVA. Consequently, these organizations have not been well prepared to recognize and address relevant issues, problems, opportunities, and obstacles in a timely way."

"The complexity and lack of finality associated with veterans claims and appeals processing suggest that the underlying philosophy driving VA programs has lost focus over the years. VA has come to be defined mostly by what it has done rather than by what it has yet to do. No clear and definite expression by Congress or VA leadership of VA's proper role for today or in the future exists. As a result, VA has become a patchwork of disparate programs that lack unifying, integrating goals to guide provision of services in a rational, purposeful, and efficient manner."

"VA is making progress in [customer relations], but still has not adequately consulted its customers for guidance, particularly as to what they perceive to be an appropriate balance of the dynamic tension between administrative timeliness and judicial fairness in the routine processing of claims."

"VA's investment in and use of automated work processing tools and strategies trails that of comparable public and private organizations. As a result, VBA and BVA operations are excessively labor intensive and therefore unnecessarily expensive."

"VA has no consistent, effective accountability mechanism in place, either at the organizational or individual level."

In addition, the Commission found that the VBA and BVA did not routinely measure and track the effects of initiatives, such as the recommendations of the Blue Ribbon Panel on Claims Processing and the pilot programs, so it is impossible to judge the effects of these efforts other than anecdotally. Neither the VBA nor the Board had a balanced set of performance measures as contemplated under the Government Performance and Results Act. Since then, the Chairman of the BVA has signed a performance agreement with the Secretary that includes measures for productivity, efficiency, and timeliness.

Following publication of the Preliminary Report, the Commission identified strategic management as a special area of inquiry needing additional research and development of specific recommendations to address the root causes of the problems.

3. What the Commission Means by "Strategic Management."

Strategic management is a process or method for providing policy direction for the planning and execution of the functions of the Department. Its purpose is to develop clear policy direction, integrate various planning activities and budget formulation, and assess organizational and senior executive performance in implementing Department decisions. The process consists of at least four elements:

- Setting direction and goals (this includes clear statements of purpose and values for both programs and operations, and with the participation of all the key stakeholders).
- Developing strategies and performance measures keyed to the direction and goals (these features are data based and client focused).
- Working with blueprints for action (this is in the form of business plans that integrate schedules, resource requirements, and intermediate measures).
- Assessing results (accountability for results is a key element).

4. Legislative Mandates.

In the past several years Congress has passed, and the President signed, three major pieces of legislation directly affecting strategic management practices in federal agencies.

- The first of these was the *Chief Financial Officers Act of 1990*. The purpose of this act was to improve financial management activities by appointment of chief financial officers; to develop and implement financial management systems and reports; and to provide for the systematic reporting of performance information.
- The second was the *Government Performance and Results Act of 1993*. Its purpose was to improve the effectiveness of programs by requiring agencies to set goals and report on results. The Senate Committee on Government Affairs said in its report on the Act, "At present, congressional policy making, spending decisions, and oversight are all seriously handicapped by

the lack of sufficiently precise program goals and adequate program performance information."[104] Agencies are required to develop multi-year strategic plans which cover all major program operations; annual performance plans which cover program activities outlined in the budget and are directly linked to the strategic plans; and annual performance reports for the previous fiscal year which compare the actual performance of program activities with established performance goals.

- The third was the *Information Technology Management Reform Act of 1995*. This act directs the OMB to encourage use of performance management in information technology programs and requires the OMB to evaluate practices in executive agencies "with respect to the performance and results of the investments made by the executive agencies in information technology."[105] The OMB is also required to conduct periodic reviews to ascertain the role of information technology in accomplishing the missions of the agencies. The act requires executive agencies to appoint a Chief Information Officer, establish goals for improving operations through the use of technology, report annually to Congress on the progress toward achieving goals, and use performance measures to assess how well information technology supports the programs of the agency.

5. Methodology.

Commissioner Davis was responsible for the strategic management area of special interest. Her task was to assess VA strategic management activities and approaches and recommend specific actions that may improve the Department's strategic management of its programs and services. As part of this assessment, Ms. Davis conducted a series of interviews with key executives in OMB, GAO, VA (including the VBA, BVA and VHA), and the chief actuaries for the Social Security Administration and the Health Care Financing Administration. The interviews explored three areas of inquiry:

- strategic management policy;
- strategic management process; and
- opportunities and obstacles to success.

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[104] U.S. Senate, Committee on Government Affairs, *Report on Government Performance and Results Act of 1993,* Report 103-58, 1993, p. 3.

[105] *Information Technology Management Reform Act of 1995,* Section 5113 (b)(1).

6. Literature Review.

The Commission reviewed relevant literature for insights and experiences of other organizations, especially government agencies. In particular, four reports of the General Accounting Office proved useful. Since enactment of the Government Performance and Results Act in 1993, GAO has produced a series of reports, *Managing for Results*, to provide guidance to agencies as they struggle with the tasks of implementing the legislation.

In one report, GAO examined management reforms in Florida, Minnesota, North Carolina, Oregon, Texas, and Virginia. They found that the "reforms are a long-term effort and that the executive and legislative branches need to work together to implement those reforms."[106] They concluded that

> . . . the states' experiences suggest that strategic planning and performance measurement could be an important means for stakeholders to obtain agreement on common goals and measure progress toward achieving those goals. The states reported that they used strategic planning to improve working relationships within and across agencies and across levels of government aimed at achieving desired outcomes. Performance measures were designed to provide the critical information needed to assess the degree to which the desired outcomes were being achieved.[107]

In a companion study, GAO reported on the experiences in Australia, Canada, New Zealand, and the United Kingdom. GAO reports that each of the countries implemented reforms to increase accountability for the management of government programs. According to the study, the "four countries' governments sought to instill a focus on results in government management through strategic planning, operational planning, and performance measurement and reporting."[108] The governments used the planning process as a communications tool for informing employees and the public about missions and goals. They used performance agreements to ensure accountability throughout the management hierarchy for achievement of goals and objectives.

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[106] *Managing for Results: State Experiences Provide Insights for Federal Management Reforms,* GAO/GGD-95-22, December 1994, p. 2.

[107] Ibid., p. 22.

[108] *Managing for Results: Experiences Abroad Suggest Insights for Federal Management Reforms,* GAO/GGD-95-120, May 1995, p. 4.

In testimony before the House of Representative's Committee on Government Reform and Oversight in May 1995, GAO representatives said they consistently found in many reports over the past decade that agencies need more precise goals and better performance measures. GAO also said,

> . . . many federal agencies lacked consensus on their mission and the outcomes sought. Most agencies also had not established a systematic process to identify and address critical issues affecting their ability to meet their mission and achieve their desired results. Moreover, reliable program and financial information was not routinely collected and used to gauge progress, improve performance, and establish accountability.[109]

In March 1996, the Comptroller General testified on Congress's role in implementing strategic planning, performance measurement, and accountability before a joint hearing of the Senate's Committee on Governmental Affairs and the House of Representative's Committee on Government Reform and Oversight. His central theme was that, "strong and sustained Congressional attention to GPRA implementation is critical."[110] He told the committees that interest at authorization, appropriations, budget, and oversight hearings "will send an unmistakable message to the agencies. . ."[111] Congress can do this by asking the following questions:

- How well is the agency measuring objectives?
- How are GPRA performance goals and information being used to drive the agency's daily operations?
- How is the agency using performance information to improve its effectiveness?
- What progress is the agency making in building the capacity necessary to implement GPRA?
- What steps is the agency taking to align its core business processes to support mission-related outcomes?

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[109] *Managing for Results: Steps for Strengthening Federal Management,* GAO/T-GGD/AIMD-95-158, May 9, 1995, p. 1.

[110] *Managing for Results: Achieving GPRA's Objectives Requires Strong Congressional Role,* GAO/T-GGD-96-79, March 1996, p. 3.

[111] Ibid., p. 7.

7. GAO Review of VA Management.

In 1990 GAO reported on VA management practices in *Management of VA: Implementing Strategic Management Process Would Improve Service to Veterans* (GAO/HRD-90-109, August 1990). They said VA needs a strategic management process so its executives could manage proactively instead of reacting to crises. According to GAO, "[t]he purpose of a strategic management process is to establish a direction for VA based on the priority needs of the veteran."[112] They further said such a process ". . . should foster a shared understanding of the Department's future direction among the three components, enhancing consistency between their day-to-day actions and the Department's aims."[113] The report said the essential ingredient for success is the leadership and sustained commitment of the Secretary. A new process should include the following characteristics:

- Involve key line managers, including those in the field;
- Ensure that strategic direction shapes the budget;
- Focus on key issues;
- Balance component aims with departmental direction; and
- Seek participation of key external groups.[114]

II. Findings

The Commission's findings are presented in two sections:

- a report of interviews with VA and non-VA officials about strategic management in VA, and
- a discussion of the value of an independent advisory committee and detailed data analysis as strategic management tools.

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[112] *Management of VA: Implementing Strategic Management Process Would Improve Service to Veterans,* GAO/HRD-90-109, August 1990, p. 3.

[113] Ibid., p. 4.

[114] Ibid., p. 21.

1. Interviews With Key Executives About Strategic Management.

The Commission conducted a series of interviews with officials of:

- the OMB;
- the GAO;
- VA (Department level);
- the VBA;
- the VHA;
- the BVA;
- the Chief Actuaries of the Social Security Administration and the Health Care Financing Administration; and
- the American Academy of Actuaries.

A complete list of the interviewees is included as Appendix F. The interview questionnaire is included as Appendix G.

THE VIEWS OF NON-VA EXECUTIVES

Policy. Interviewees gave us insights into three major elements:

- Who is responsible for setting strategic direction for VA, the VBA and BVA?
- Is strategic management in a political organization "doable?"
- How well does VA conduct its strategic management processes?

Direction Setting: Non-VA executives are not clear on who is currently setting strategic direction for VA. One perspective is that the organizational design, with stovepipes by program, is such that strategic decisions can be made only at the level of the Secretary. However, one interviewee told the Commission that when the Secretary's office does not exert leadership, there is an absence of strategic management. For example, the Department's Chief Financial Officer does not have authority over the administration CFOs. Planning and budgeting efforts of the administrations and the Board of Veterans' Appeals are each conducted without regard for the others. One observation was made that the Congress and the Veterans Affairs' Committees have a role in setting the Department's strategic direction.

Political Organization: Non-VA executives not only said strategic management is doable in a political organization, but is critical for success. Implementation of GPRA was cited as a key to improving planning efforts but only if Congress holds VA accountable. Strategic thinking, though hard to do, can help focus decision makers on key issues, when their tendency is to get caught up in day-to-day problems. As one person said, "Somebody has to think about how things fit together." Another interviewee said that a good strategic management system is what enables the organization to keep going and adapt to change when there is turnover at the political level.

Current Assessment: Non-VA executives feel that VA does not manage strategically, perhaps because it has never had to do so. The common perspective is that bad performance is rewarded, reinforcing behavior that diminishes the value of strategic management. Specific points were made that the VBA in particular is not well armed to defend its budget, and other decisions, because it does not have clear program missions for compensation and pension, does not have performance measures in place, is not accountable, *i.e.,* has no system in place to measure results of changes and achievement of goals. Non-VA observers recognize that the VBA and BVA do not plan together and that this creates dysfunction. In discussing program mission and performance, one interviewee noted that the C&P programs are not subject to the provisions of Public Law 95-595, amendment to the Budget and Accounting Procedures Act of 1950, that require long-range actuarial planning and reporting for other federal benefit programs. Such program planning and reporting would require Department-level leadership to develop consensus assumptions for the future; additional analytical data that the Department does not currently collect or maintain would also be needed.

Process. Interviewees gave us insights into four major elements:

- What are the critical elements of good strategic management?
- How do VA's strategic management processes work?

- What mechanisms are in place to link planning efforts of the VBA and BVA, and other elements of VA?
- How clearly does the budget reflect strategic decisions?

The GAO interviewees referred us to their 1990 report entitled, "Management of VA: Implementing Strategic Management Process Would Improve Service to Veterans." In this report they say, "The success of a strategic management process depends upon the leadership and sustained commitment of the Secretary."[115] The report cites the Secretary's leadership and commitment as the most critical element. Other critical elements include:

- involving line managers;
- ensuring that strategic direction shapes the budget;
- focusing on key issues;
- balancing component aims with departmental direction; and
- seeking participation of key external groups.

Defining the mission and strategies for the programs was identified as a critical element. Communication, empowerment, accountability, client focus, and integration across the Department are other critical elements repeatedly cited.

As in the policy discussion, VA's organizational structure is seen as an impediment to effective planning in that neither the Department's CFO nor the Assistant Secretary for Policy and Planning has authority over the administrations. One cause of difficulty in planning is the lack of agreed upon long-range assumptions and a common data base. As a consequence, the Department and others have little information about the long-term impacts of the program on either claimants or workloads of regional offices.

Non-VA observers had seen no strategic linkage activities between the VBA and BVA.

[115] Ibid., p. 21.

VA's budget does not reflect strategic decisions, according to our interviewees. They said the VBA budget is based on an old, incremental model that essentially rewards poor performance. This can happen when low-productivity offices receive relatively more resources to enable them to complete the same amount of work as offices with higher productivity. They observed that no global goals or overall picture of where VA wants to go in the C&P programs exist. One interviewee remarked that it is "irresponsible" not to have an ultimate plan.

OMB representatives said defining the mission and strategies for the program is the most critical element. Communication, empowerment, accountability, client focus, and integration across the Department were identified as other critical elements.

Opportunities and Obstacles to Success. We asked interviewees for their views on what are the greatest opportunities and obstacles to success. Three major themes emerged.

1. No one was seen to be leading the way. Lack of consistent top management commitment was cited as the biggest barrier to successful implementation of a strategic management process.[116] A corresponding lack of accountability for achieving organizational goals and objectives was also perceived.

2. Interviewees thought VA lacks good information. As a consequence, VA is not in a good position to defend its decisions or its budget. Historically, however, they said this has not been problematic because VA has gotten adequate funding.

3. The purposes, or missions, of the programs were regarded as not clear. One of our participants emphasized that defining the mission and strategy for the compensation and pension programs is the most important element of a good strategic plan.

The Views of VA Departmental Executives

Policy. VA Departmental executives gave us insights into three major elements:

[116] The Commission notes that although the Secretary has a performance agreement with the President, the Secretary has not published a strategic direction since April 2, 1993.

- Who is responsible for setting strategic direction for VA, the VBA and BVA?
- Is strategic management in a political organization "doable?"
- How well does VA conduct its strategic management processes?

All of our Department interviewees said VA's top management cadre, starting with the Secretary, is responsible for setting VA's strategic direction. While all agreed that efforts to manage strategically have begun, for the most part, they stated that the efforts have not yet succeeded in establishing effective tools for doing this. One interviewee was optimistic that a lot will be accomplished this year. Another participant likened VA to the Balkans, observing that the administrations do not understand each other and see no advantage in working together. It was further noted that within the VBA, characterized as a "closed corporation," this same phenomenon is true across the programs they administer. The top leadership said VA is trying to change its planning culture but one characterized it as "embryonic."

All the VA Departmental executives said strategic management is "doable" in a political organization. The new strategic management process was described as "absolutely critical." Another cited it as a "legacy" that would help VA survive, noting that the budget crises during FY 1996 were a "wake-up call" throughout VA. One participant said the Congress tends to micromanage because VA does not have a plan. While they see implementation of GPRA as a key to improvement of planning efforts, some noted that Veterans' Affairs Committees and Appropriations Committees do not understand how GPRA can be used. Several subjects cited the positive experience of the Under Secretary for Health in producing his vision and prescription for change.

The interviewees said that although efforts are underway to establish a strategic management process at the Department level, VA does not yet have a process to set cross-agency priorities. The administrations and the Board of Veterans' Appeals do not plan or budget together. The Deputy Secretary has recently begun meeting with the Under Secretary for Benefits, the Chairman of the BVA, and the Deputy Under Secretary for Health twice a month to discuss improvements in claims and appeals processing. The meetings are seen by the interviewees as an opportunity for open exchange and not "staffed" as part of an integrated strategic management process.

Process. VA Departmental executives gave us insights into two major elements:

- How do VA's strategic management processes work?

- What mechanisms are in place to link planning efforts of the VBA and BVA, and other elements of VA?

Following a top management retreat in October 1995, the Secretary established a strategic management group with the Deputy Secretary as chair. Sub-groups have been established to deal with specific topics. This process is too new to evaluate. The Assistant Secretaries for Management and for Policy and Planning have formed what one of them described as a strategic alliance to improve the Department's planning. Some interviewees noted that a major impediment to success lies in the lack of a shared vision on the part of the administrations and the Board. However, they acknowledged that they do not treat the BVA as an operating component. They have not viewed the administrative appellate process administered by the BVA as a continuation of the VBA's C&P benefits administration process.

VA Departmental executives expressed a need for better data. One noted that VA has a problem providing credible data to OMB and Congress. The Assistant Secretary for Policy and Planning told the Commission that he has established a data oversight group to improve the usefulness and reliability of the data VA collects and reports across all programs and to have a "corporate data repository." Several respondents agreed that VA needs to conduct better long-range data analysis at the Department level. The products of the National Center for Veteran Analysis and Statistics are not currently used to a great extent by the administrations or the BVA.

A VHA interviewee told the Commission that the Administration recently included a performance measure for quality and timeliness of compensation and pension exams in the performance plans for VISN directors.

Opportunities and Obstacles to Success. We asked our VA interviewees for their views on what are the greatest opportunities and obstacles to success. Two major themes emerged.

1. Subjects said that VA has had little incentive to manage strategically: external forces have not reacted explicitly to the absence of strategic management processes, and the adverse consequences of not managing strategically have not driven change. They said the consequences of not planning have not been apparent. One senior official commented that, while VA needs a strategic plan to inform Congress of future needs and to make Congress the Department's partner, the Congress has not been interested in the Department's strategic planning or performance

measurements. Another respondent said veterans service organizations also never talk about strategic planning or performance measurement.

2. Subjects believed the Department's organizational culture has been a barrier to success. VA and its administrations were described as reactive and insular, characteristics that make planning very difficult. Top executives recognized the need to overcome barriers to the administrations not being committed to working together and the lack of accountability for achieving organizational goals and objectives. Several thought that overcoming these barriers would be an important "legacy."

THE VIEWS OF VBA AND BVA EXECUTIVES

Policy. VBA and BVA executives gave us insights into three major elements:

- Who is responsible for setting strategic direction for VA, the VBA and BVA?
- Is strategic management in a political organization "doable?"
- How well does VA conduct its strategic management processes?

All interviewees said the Department's top management cadre, starting with the Secretary, is responsible for setting the VA's strategic direction. Depending on the issue, the Under Secretary or Chairman of the Board of Veterans' Appeals may be the responsible official.

Almost all of the executives recognized a need for strategic planning and performance measurement, and a need to hold themselves accountable. However, they also recognized that the Department and the administrations have not done well in establishing appropriate processes. VBA officials acknowledged constructive criticism by Congress/GAO and OMB for not having an integrated strategic plan. One executive noted that they need to get better, if only in order to avoid the costs of future commissions, pointing out that the $1 million for the forthcoming National Academy of Public Administration (NAPA) study could have paid for 22 people to process claims. Another cited strategic management as "the only hope for survival."

The interviewees noted that the VBA has implemented a strategic management process that it expects will meet the requirements of the GPRA. However, the process has not been in place long enough to evaluate.

They acknowledged that VBA's planning is not integrated with the Board's, and at the time of these interviews there was no interest in doing so. While some see this as an effect of organizational stove-piping, others see it as part of the organizational philosophy of keeping the Board an independent, impartial entity. One executive noted the absence of program planning as a problem and felt it should be done, citing the need to clarify the purpose of the compensation program.

Process. VBA and BVA executives gave us insights into two major elements:

- How do VA's strategic management processes work?
- What mechanisms are in place to link planning efforts of the VBA and BVA, and other elements of VA?

VBA executives said they are establishing a strategic management process that integrates customer expectations, strategic planning, performance measurement, budget formulation, and accountability. Subsequent to these interviews, a key step in this effort has been the formation by the Under Secretary for Benefits of a Strategic Management Committee to provide overall strategic direction for all VBA operations. Business plans are under development to support the resource requests for each line of business. Several were included in the FY 1997 budget request. Although the executives expressed a commitment to planning, one of the interviewees described the process as a mid-level insurgency without an overall plan to guide it.

During the interviews, the Commission learned that the Board does not have a planning process apart from budget formulation. However, the Chairman has developed a vision for a more efficient process and has used traditional strategic management elements. The Board implemented a major change in how it handles cases by organizing Board sections along geographic lines to correspond to VBA Areas. The Chairman recently signed a performance agreement with the Secretary to improve productivity, timeliness, and efficiency.

The interviewees said no formal linkages exist between VBA and BVA to support their planning efforts. However, some interviewees noted closer working relationships because of biweekly meetings with the Deputy Secretary. Others said they were unaware of these meetings or had no knowledge of their outcomes. Notably, they told the Commission that the BVA is not part of the steering effort for the VBA reengineering initiative. VBA executives did not think this was a problem. A regular series of meetings is also held by the VA Chief of Staff with components, but this was not cited as part of the strategic

management process. One executive opined that there should not be a separate Board and that the appeals process should be managed as part of the claims process by the VBA.

According to the interviewees, there was a generally agreed need for better, more reliable data. They noted that no long-range data analysis of the C&P programs is currently conducted, or ongoing program analysis and evaluation. Several interviewees expressed the opinion that development of program policy changes at the VBA level was not politically feasible.

One official cited the distinction between line and staff as a barrier to effective strategic management. He said policy officials do not have authority over line, resulting in an inability of program staff to direct regional office actions.

Opportunities and Obstacles to Success. From VBA and BVA executives views on the greatest opportunities and obstacles to success, three major themes emerged.

1. Several VBA officials expressed operational concerns, particularly that time is needed to do things right. While recognizing the need to do much more, officials are concerned that doing things in a rush to catch up may create a problem. They said they will need continuing top leadership reinforcement from within the VA and the Administration to make progress.

2. Also, VBA executives recognized a need for better communication to all employees of the Administration's priorities and plans for achieving goals. The interviewees said that the reengineering initiative contains a communications component. However, they reported that no overall communications plan on the full range of initiatives has been developed. The Commission regards the establishment and maintenance of effective organizational communications as major responsibilities of top leadership. The Commission is impressed with the late Bart Giamatti's description of leadership as

> . . . an essentially moral act, not—as in most management—an essentially protective act. It is the assertion of a vision, not simply the exercise of a style: the moral courage to assert a vision of the institution in the future and the intellectual energy to persuade the community or the culture of the wisdom and validity of the vision. It is to make the vision practicable, and compelling.[117]

3. Neither VBA nor BVA executives saw a value in integrating the two organizations' strategic management activities. A BVA official said they are often overlooked because of the Board's

[117] As quoted in Mark Harris, *Diamond*, (New York: Donald I. Fine, Inc.), 1994, pp. 225-225.

(relatively small) size, and that they are perceived as "removed and remote." A VBA executive noted that the Board is not represented on the newly formed Department CIO Council.

THE VIEWS OF THE CHIEF ACTUARIES

The Commission held discussions with chief actuaries unaffiliated with the veterans' programs. These discussions provided insights into the potential value of actuarial analysis and projections pertaining to the compensation and pension programs based on experiences in other agencies. The views of the government actuaries are summarized below.

Actuarial science is built on the evaluation of the financial, economic, and other implications of future contingent events. Actuarial training includes analysis of uncertainty, risk, and probability. The real costs of program changes are often not recognized for many years. Thus, the value of conducting competent actuarial evaluations is that costs of future liabilities can be reasonably estimated.

In the social insurance context—for example, Social Security Insurance cash benefit programs and Medicare Part A (hospital insurance)—the Federal Government has made a commitment to persons who work in covered employment and has, therefore, incurred a long-range liability. Statutorily mandated mechanisms are in place to annually review the adequacy of funding for these programs from an actuarial perspective. Likewise, employee benefits offered by employers represent commitments that must be honored, and enforcement mechanisms—such as the Employee Retirement Insurance Security Act and state regulations—are in place to ensure that they are. All Federal Government employee benefit programs are required to do actuarial valuations to ensure adequacy of funding under Public Law 95-595.

In some ways, the compensation and pension programs can be viewed as obligations of the employer, the Federal Government, that continue for a very long time, *i.e.,* the lifetime of each individual who potentially will qualify. Therefore, it makes sense in the context of the Federal budget to track these future liabilities. One interviewee characterized it as "an orderly recognition of financial commitments."

An example of a program which is now, but was not originally, scrutinized by actuaries for the long range is the Medicare Part B (supplementary medical insurance) program. Given its annual funding basis, which is required by law to balance, long range projections were not originally seen as necessary. However, as the program grew, the public members of the Medicare Board of Trustees successfully advocated a 75-year analysis to correspond to the Part A program because of the importance of recognizing future program implications.

Among the reasons for requiring actuarial analysis of public benefit programs are:

- Such programs typically involve commitments to pay benefits for many years into the future. Before entering into such long term commitments, and periodically thereafter, every effort should be made to ensure that the financial obligations can be met.

- True costs are often not seen in the early years of a program change and can only be identified by looking at the long term.

- To understand the long-range implications, assumptions have to be presented, understood, and agreed upon by policy makers.
- Better inter-program analysis can be made, *e.g.,* the effects of a proposed change in one program on another.

- Consistent assumptions from year to year in the budget process for both program and workload costs can be made.

- Such analysis provides an accountability tool to measure program outcomes.

Interviewees also commented on the need for an agency's actuary to be at a senior level in the agency and to be seen as the source of factual, non-political estimates. In recognition of the high standing of the Social Security Administration's actuarial staff, the Congress recently mandated that the Chief Actuary report directly to the Commissioner and be compensated at ES level 6 (PL 104-121, March 29, 1996). One Social Security official noted that reporting directly to the Commissioner will make it easier to get actuarial analysis to the ultimate decision makers in the agency.

THE VIEWS OF THE AMERICAN ACADEMY OF ACTUARIES

The Commission met with the Executive Director of the American Academy of Actuaries and Academy professionals to get their views as to the importance of applying actuarial science to the compensation and pension programs. As a follow-up to our meeting, the Academy sent a letter expressing their view of the usefulness of such analysis (See Appendix H). Their views are summarized below.

They said the Department of Veterans Affairs may be unique among federal agencies in that Congress does not require the agency to prepare annual actuarial evaluations for its compensation and pension programs.

Annual actuarial evaluations under PL 95-595 are required for such similar programs as federal and military retirement, Social Security, and Medicare. The Actuarial Standards Board has stated that all social insurance programs should have an actuarial report. The VA programs are not social insurance programs, but they are similar in that they represent a long-term commitment of the government to veterans.

In its letter, the Academy reported that the Actuarial Standards Board (the actuarial profession's standard-setting body) requires all of the following items in actuarial reports on social insurance programs.

- Collection of analytical and demographic data on the base population that is covered by the programs, the rates of their progression in disablement and utilization, and the timing in life of their utilization.
- Analysis of the benefit amounts and eligibility rules and the cost effects of amending them.

- Determination of actuarial assumptions, based on past experience and future expectations, to be applied in projecting the future of the program.

- Projection of the streams of benefits, administrative expenses, and income.

- Analysis of the adequacy of current assets and projected income to fund the program on a short-term basis even under pessimistic assumptions.

- Analysis of long-term income adequacy on an ongoing, best-prediction basis to ensure the federal commitment to beneficiaries remains on a permanently sound footing.

By using these assumptions and projections as a standard baseline for all parties when discussing amendments to the programs, Department executives can reduce the number of issues that have to be debated. Actuarial analysis may provide a framework for addressing the following key issues:

- determining how to make the program sustainable and how to fund it;

- determining the level of assets necessary to apportion costs equitably between current and future generations; and

- estimating the future costs arising out of individual amendments or military actions, on an aggregate as well as a per-person basis. This information may be useful for analyzing alternative payment options, such as a [lump-sum payment of benefits].

An annual actuarial analysis is just one element of a well administered program. The analysis can benefit many parties: program executives; Congress and the Administration; beneficiaries and their dependents; and the general public. The evaluation can be used for planning; to warn of hidden costly spikes in future costs or in future legislation; to identify and curb abuse; to justify legislative proposals; and to respond to queries from stakeholders. The Academy has found that even the process of producing the actuarial evaluation is very helpful to management in running an effective program.

For these reasons, the American Academy of Actuaries recommends that long- and short-range actuarial analysis be done for all veterans benefits programs. They suggest VA establish an Actuarial Advisory Board of private sector actuaries to assist the Department in this effort.

2. Annual Report on Disability Compensation Program.

The Commission knows of no regular report that presents consolidated, comprehensive information about VA's disability compensation program. Collection and publication of these data would be of significant value to VA, Congress, veterans service organizations, and other stakeholders. A relatively small amount of data is published in a variety of reports: *The Annual Report of the Secretary of Veterans Affairs*, *The Department of Veterans Affairs Annual Accountability Report*, and the annual budget submission. These reports include a limited amount of caseload, workload, and financial information about the program. A well designed public report with comprehensive data could:

- enhance VA's strategic management and planning processes by allowing the identification and analysis of emerging trends and the construction of future scenarios;
- give VA top management an accurate picture of the compensation program "as it really is," not "as it is thought to be;"
- provide a means for all interested parties to track VA's progress in meeting its strategic goals and objectives as they pertain to the disability compensation program; and
- provide an opportunity for additional analysis and commentary by VA's stakeholders.

3. Role of an Advisory Committee for the Disability Compensation Program.

Through much of its history, the Federal government has relied on advisory committees of private citizens to bring a variety of perspectives to general areas of concern and to specific issues. Advisory committees are a means by which the best resources and experience available in all fields of business, society, government, and the professions can be made available to the Federal government at little cost.

VA has various "advisory committees" to address issues of current or long-term interest. All of these committees were established by one of three means: legislation, Executive Order of the President, or by the Secretary of Veterans Affairs. Appendix I lists these committees, taken from VA's *Guide to Federal Advisory Committee Management*. The appendix also presents summaries of statements of purpose and membership requirements for those committees whose objectives touch VA's claims adjudication processes. The appendix also contains summaries of recent committee recommendations, if available.

The Commission's review of all advisory committees in VA found none whose mission encompasses the entire range of disability compensation benefits and the entire population receiving these benefits. The Commission found no external body to assist in oversight of an annual $15 billion governmental expenditure for disability compensation with future entitlement obligations that will be expended over many decades. However, VA does receive advice and recommendations on service-connected disability compensation issues regularly from external sources such as the General Accounting Office and national veterans service organizations.

VA currently has no advisory committee whose mission encompasses the disability compensation program as a whole and the entire population receiving these benefits. Given the substantial portion of VA's budget allocated for payments to veterans with service-connected disabilities and that over 2.5 million veterans and dependents receive VA compensation, the Commission believes that program policy advice on an ongoing basis from an independent body would be useful to the Secretary.

III. Conclusions

The Commission's assessment of VA's performance of strategic management tasks is a mixture of good news and bad news. There is much work under way throughout the Department, especially to implement strategic planning and performance measurement as required by the GPRA, that may well be very fruitful and result in better program administration. This good work may be the foundation for strong leadership of the Department's activities. However, the Department, VBA, and BVA have much work to do before a strategic management process systematically yields the expected benefits. Clear, consistent commitment of top executives to the principles of strategic management is essential for continuing success. They can do

this by fostering a climate that leads to a change in the organization culture such that strategic planning, performance measurement, and accountability for results are valued principles.

1. Effectiveness of VA's Strategic Planning.

- Many executives are aware of the need for strong strategic management and recognize that much remains to be done.
- Two Assistant Secretaries, for Management and for Policy and Planning, are collaborating in implementation of the CFO Act and GPRA requirements for establishing goals, strategic plans, performance measures, and accountability reporting. The "embryonic stage" of a strategic management infrastructure at the Department level is emerging.
- Efforts are under way to build a "corporate data repository" with several components agreeing to participate.
- VHA has moved well along in developing a strategic management agenda, setting a model for others.
- VHA recently introduced a performance measure for quality and timeliness of compensation and pension examinations in the performance plans for VISN directors.
- Under Secretary Vogel announced the formation of a Strategic Management Committee on April 26, 1996.
- Chairman Cragin recently signed a performance agreement with the Secretary to improve productivity, timeliness, and efficiency.
- Deputy Secretary Gober convenes biweekly meetings with Under Secretary Vogel, Chairman Cragin, and Deputy Under Secretary Garthwaite to promote coordination among the Department's component organizations.
- The BPR project incorporates elements of strategic planning and is built on a vision of an alternative future claims processing system.

2. Detrimental Effects of the Lack of VA Strategic Planning.

These are characterized as "bad news" because Commissioners feel they represent barriers to successful program management.

- Executives in the VBA, VHA, and BVA do not see an advantage in working at the Department level and have not been committed to doing so.
- The embryonic Department Strategic management infrastructure is not yet driving VBA, VHA, and BVA directions.
- Department officials do not regard the BVA as an operations component and have not encouraged integrating its activities, such as technology planning and performance measure development, with the VBA's.
- Workload projections for the VBA and BVA are done in isolation. However, the VBA is now participating in the "corporate data base" activity.
- No program or workload projections are made beyond the budget year requirements, unlike other government benefit programs.
- Neither Congress nor VA projects costs of proposed program changes beyond the near term, usually five years. No internal VA capability exists to do actuarial analyses of proposed changes, or review future program liabilities on a periodic basis. The annual Chief Financial Officer's report does include a line in the financial statement for future liability for veterans compensation and pension. However, this information is based solely on the current beneficiary population and is not used for any other purpose.
- No long-term program policy planning is under way for the compensation and pension programs. Program policy is not being addressed by the VBA reengineering effort.
- The VHA has included the VBA and BVA as stakeholders in developing their vision, but the VHA role in the compensation and pension programs is not explicitly recognized.
- While the new VBA Strategic Management Committee holds promise, integration of major initiatives has not yet occurred.
- Key VBA and BVA officials are not aware of the Deputy Secretary meetings and have no input to, nor action items from, them. The Assistant Secretaries who might carry out agenda planning and integrate with strategic planning, performance measurement, and accountability do not participate.

3. Detailed Data Analysis Is Essential For Effective Strategic Management.

A family of verifiable performance measures is essential for the objective evaluation of VA's compensation and pension programs. VA currently uses a limited set of measures for quality, timeliness, and productivity as critical indicators of claims processing performance. They are now working to collect information about customer and employee satisfaction, and unit costs. However, VA does not routinely collect information about beneficiaries or the impact of the programs on their lives.

Detailed data about veterans receiving and claiming compensation, and about the nature of the disabilities compensated and claimed, would be useful in understanding the current status of the disability compensation program and in identifying emerging trends.

IV. Recommendations

1. Congressional Oversight Needed on an Ongoing Basis.

Only the Congress, particularly the authorizing and appropriations committees concerned with veterans benefits programs, can create the external force needed to give VA adequate incentive to implement and sustain an effective strategic management process. Having established the legislative framework for strong strategic management in the CFO Act, GPRA, and the ITMRA (Information Technology Management Reform Act), the committees must now insist that the provisions of these statutes be implemented in a meaningful way. The Congress can do this in several ways: participate appropriately in the development of the Department's strategic planning; focus on performance issues during hearings; and make legislative decisions based on the plan and performance measurement.

2. Accelerate Development of an Integrated Department Strategic Management Infrastructure.

The Secretary and Deputy Secretary must take the lead in setting strategic goals and embracing the accelerated development of an integrated strategic management process. Responsibilities of the Assistant Secretary for Policy and Planning and the Assistant Secretary for Management, need to be clarified and strengthened for them to ensure that all components' efforts are integrated. This must include facilitating the integration of the BVA's activities in all major efforts affecting compensation and pension claims processing. For the VBA, the Under Secretary must establish a strategic direction

consistent with that articulated by the Secretary. While the Strategic Management Committee effort is "good news," it must do more than integrate already existing initiatives. A strategic vision and a clearly defined set of goals designed to achieve it must be developed.

3. Clarify Program Purpose.[118]

The compensation program has evolved over the years in such a way that the program's purpose is no longer clear. The Schedule for Rating Disabilities says, "The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations."[119] It also makes reference to compensating for considerable loss of working time. However, many veterans receiving compensation are gainfully employed. This lack of clarity regarding the purpose of the program contributes to complexity of the adjudication process and provides opportunity to the Board of Veterans' Appeals and the Court of Veterans Appeals to interpret statutes and regulations in ways that further increase complexity. While some process improvements can be made within the existing program, legislative and judicial mandates must be reviewed to ensure consistency of purpose and ease of administration. The obvious political sensitivity of addressing this issue may require that the Congress establish a commission for this purpose alone.

4. Implement Ongoing Actuarial Analysis.

Recognizing the future costs of program changes and understanding ongoing dynamics of the programs will enable both Congress and the Administration to manage them strategically. For example, stakeholders will be able to determine whether proposals are in keeping with program purposes and are fiscally prudent. There should be an actuarial staff at the Department level, with direct access to the Secretary, that is responsible for this analysis. All VA components would participate in developing the assumptions used by the actuaries and would use the same assumptions in program and operations planning and budgeting.

5. Empower a Corporate Data Collection and Analysis Activity.

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[118] This issue is discussed in more detail in chapter VI.

[119] VA *Schedule for Rating Disabilities,* section 4.1.

A strong central focus for identifying data needs, collecting data, and analyzing data should be established by designating or creating a Department level unit responsible for organization-wide data development, maintenance, and analysis. All components should be required to collaborate with this entity to ensure common understanding about future workloads and the needs of current and future customers. Such data are essential for ongoing actuarial analysis. Data collection should be a byproduct of work processes at the operating division level, to the extent practicable. Data should be useful at the operational level, as well as at higher levels.

6. Require an Annual Report that Focuses Solely on the Disability Compensation Program.

The Commission recommends that VA publish a comprehensive annual report on all aspects of the disability compensation program utilizing the corporate data base and actuarial analysis. The Commission believes that detailed analysis and publication of the characteristics of VA's compensation program, and its beneficiaries and claimants, will enable VA to predict more reliably its future program and training needs.

7. Establish a Disability Compensation Advisory Committee to Provide Independent Evaluation.

The Commission recommends that Congress establish a disability compensation advisory committee to ensure that the Congressional concerns that led to the Commission's creation continue to receive independent evaluation. The disability compensation advisory committee's mission should include program policy and strategic management issues related to the compensation and economic recovery of veterans with service-connected disabilities, but should not include issues of direct medical care for these disabilities. So that VA may hear new and independent voices on veterans' disability compensation issues, the Commission also recommends that the committee include members from constituencies of disabled persons that currently provide little or no input to VA.

V. Process Design: Claims Adjudication and Appeals

Major Findings and Conclusions

The Commission's preliminary findings and conclusions, as updated and expanded in this final report, support the following:

- ***The adjudication and appeals process:***
  - ***involves too many "hand-offs" at the initial adjudication level;***
  - ***lacks clear and definitive rules that can be fairly and efficiently applied to the processing of the vast majority of cases;***
  - ***fails to provide meaningful due process to claimants by not making them partners in the adjudicative process;***
  - ***imposes time-consuming and labor-intensive redundancies, e.g., the notice of disagreement and statement of the case prior to the filing of a formal appeal;***
  - ***blurs accountability due to ill-defined jurisdictional lines and failure to use the results of actual adjudications for quality control and employee rating purposes; and***
  - ***generally fails to treat the claims and appeals process as a continuum which should narrow and sharpen issues as a claim proceeds through the process, rather than expanding and obfuscating them.***

Neither VA nor the taxpayers can afford the luxury of the resource intensity required of a paternalistic adjudication system. Neither should veterans have to tolerate the imposed complexities and delays inherent in a system of "adversarial paternalism." The current system is particularly ill-adapted to the task of fairly and efficiently processing repeat claims, which represent the bulk of the compensation workload.

Both veterans and the system need Congress to express its intent clearly by clarifying statutory terms and concepts such as "burden of proof," "well grounded claim," "duty to assist," and whether or not there is a distinction between "evidence" and "facts" as those terms apply to the "duty to assist." They also need a clear statutory/regulatory expression as to the respective duties and responsibilities of claimants, representatives, and VA, as well as the extent and nature of the proofs necessary to establish entitlement to benefits.

Regulations are needed to incorporate and formalize VA's experience in adjudicating millions of claims, so that all parties, including the CVA, will know the rules under which claims are adjudicated on the Secretary's behalf and the basis for those rules. This is particularly true with respect to:

- ***the weight given to the various forms of evidence, in hierarchical order;***
- ***the presumptions attached to the various kinds of evidence and the kinds of critical tests to which they should be systematically subjected, particularly for purposes of reopening;***

- *the acceptable sources of that evidence; and*
- *the responsibilities of the respective parties in obtaining it, considering its source.*

Hearing officers and VSO representatives are an underutilized resource. Both should have a greatly expanded role in a nonadversarial, nonpaternalistic redesigned adjudication and appeals process.

Major Recommendations

The Commission's recommendations fall into three broad categories: (1) the need for Congress and the Secretary to exercise their respective policymaking responsibilities; (2) building partnership between VA and the claimant/representative; and (3) the Commission's proposals for a redesigned adjudication and appeals process.

I. Review and Reaffirmation of Major Policies Needed

Congress should review the policies established by the Court of Veterans Appeals (CVA) to determine whether they are consistent with the compensation program's purposes and the intent of Congress. Where they are not, Congress should legislate or direct the Secretary to regulate.

Several key policy areas require early attention because of the manner in which the Court has interpreted intent. While these interpretations may be in keeping with Congressional intent, they are also critical drivers of extended development and thus of additional time and resources in the process. They also create confusion on the part of the Department's field staff, claimants, and representatives.

These areas include:

- *"burden of proof;"*
- *"well grounded claim," including:*
  - *the nature of evidence sufficient to establish a well grounded claim;*
  - *whether or not a well grounded claim is a threshold test, which requires a summary denial if not met; and*
  - *whether an allegation of disability is sufficient to establish a well grounded claim without accompanying credible medical evidence;*
- *"duty to assist;"*
- *the distinction between "evidence" and "facts" as those terms apply to the "duty to assist;" and*
- *the interrelationship of "burden of proof," "well grounded claims," and "duty to assist," and the sequence in which they are to be applied.*

These policies drive critical steps in the claims process. The expected outcome of the review of these major policies and subsequent legislation and regulations would be clear guidance as to the respective roles and responsibilities of the veteran, representatives, and VA in the claims process. It would put the Congress in charge of the statement of program purpose and policy with VA responsible for

interpretation and application of those policies. The Court would then have a more traditional role of ensuring proper application of policies to individual litigants.

The Secretary should promulgate regulations that provide his construction of the statute and that incorporate and formalize VA's experience in adjudicating millions of benefit claims.

There is a regulations void, which should be filled, on such fundamental adjudicative issues as:

- *the weight given to the various forms of evidence, in hierarchical order;*
- *the presumptions attached to the various kinds of evidence and the kinds of critical tests to which they should be systematically subjected;*
- *the acceptable sources of that evidence; and*
- *the responsibilities of the respective parties in obtaining it, considering its source.*

There is also a lack of a practical definition of the term "well grounded," with acknowledgment and authoritative discussion of its adjudicative implications. It is on these fundamental issues that CVA is making policy because of the regulatory void, which the Secretary should fill.

These regulations should provide the foundation for a redesigned adjudication and appeals process, which the Commission recommends below, because what has to be proved—and by what means—determines the nature of the process. The redesigned process should be incorporated into regulations. It is particularly important that regulations address the substantive issues presented by the vast majority of claims. The data in Chapter I show that the majority of cases are repeat claims filed by represented veterans who are already in benefit status. The typical veteran presents disabilities which have been or will be rated zero or ten percent. The typical case includes relatively simple substantive issues and the evidentiary and procedural rules needed to fairly and efficiently resolve those issues can be similarly simple.

II. VSOs and VA Should Build a Claims-Processing Partnership

The Commission believes that the expertise of VSO representatives is a valuable resource with great potential for further application in the claims processing system. By working in partnership with

VSOs to find ways of systematically engaging them in the claims process, VA can improve its service to veterans. As recommended in Chapter III, appropriate roles and responsibilities of the partners would be negotiated among VA and the VSOs, in the context of the VBA's BPR initiative, to provide a conceptual framework that would guide claim-specific partnerships among the parties to the claim.

III. Redesign the Adjudication and Appeals Process to Make it More Functional, Fair, and Efficient.

The Commission endorses the following conceptual process redesign in principle but acknowledges that further expert analysis is needed before the net effects of the proposed changes can be projected accurately. The redesigned process would feature the following characteristics.

- ***A duty to inform, i.e., ensuring that the claimant knows what benefits he or she is potentially eligible for, including the degree of disability he or she could reasonably hope to prove, and the evidence needed (in hierarchical order) to establish the claim.***

- ***Establish the respective roles and responsibilities of the claimant and VA in obtaining a complete and focused record. The purpose would be to narrow the claim to the relevant issues and focus development on evidence that is most persuasive and material in resolving those issues.***

- ***Ensure the evidentiary record is complete prior to decision.***

- ***An appeals process that narrows and sharpens the issues rather than one that expands and obfuscates them. This includes: replacing the NOD with a formal appeal and eliminating the Statement of the Case; shortening the appeal period to 60 days; expanding the role of the Hearing Officers to make it the mandatory first step in the appeal process; and changing the nature of the BVA's review from de novo to appellate.***

I. Background

Scope of Claims and Appeals Process Analysis.

VA's adjudication and appeals process is the fulcrum around which the Commission's entire deliberative effort has turned for the very good reason that each and every area the Commission was charged to evaluate and assess by Public Law 103-446 relates directly to VA's adjudication and appeals process. The Commission's task was not easy for two reasons: first, it was necessary to review and analyze a mountainous quantity of data in order to gain an informed grasp of the details of the entire process; second, it was difficult to establish a baseline for measuring realistically VA's success or failure in implementing congressional expectations.

The second difficulty gives rise to two fundamental questions:

- Is the procedural complexity of the adjudication and appeals process, especially as it has evolved since the creation of the Court of Veterans Appeals (CVA), what Congress intends?

- If so, are the inevitable delays caused by this complexity a tolerable and necessary adjunct of congressional intent, as interpreted by the CVA?

- If both questions are answered "yes," a third question is posed: To what extent, if at all, can the existing adjudication and appeals process be improved, or "fine tuned," to minimize delays while ensuring quality adjudication and full due process?

Because the Commission first had to become familiar with the particulars of the existing process, and because it was operating under the presumption that the existing process was what Congress intended, the Commission's deliberations did not follow the sequence of the questions posed above. After becoming familiar with the existing process, the Commission attempted to answer the third question first because if that question could be answered in the affirmative, it would obviate the need to answer the first two questions. The Commission, however, was unable to answer the question in the affirmative, as its Report on Preliminary Findings and Conclusions attests.

Broad Changes Required.

The Commission concluded that the problems with the existing system are so many and varied that it cannot be fine tuned into a system that will consistently produce timely and high-quality adjudicative products. This conclusion perhaps was not unexpected because there was a general consensus that the system was failing both in terms of the quality and timeliness of its decision making on benefit claims, which is what occasioned the creation of the Commission. The question was: "Why?" To answer this basic question, the Commission believed it was necessary to conduct a fundamental reexamination of the nature, purpose, and intent of the system for adjudicating veterans benefits claims, or, to put it more colloquially, "to go back to square one." Only then would it be possible to determine what could be done realistically to improve the system within the parameters of congressional expectations and the resources provided to VA by Congress.

It was at this point that the Commission posed to itself the first two questions cited above in order to ensure that its recommendations would comport with congressional intent and direction. For example,

- Did Congress intend, or at least anticipate, that a remand rate of approximately 50 percent would become the norm both for the CVA and BVA?

- Did Congress expect judicial review to reveal that adjudication at the BVA and the ROs was so procedurally deficient as to justify such high remand rates by the CVA and BVA? More specifically,
- Did Congress expect and intend that the nature of VA's adjudication would change fundamentally with judicial review so that it would be more time consuming and costly?

If so, to what degree, if at all, is VA failing to deliver the kind of system Congress wants, in the manner it intends?

The Commission was unable to find definitive answers to these questions. The Commission believes it is time for Congress to reexamine all facets of the system and how the changing characteristics of the veteran consumer affect the nature of the claims he or she submits.

VA Paternalism: A Source of Difficulties.

Prior to the creation of the CVA by Public Law 100-687 in 1988, as a practical matter, clear congressional direction was not essential. By all accounts, the adjudication and appeals system was "paternalistic," but VA was able to process benefit claims in a reasonably timely manner and, without judicial review, VA was the judge of what constituted "quality" decisions. The Commission has discovered nothing that would contradict the universal perception that VA's adjudication and appeals system was and still is paternalistic. This fact has great significance because in order to fix a problem, you first must know what the problem is. The Commission believes that VA's traditional paternalism is the source of much of its present difficulties. The question is whether this is the kind of system Congress still wants.

A paternalistic system *requires* that claimants not be informed regarding such fundamental matters as the specific requirements for presenting and proving their claims; otherwise, they will become partners in the adjudicative process, and, of course, the system will no longer be paternalistic. In a paternalistic system, such rules as there are mean what the paternalistic decision maker says they mean. This is particularly true when there is no formalized, independent, third-party review of agency decisions.

Without independent, third-party oversight a paternalistic system is generally accountable only to itself. This permits certain administrative efficiencies; for example, cursory decisions with little or no explanation of the material factors leading to the decision. But such a system also has built-in inefficiencies, the foremost of which is that the agency assumes complete responsibility for evidence gathering. Another important downside is that as long as the system produces reasonably timely decisions and escapes broad congressional criticism, there is little, if any, institutional incentive to actively pursue increased efficiencies. Change and innovation are not characteristics of an unreviewed system. The Commission believes that this description can be accurately applied to VA as it existed prior to the enactment of P.L. 100-687.

With the creation of independent, third-party review, however, the paternalistic VA system was confronted with the worst of both possible worlds: it was saddled with the built-in inefficiencies and institutional inertia of paternalism, but it also was no longer able to take advantage of the lack of accountability that permitted decision making efficiencies. This is because effective oversight of agency decisions requires that they be fully rationalized and comply with relevant statutory and regulatory provisions. The absence of clear and definitive rules governing administrative adjudication procedures, which is characteristic of a paternalistic system, compounded VA's problems even more, and has placed VA in a reactive posture with respect to the formulation of adjudicative policy. Vague rules, which previously had not been a problem because they were subject only to VA's interpretation, suddenly took on an entirely different meaning when interpreted by the CVA. Invariably, the CVA's interpretation of statutory and regulatory provisions was more expansive than VA's and required VA to do more for claimants. These developments have produced a phenomenon which is another overriding theme of this report.

During the process of formulating its preliminary findings and conclusions, the Commission struggled to find an accurate term that would characterize the nature of the current adjudication and appeals process. After much deliberation, the Commission settled on the term "adversarial paternalism," which admittedly is an oxymoron because "adversarial" and "paternalism" are contradictory terms. But it is this contradiction in terms that drives the adjudication system and dooms it to inefficiency. By definition, the proceedings before the CVA are adversarial. When an adversarial review is imposed on a paternalistic adjudication and there are no definitive rules that describe the limits of adjudicative paternalism, for all practical purposes the judicial review standard becomes, "Was VA paternalistic enough?" As each case presents different circumstances, the boundaries of paternalism can be and are continually extended. And, because three-judge rulings are precedential, extended boundaries resulting from appeals decided by three-judge panels must be applied to all cases.

Many of the problems associated with adversarial paternalism have been described in the Commission's Preliminary Findings and Conclusions and will be more fully discussed in connection with the Commission's final recommendations. The point is that an administratively efficient adjudication system requires simple, easy-to-understand rules that are binding on all parties and can be applied across-the-board. Such rules should be designed to facilitate the production of adjudicative decisions rather than complicate it. This is just as true for procedural rules as for the actual adjudicative standards for determining disability. Not having clear and binding procedural rules is akin to trying to determine the degree of disability without the rating schedule. The rules may be liberal or exacting, depending on congressional intent, but there must be clear rules if there is to be administrative efficiency.

Discerning congressional intent from statutory language, however, poses a problem because the language seems to be inconsistent with the reality of VA's paternalistic system. For example, the statute appears to place the burden of proof on the claimant, and the burden is heavy, *i.e.,* ". . . a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded."[120] A literal reading of this provision places a heavy responsibility on the claimant that is clearly inconsistent with a paternalistic adjudication system.[121]

Duty to Assist and Burden of Proof.

The remaining language of subsection 5107(a) does not change this perception. It provides that: "The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title." Section 5106 refers to information in the possession of any federal department or agency. Although the first sentence has been interpreted as imposing an almost open-ended "duty to assist" on the Secretary to develop *evidence* for the claimant pertinent to the claim, the statute does not say this at all. It says that the Secretary shall assist the claimant in developing the *facts* pertinent to the claim. Presumably, if Congress had meant "evidence," it would have said "evidence." Logically and legally, evidence and facts are two different things. The *facts* pertinent to the claim are the issues to be evaluated in the context of the criteria for entitlement; *evidence* is the material necessary to establish those facts as true. The only specific statutory exception applies to pertinent information (evidence) in the possession of a federal department or agency. Thus, a literal reading of the statute requires the Secretary to assist the claimant in identifying the facts that must be established, but the burden of submitting evidence to establish those facts remains with the claimant.

Subsection 5107(b) appears to reinforce this view. After enacting the "benefit of the doubt" rule, the section concludes by stating: "Nothing in this subsection shall be construed as shifting from the claimant

[120] See also 38 USC §5107(a).

[121] See also 38 USC §5103(a).

to the Secretary the burden specified in subsection (a) of this section," *i.e.,* the burden never shifts to the Secretary, it always remains with the claimant.

Within the statutory scheme, there is a general exception to the rule that the burden of proof is on the claimant. It is expressed in the opening phrase of subsection 5107(a) as follows: "Except when otherwise provided by the Secretary in accordance with the provisions of this title. . . ." "[In] accordance with the provisions of this title" means that such exceptions as the Secretary may provide must be promulgated under the Administrative Procedures Act (APA) rulemaking procedures.

Under this interpretation of the statutory provisions, congressional intent appears to be quite clear. Moreover, the provisions are in effect a restatement of VA regulations that existed prior to the creation of the CVA. Yet, in practice, VA then and now operates as a paternalistic adjudication system. The difference is that, with judicial oversight, VA can no longer unilaterally and arbitrarily decide the extent to which it wishes to be paternalistic by departing from its own and Congress's rule that the burden of proof is on and remains on the claimant. At a minimum, any departure or exception to the rule must be done through rulemaking and by regulation. Such regulations do not exist.

When legislative history is ambiguous, the courts take on a legislative function by making judgments about what Congress intended.[122] It is perfectly appropriate that the CVA would interpret a statute in light of VA's past practices in interpreting and implementing it, which were decidedly paternalistic. ("VA's duty to assist arises out of its long tradition of *ex parte* proceedings and paternalism toward the veteran."[123]) This is particularly true in the absence of regulations specifying exceptions where VA would partially relieve the claimant of the burden of proof by obtaining evidence on his behalf. Indeed, the alternative would be to give a construction to the statute that is contrary to the Secretary's, as demonstrated by decades of past VA practice.

The statute is not clear in other important respects. For example, it is difficult to determine with any degree of certainty what the statute means by a "well grounded" claim; what exactly a claimant's "burden of proof" is; when or if the claimant's burden of proof shifts to the Secretary; how, if at all, the Secretary's "duty to assist" is related to the claimant's burden of proof; whether the Secretary's duty to assist was meant to be triggered only upon a determination that a claim is "well grounded;" and how, if at all, these provisions and the "benefit of the doubt" provision interrelate. On a case-by-case basis, virtually any interpretation is possible, but policymaking under these circumstances can only be confusing, disruptive, and inefficient.

Removing from the claimant the burden "of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded" results in decreased adjudicative timeliness and efficiency. Whatever VA does for a veteran claimant that the veteran can do for himself or herself is an unnecessary and wasteful expenditure of resources. Adversarial paternalism places little, if any, responsibility or expectation on the part of the claimant. This creates a burden additional to the one already self-imposed on VA and, in the process, lifts the burden of proof from the claimant. It also tends to unnecessarily expand issues and drive the system toward requesting and obtaining evidence that is not relevant rather than concentrating resources on obtaining evidence that is focused on the issues.

The Commission believes that VA's traditional paternalism is no longer sustainable or affordable now that it has to be defended within the adversarial context of, "Was the VA paternalistic enough?" This being so,

[122] For a discussion of judicial review of legislative and administrative acts, see *Managing the Public's Business*, by Laurence E. Lynn, Jr., Harper, 1981.

[123] *Connolly v. Derwinski*, 1 Vet. App. 566, 569 (1991).

the adjudication and appeals system we recommend would be neither "adversarial" nor "paternalistic." The Commission believes that its recommended system is fully consistent with the language of existing statutory provisions, but whether it fully comports with congressional intent is an issue only Congress can decide. It is essential that this issue be resolved, because without clear congressional direction it is doubtful that any recommended solutions will be implemented and sustained. If adopted, the Commission's recommendations will take the VA's adjudication and appeals system in a different direction than it has followed traditionally. Although most of the Commission's recommendations may not require statutory changes, fundamental changes of the kind we recommend should be implemented only with congressional endorsement, after full consideration of the views and interests of all major parties to the system.

The Commission believes that the claims processing partnership between the claimant/representative and VA should be grounded on *a duty to inform*, which is introduced and described below. Each party would have specific roles and responsibilities. The Commission also believes that having ill-defined procedural rules, or no rules at all, creates complexity and inefficiency. The Commission's solution theme for this problem is simplification of the system, with the simplification being formalized in easy-to-understand, easy-to-apply, common sense rules. Such ill-defined and confusing terms as "well grounded claim" and "duty to assist" would be subsumed within, and given meaning and substance by, this simplified system.

II. Findings

The Commission affirms its preliminary findings and conclusions as they relate to the nature of VA's adjudication and appeals process and the fundamental problems that are inherent to the system as currently operated. The following updates data and expands upon the Commission's preliminary findings and conclusions which provide the bases for the Commission's recommendations.

Repeat Disability Compensation Claims.

Repeat disability compensation claims continue to drive the process. Since FY 1990, the ratio of repeat claims to initial claims has been almost three to one. Among initial and repeat claims for disability compensation received in FY 1996, through May, about 74 percent were repeat claims and about 32 percent were initial claims.

In addition, the "typical" claimant has a lower-rated disability and has professional representation.[124]

[124] See Chapter III, *Interaction: The Veteran Meets the System*, for statistics regarding claimant representation.

Table 1 - Claimants With Lower Rated Service-Connected (SC) Disabilities		
	Number of Veterans as of 9/30/95	*Percent*
Veterans with a Combined Degree of 10% for a SC Disability	886,279	39.64%
Veterans with a Combined Degree of 20% for a SC Disability	365,241	16.34%
Veterans with a Combined Degree of 30% for a SC Disability	306,997	13.73%
Total Veterans with Combined Degrees of 10, 20, and 30%	**1,558,517**	**69.71%**
Total Veterans Receiving Benefits	**2,235,675**	**100.00%**

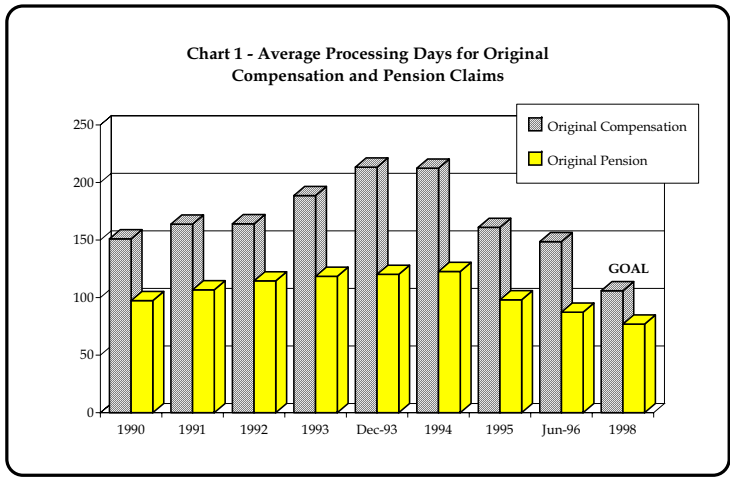
Source: RCS 20-0223 Report

The VBA continues to progress toward meeting its timeliness goal for processing original compensation claims—average processing time has declined from 212 days at the end of FY 1994 to 150 days at the end of May 1996. However, the Commission regards this improvement not as having been achieved by increased productivity, as measured by task time per case, but by a combination of increased decision making FTE, heavy use of overtime, and decreased receipts. The following data update the VBA's workload processing statistics through June 1996:

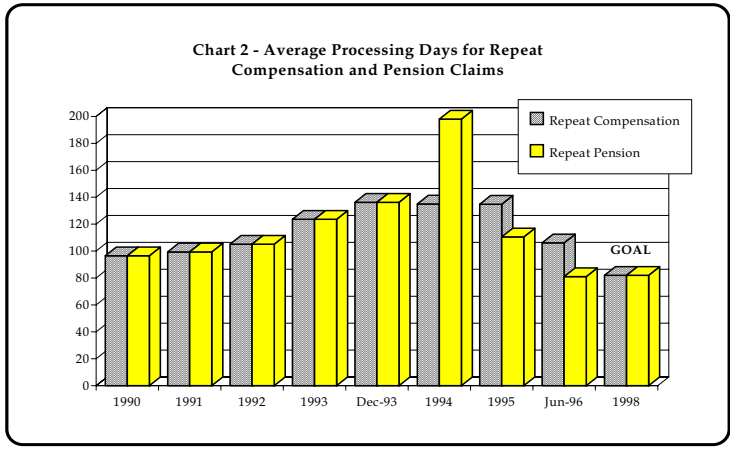
Table 2 - Average Processing Days for Original and Repeat Disability Compensation and Pension Claims

	Original		*Repeat*	
Fiscal Year	*Compensation*	*Pension*	*Compensation*	*Pension*
1990	151.1	97.4	96.5	96.5
1991	163.9	106.8	99.4	99.4
1992	164.2	114.5	105.1	105.1
1993	188.7	118.5	123.6	123.6
December 1993*	213.4	120.2	136.2	136.2
1994	212.5	122.7	135.0	198.0
1995	161.0	98.1	134.8	110.5
June 1996**	148.6	87.4	106.1	81.0
1998 (Target)	106.0	77.0	82.0	82.0

Source: COIN DOOR 1015 Reports
*December 1993 is FYTD (10/1/93 - 12/31/93)
**June 1996 is FYTD (10/1/95 - 6/30/96)
Note: Repeat Compensation and Pension processing days are the same until fiscal year 1994. VBA controlled repeat compensation and pension claims under the same end product until fiscal year 1994.



Source: COIN DOOR 1015 Reports



Source: COIN DOOR 1015 Reports
Note: VBA controlled repeat compensation and pension claims under the same end product until FY 1994. The significant increase in repeat pension processing days in FY 1994 is most likely due to the creation of separate end products for repeat compensation and pension claims. Not all repeat compensation and pension claims were classified under their new end product until FY 1995.

The early results of the separation examination pilot initiative are quite promising in terms of improving the fairness and efficiency of original compensation claims processing. This initiative is discussed in Chapter IX, Section 1.

Business Process Reengineering.

The VBA's Business Process Reengineering (BPR) initiative has great potential for improving the system by making it more responsive to claimants and more administratively efficient. The Commission is impressed with the BPR's practical orientation and its willingness to rethink the process in order to make it more efficient and functional to the needs of claimants. The Commission endorses the BPR approach taken thus far. Assuming that VA adopts an energetic and complete communications plan[125] and includes the BVA in the implementation process, the redesign should become the overarching blueprint for future changes in the process and the information technology to support it.

Appeals.

Since the Commission issued its preliminary findings and conclusions, VA has reported on a number of initiatives it has undertaken to improve appeals processing. These include:

- A 100 percent review by regional offices of all appeals before forwarding them to the BVA.
- The development of a "Precertification/Certification Worksheet" to facilitate the 100 percent review.
- Increasing the number of decision makers at the BVA, and increasing the ratio of attorneys and Board members to support staff.
- Improving communications and cooperation among the VBA, BVA, and VHA.
- Improving the BVA's quality assurance system.
- Developing a performance agreement between the Chairman of the BVA and the Secretary.

These and other BVA initiatives coincide with improvements in appeals processing. The following tables update the appeals workload processing statistics in the preliminary report to include all of FY 1995 and the first eight months of FY 1996:

[125] A communication plan refers to a plan/schedule for communicating with all the stakeholders/parties who will be interested in the BPR team's work. The communication plan sets out a plan for communicating with the stakeholders/parties from the *beginning* to the *end* of the team's work.

Table 3 - FY 1995 and 1996 Apeals Workload Processing Statistics

	FY 1995	*FY 1996 (thru May)*
Decisions	28,195	21,570
Appeals Received	39,990	22,337
Pending End of Year	58,943	59,710
BVA FTE	433	471
Decision per FTE	65.1	70.2
Response Time (days)	763	641

Source: BVA, May 1996

Table 3 (above) reveals that pending appeals have increased slightly while the number received has dropped noticeably. In FY 1995, an average of 3,332 appeals were received per month. But in FY 1996 (through May), the average per month is 2,792. In addition, FTE at the Board has increased by eight percent. More staff have decided more cases, while fewer have been received. There has been an increase of five dispositions per FTE per year but the Commission does not have data that would indicate whether this increase is due to improved efficiencies, an increased use of overtime, or a combination of both.

A study of the cases called in by the BVA during the period September 1995 through June 1996 was the subject of a BVA report. (From February 1994 until July 1995, certified appeals—that is, appeals ready for BVA action—were held in the ROs because of a heavy appeals backlog in the BVA.) The study was instituted by the Deputy Secretary and included the above-cited 100 percent review of appeals being certified to the BVA by the ROs. The study revealed the following results for cases decided by the BVA:

Table 4 - Study of Cases Called in by the Board of Veterans' Appeals

Period	*Decisions*	*Remand*	*%*	*Allowed*	*%*	*Denied*	*%*	*Other*	*%*
FY 1995	19,295	10,114	52.4%	3,118	16.2%	4,041	20.9%	2,022	10.5%
9/95	1,384	621	44.9%	271	19.6%	377	27.2%	115	8.3%
9/95-6/96	6,525	2,953	45.2%	1,064	16.3%	2,025	31.1%	481	7.4%

Source: Board of Veterans' Appeals, Study of Cases, May 1996

The percentage of remanded appeals in the study dropped from 52.4 percent in FY 1995 to 45.2 percent in FY 1996 and the proportion of appeals denied increased.
The study report also includes data relating to the total number of cases called up by the Board.

Table 5 - Board of Veterans' Appeals Status of Advanced File Call-ups by Month							
Call up Period	*Active*	*Remands*	*Decided by BVA*	*Decided in Field*	*Total*	*Cases Not Received*	*Total Call Ups*
Sep-95	520	685	699	369	2,273	717	2,990
Oct-95	613	481	479	338	1,911	1,089	3,000
Nov-95	759	429	479	295	1,962	1,033	2,995
Dec-95	1,601	666	621	531	3,419	2,572	5,991
Jan-96	988	270	292	372	1,922	2,075	3,997
Feb-96	1,614	283	335	477	2,709	3,279	5,988
Mar-96	1,101	188	210	318	1,817	2,180	3,997
Apr-96	1,038	133	127	331	1,629	2,370	3,999
May-96	754	33	78	212	1,077	4,917	5,994
Jun-96	247	7	19	43	316	3,684	4,000
Total	**9,235**	**3,175**	**3,339**	**3,286**	**19,035**	**23,916**	**42,951**

Source: Board of Veterans' Appeals, Study of Cases, May 1996

The results of the cases decided by the BVA reveal a slight decrease in the percentage of BVA remands and a stable BVA grant rate of approximately 16 percent. But these statistics do not tell the whole story. The 100 percent RO review resulted in almost as many cases being decided in the field as at the BVA (3,286 *vs.* 3,339). More than half the cases called up have not been received, presumably because some additional action is being taken by the ROs on those cases. One can only speculate what the BVA remand and grant rates would be without the 100 percent review, but it is certain they would be higher.

The Commission believes that the lengthy intervening period between the initial decision and the appeal certification frequently changes the issues and the evidence needed to decide them (*e.g.,* medical evidence can no longer be considered current). The Commission considers this a significant factor in the continuing high rate of BVA remands.

The CVA reviews the BVA's *de novo* decisions, and in FY 1995 only 23 percent of the BVA's dispositions were denial decisions. The BVA remanded 47.6 percent and granted 19.5 percent of the cases it reviewed and 10.2 percent were classified as "other." But of the relatively minuscule number of cases subject to CVA review, Chief Judge Nebeker has reported to the Commission that there is "prejudicial error" in more than 60 percent of the cases (see Appendix J). These errors relate almost exclusively to procedural, as opposed to substantive, issues. The Commission believes that the lack of clearly defined and commonly understood procedural regulations is a significant factor in the high prejudicial error rate found by the CVA.

Since the creation of the CVA, VA has devoted an ever increasing amount of time and resources to what the Commission believes has been a good faith effort to comply with the realities of judicial review. During this period, productivity, as measured by task time and cost per case, has deteriorated to the point that it takes twice the work hours to adjudicate the average case. Processing times, particularly for appeals, have increased drastically. Yet, as measured by the actual results of the BVA and CVA adjudications, VA has fallen far short of achieving what would be considered an acceptable "error rate" for an efficient and functional adjudication and appeals system. Moreover, the results of the 100 percent case review prior to appeal certification offer little, if any, hope of improvement within the current system. The solution, therefore, is not to devote even more resources to adjudicating within the current system, but rather to make fundamental changes to the system.

The one aspect of the current system that appears to be working well both in terms of processing times and quality adjudication, is the hearing officer program, as the following FY 1995 tables reveal.

Table 6 - FY 1995 Hearing Officer Program			Table 7 - FY 1995 Hearing Officer Data	
	Number	*Percent of Total*		*FY 1995*
Number of Dispositions	30,839	100.0%	***Grant Rate***	38.4%
Completed	17,189	55.7%	***Development Rate***	57.4%
Failed to Show	3,300	10.7%	***Average Days:***	
Cancelled	10,273	33.3%	***Request to Hearing***	80 days
Prior Decisions Affirmed	10,314	60.0%	***Average Days:***	
Granted	6,708	39.0%	***Hearing to Decision***	114 days
Decreased	32	0.2%		

Source: VBA Compensation and Pension Service, June 1996

Both the hearing officer grant rate and development rate are significant. The Commission believes that the personal, face-to-face contact between the hearing officer and the veteran and his representative promotes the objective of obtaining a complete and focused evidentiary record, which in turn results in fair and equitable decisions. Currently, hearing officers average 474 dispositions and 264 decisions per year. Total average processing time, which includes development time, amounts to 194 days. The Commission believes that the hearing officer disposition rates and processing times are quite encouraging, particularly when they are contrasted with the BVA's average disposition rates and processing times.

III. Conclusions

1. Fundamental Reevaluation Essential.

It is clear to the Commission that neither VA nor the taxpayers can afford the luxury of the resource intensity required of a paternalistic adjudication system. Neither should veterans have to tolerate the imposed complexities and delays inherent in a system of "adversarial paternalism." Since creation of the CVA, VA's average task time has doubled at the VBA, while task time and cost per case have doubled at the BVA, as have processing times. These performance changes have not resulted in discernible reduction in the high CVA and BVA remand rates. Moreover, the underlying philosophy of paternalism, *i.e.,* that veterans and their representatives are not competent to present their claims effectively, is both demeaning and anachronistic. For these reasons, a fundamental reevaluation of the claims adjudication and appeals process is essential.

2. Product and Process are Directly Related.

Any reevaluation of the adjudication and appeals process, however, cannot avoid involving the program product. The nature of the product fundamentally affects—ideally, should dictate—the process for producing it.

3. Congressional Endorsement Needed for Fundamental Changes in Adjudication and Appeals Process.

As part of its analysis of the adjudicative product, the Commission compiled original data[126] that have direct relevance for redesigning the adjudication and appeals process, as well as broad program policy implications that warrant congressional attention. The Commission has used and applied these data for two basic purposes:

(1) to recommend ways of making the adjudication and appeals process more functional, equitable, and efficient in the near term; and

(2) to provide analyses and options for legislating program changes that could serve Congress in developing its direction for VA benefit programs into the next century.

4. Repeat Claims Dominate the System.

The Commission's primary conclusion about the adjudication process is that repeat claims dominate the system. More focused and efficient ways of adjudicating these claims are essential. Chapter I, Sections 2 and 4, address the significance of repeat claims.

5. Most Claimants are Already Receiving Compensation; Many Disabilities are Minimal.

The typical veteran claimant is already in benefit status, having at least once previously negotiated the claims and/or appeals process successfully. The majority of claimants (69.7 percent) filing repeat disability claims have relatively minimal disabilities (zero to 30 percent) and are represented (57 percent at the RO level and over 90 percent at the BVA level). The Commission notes that 86 percent of the service-connected disabilities among veterans newly awarded compensation during FY 1995 were evaluated zero or 10 percent disabling.

6. Process Can Be Simplified.

The fundamental issues in the vast majority of disability compensation claims are simple and straightforward: (1) that a disability exists, (2) whether it is service connected, and (3) the degree to which it disables the veteran. Approximately 65 percent of all compensation and related claims are repeat claims. Repeat claims should present limited and narrow issues, particularly if the prior decision included well articulated "reasons and bases." The Commission believes the process can be simplified significantly.

7. Claims and Evidence Development Not Focused on Real Issues.

There is no clearly defined evidentiary threshold for the making of a claim for purposes of determining whether it is "well grounded" or not. In practice, a bare allegation of a disability and its service connection suffice to set the adversarial paternalistic adjudication machinery in motion. The effect is that VA is put in the position of trying to "prove a negative," *i.e.*, that the claimant is *not* entitled to all possible VA benefits. As a result, claims and evidence development do not focus on the real issues presented, and baseless claims, or those with the least merit, often require the most development and expenditure of VA resources.

8. VA Rules Need to Reflect VA's Experience.

The Secretary should expeditiously promulgate regulations that incorporate and formalize VA's experience in adjudicating millions of claims. Then all parties, including the CVA, will know the rules under which claims are adjudicated and the basis for those rules. This is particularly true with respect to:

- the weight given to the various forms of evidence, in hierarchical order;

[126] See Chapter I, Section 4, *Concept Paper on Repeat Disability Compensation Claims.*

- the presumptions attached to the various kinds of evidence and the kinds of critical tests to which they should be systematically subjected, particularly for purposes of reopening; (The Commission believes that the Transition Assistance Program and Disabled Transition Assistance Program (TAP/DTAP) and the initiative to enhance the medical examination process are effective means for processing original compensation claims. However, even though these claims are fully developed prior to or shortly after the veteran's separation, no presumptive weight (subject to systematic critical testing) is assigned to the evidence and no finality is accorded to decisions denying service connection based on that evidence.)

- the acceptable sources of evidence; and

- the responsibilities of the respective parties in obtaining it, considering its source.

The Commission observes that Social Security Administration (SSA) regulations on determining disability and blindness[127] are much more specific than VA regulations in these areas. SSA's regulations took time to develop, however. For years SSA regulations on determining disability were extremely vague, and the system was very paternalistic. Driven by a number of factors, regulations specifying how vocational factors were evaluated within the context of the statutory definition of disability were promulgated in 1978. Detailed regulations specifying how medical evidence is to be evaluated in determining disability were promulgated in 1991. The vagueness of the prior regulations and the success of class action lawsuits are cited by many as a critical cause and effect equation. SSA's expanded regulations, which have been upheld, basically incorporate long-standing SSA policies. Many observers believe that had those policies always been articulated in regulations, many problems with the federal judiciary and Congress could have been avoided.

When such regulations are promulgated by VA, their consistency with relevant statutory provisions as well as their legal sufficiency and administrative efficacy will be fairly tested during the APA rulemaking process. When finally promulgated, such regulations will be given due deference by the CVA, and the uncertainty regarding the adequacy of VA's adjudicative procedures will diminish.

9. Good Regulations Will Lead to Better Adjudicative Decisions.

Many people have come to associate regulations with unnecessary complexity and obfuscation. If regulations are developed and promulgated effectively, however, the exact opposite is true.

With judicial review, it is essential that the Secretary articulate his construction of the statute and that this be done by rulemaking. Regulations must, of course, reflect congressional intent in applying VA's administrative and legal experience. If this is done, regulations have the force and effect of law and, accordingly, are binding on the courts. Absent such regulations, however, the vacuum will be filled by the judiciary's independent interpretation of the statute. Indeed, the court will have no responsible alternative. Therefore, it is in everyone's interest for VA to fulfill its statutorily imposed responsibility of promulgating well informed regulations that reflect the Secretary's construction of the statute.

Regulations are the primary means of informing the public, VA's constituencies, Congress, and the courts of what exactly is needed to establish entitlement to benefits and of the rules for obtaining and evaluating relevant evidence. As such, regulations are the cornerstone of the adjudication and appeals process.

On a purely practical level, regulations provide common rules and procedures for handling commonly occurring issues fairly and consistently. When procedures make sense and actually focus on real-world

[127] 20 CFR part 404, Subpart P-4040.1501 ff.

problems and concerns, the proper way to handle particular issues and circumstances has already been authoritatively decided. In effect, regulations eliminate the necessity of constantly "reinventing the wheel."

VA's massive experience—gained by having decided millions of claims over the years—should be used to make it easier to decide claims at all levels, focusing on efficient, common sense adjudicative rules and procedures that not only comport with due process requirements but incorporate them fully. To the extent this is done, the areas requiring true analytical and adjudicative skills are narrowed, as are the number of cases requiring those skills for accurate decisions. Good regulations simplify what otherwise would be complex by providing an organizing framework that can be systematically applied to the administrative process. Vague or nonexistent regulations make complex what otherwise would be simple.

10. Processes are Dysfunctional.

The traditional adjudication and appeals process:

- involves too many "hand-offs" at the initial adjudication level;
- lacks clear and definitive rules for processing the vast majority of cases;
- does not make claimants partners in the adjudicative process and, as a result, withholds meaningful due process;
- imposes time consuming and labor intensive redundancies, *e.g.*, the notice of disagreement and statement of the case prior to the filing of a formal appeal;
- blurs accountability (jurisdictional lines are ill defined and results of appealed adjudications are not used for quality control and employee rating purposes); and
- is not administered as a single continuum which should narrow and sharpen issues as a claim proceeds, rather than expanding and obfuscating them.

11. Application Process is Flawed.

At the claims intake point, the application is lengthy, unfocused, and, in many instances, asks for information that is extraneous to the benefit sought. The instructions provided with the application do not:

- explain direct, secondary, or presumptive service connection;
- adequately specify the criteria needed to establish entitlement to benefits;
- describe the nature of the evidence required to meet those criteria;
- communicate the need to explicitly authorize VA to obtain medical records; or
- explain that providing records with claims will speed the adjudication process.

12. Duty to Inform.

The Commission believes that fundamental due process requires that VA clearly describe for claimants:

- what must be proved;
- the exact requirements for establishing entitlement;
- the best evidence for establishing entitlement; and

- the most effective way to obtain the evidence.

These requirements can be accurately described as a "duty to inform," and it is this duty to inform that the Commission believes is incorporated within the statutory provision that "[t]he Secretary shall assist such a claimant in developing the facts pertinent to the claim." Ideally, this function would be performed by the knowledgeable employee who ultimately decides the claim. However, the Commission believes that representatives, particularly VSO representatives, are in an excellent position to assist the VA in fulfilling its "duty to inform" responsibility. This requires building a claims processing partnership between VA and the claimant/representative.

13. VA/VSO Claims Processing Partnership.

As discussed in Chapter III, VA's claims processing system does not make effective, systematic use of the accumulated knowledge and communication base embodied by VSO representatives. VA regulations concerning VSO representation should be restudied and modified to set out specific roles, responsibilities, and limitations of the representative so that VSO support of the claims process may be maximized as the proposed partnership is formulated. A fully documented claim presented to VA can be readily decided. Some regional offices have agreements with VSOs under which a well documented claim presented to the RO will be adjudicated immediately. These agreements demonstrate the mutual benefits of building partnership between claimants/representatives and VA.

The Commission believes that well informed claimants and their representatives, acting in partnership with VA, are in an excellent position to know whether "duty to assist" and, indeed, all due process requirements have been followed in adjudicating their claims. By making these judgments a routine part of the claims process, procedural issues associated with adversarial paternalism could be minimized.

14. "Getting It Right The First Time."

The CVA rarely reverses VA's decisional outcome but quite frequently remands cases for more rigorous compliance with the statutory "duty to assist" and/or "reasons and bases" requirements. Thus, as a practical matter, the procedures followed in reaching a decision are as important as the decision itself. A partnership in the adjudicative process is the best way of achieving this goal. Prior to the CVA, VA did not have to deal with this reality; now it most assuredly does.

15. Nature and Structure of Appeals Process a Major Problem.

If a good faith effort has been made to follow clear due process procedures in reaching an initial decision, the issues on appeal should be few:

- was due process, in fact, provided;
- is the record complete; and
- did the adjudicator properly evaluate the evidence in accordance with applicable law and regulations.

The nature and structure of the appeals process contribute substantially to the problems VA has experienced in processing and deciding appeals, especially in the area of timeliness. For example, the issuance of the Statement of the Case (SOC) in response to a Notice of Disagreement (NOD) overlaps with the requirement for initial decisions to express "reasons and bases," as contained in section 5104(b) of 38 USC. Title 38, USC, specifically requires, "(1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary." The provision which relates to the Statement of the Case, section 7105(d)(1), 38 USC, mandates that the SOC shall include, "(A) A summary of the evidence

in the case pertinent to the issue or issues with which disagreement has been expressed." It also requires, "(B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision." Also, the law requires, "(C) The decision on each issue and a summary of the reasons for such decision."

In addition, both the ROs and the BVA conduct continuing *de novo* reviews throughout the appeals process, which now on average encompasses a period of more than two and a half years from the date the NOD is received. The Commission believes that the practice of *de novo* review unnecessarily impedes the functionality, efficiency, and fairness of the appeals process. The Commission believes that fundamental changes in the appeal process are needed.

16. BVA's Adjudicative Function.

As a result of many initiatives it has undertaken and the additional FTE it has obtained, the BVA recently has improved the timeliness of its dispositions, decreasing its average response time from 763 days in FY 1995 to 641 days during the first eight months of FY 1996. The total appellate system average processing time, however, increased from 1,098 days to 1,134 days during the same period. The BVA anticipates that in FY 1996, for the first time in years, appeals dispositions will approximate receipts. The appeals backlog, however, remains at approximately 60,000 cases. Moreover, there is no indication that the more than 60 percent "prejudicial error" rate that the CVA finds in its review of the BVA's decisions is decreasing. These data indicate that the current operation of the appeals system can at best maintain an unsatisfactory *status quo*. The Commission does not believe that an influx of resources to support the BVA's operation would bring about a solution to the problems besetting the appeals process.

Prior to the institution of the CVA, the BVA functioned as a "court of last resort" and conducted a *de novo* adjudication. It still conducts a *de novo* adjudication but also functions as an appellate body in reviewing RO decisions, which accounts for the dramatic increase in BVA remands. The BVA's dual functions are seen as a contributing factor to the deterioration in its timeliness and productivity, which began in FY 1990 and has only recently been allayed.

17. Hearing Officers Record is Encouraging.

During the course of its meetings and deliberations, the Commission has been impressed by what appears to be overwhelming approval of the performance of VA's hearing officers. Of particular interest is a finding from the "Code 41" Study that none of the cases in the sample that had been decided by hearing officers would be remanded by the BVA, based on the record upon which they reached their decisions. Currently, a hearing and decision by a hearing officer is an option for a claimant.

18. Hearing Officer Role a Cornerstone.

An on-the-record evidentiary hearing during which a claimant can fully present his or her claim represents a cornerstone of due process. Hearing officers are ideally qualified to perform this function in an informal, nonadversarial setting.[128] The statistics relating to hearing officer performance cited above in the Commission's findings indicate that the hearing officer program is functioning fairly and with a relatively high degree of efficiency. The Commission believes it is noteworthy that the hearing officer adjudication, which is conducted within the framework of a partnership between the claimant/representative and the hearing officer, is a part of VA's adjudication and appeals process that appears to be working well. An expanded role for hearing officers is clearly in order.

[128] Hearing Officers meet claimants face-to-face, develop and review evidence, and can make decisions, although, under current guidelines, such decisions are limited to those which involve clear and unmistakable error or new and material evidence.

IV. Recommendations

The Commission's recommendations fall into ***three*** broad categories:

(1) the need for Congress and the Secretary to exercise their respective policymaking responsibilities;

(2) building a claims processing partnership between VA and the claimant/representative; and

(3) the Commission's proposals for a redesigned adjudication and appeals process.

1. Review and Reaffirmation of Major Policies Needed.

In the conduct of an entitlement program, Congress establishes the basic policy framework in statute, providing background to its actions in conference and other committee reports. The executive branch interprets the statute to guide decision makers and to establish clarity for claimants. Presumably, this is done through regulations published under the Administrative Procedures Act with adequate opportunity for public comment. Such regulations have the effect of law, are binding on all decision makers, and are entitled to deference by the courts when properly promulgated. When the claimant seeks judicial review, the courts may rule on interpretation of the statute, the consistency of regulations with statutory intent, or both. In the case of the CVA, the Court's panel decisions establish precedents which the Department must follow if it does not appeal (in cases where the Court interprets statute) or publish clarifying regulations (in cases that involve VA's interpretation of its regulations).

The preceding pages describe VA's failure to issue regulations covering some of the most important aspects of the statute. With the introduction of the CVA in 1988, many of those policies have been tested in litigation. Absent clear statutory detail or regulatory interpretation, the Court has issued precedents that now set policy in those areas. Thus, the Court has become by default the major determiner of policy in compensation and pension programs.

A. Congress should review the policies established by the Court's decisions to determine whether they are consistent with the compensation program's purposes and the intent of Congress. Where they are not, Congress should legislate or direct the Secretary to regulate.

Several key policy areas require early attention because of the manner in which the Court has interpreted intent. While these interpretations may be in keeping with Congressional intent, they are also critical drivers of extended development and thus of additional time and resources in the process. They also create confusion on the part of the agency's field staff, claimants, and representatives. These areas include:

- "burden of proof;"
- "well grounded claim," including:
  - the nature of evidence sufficient to establish a well grounded claim;
  - whether or not a well grounded claim is a threshold test, which requires a summary denial if not met; and
  - whether an allegation of disability is sufficient to establish a well grounded claim without accompanying credible medical evidence;
- "duty to assist;"

- the distinction between "evidence" and "facts" as those terms apply to the duty to assist; and
- the interrelationship of "burden of proof," "well grounded claims," and "duty to assist," and the sequence in which they are to be applied.

The BVA Decisionmaking Process diagram in Appendix K, which gives CVA case citations for each of the many steps in the process, graphically illustrates this point. Appendix L also includes:

- a case example from GAO[129] shows the practical difficulties VA encounters in attempting to comply with CVA rulings; and
- a C&P Service publication that[130] illustrates how complex the task of adjudicating claims following CVA rulings has become.

These policies drive critical steps in the claims process. The expected outcome of the review of these major policies and subsequent legislation and regulations would be clear guidance as to the respective roles and responsibilities of the veteran, representatives, and VA in the claims process. It would put the Congress in charge of the statement of program purpose and policy, with VA responsible for interpretation and application of those policies. The Court would then have a more traditional role of ensuring proper application of policies to individual litigants.

Pros:

(a) Would place program and adjudication policymaking in the hands of Congress and the Secretary, where it properly belongs.

(b) Would give definitive and authoritative direction on benefit programs policy and the manner in which Congress intends claims to be adjudicated.

(c) Would clarify the respective roles of the Secretary and the CVA in implementing and interpreting congressional intent.

(d) Would generate a fundamental reevaluation of the adjudication and appeals system, with an opportunity to establish a system where "form follows function," *i.e.,* a system designed to serve the needs of its customers and facilitate the production of the adjudicative product.

Cons:

(a) Requires a significant shift in the respective policymaking roles of Congress and the Secretary as they have evolved over the decades, and an assessment of the policymaking role of the CVA as it has evolved since its creation. Changes in policymaking roles may engender resistance from affected parties.

(b) The kind of reformation of public policy the Commission recommends is an inherently difficult task, requiring the building of consensus among parties with varied interests and concerns.

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[129] GAO report, *GAO/HEHS-95-190, VETERANS BENEFITS, Effective Interaction Needed Within VA to Address Appeals Backlog*, issued in 1995.

[130] VBA, Compensation and Pension Service, *SUMMARY OF SIGNIFICANT HOLDINGS, THE UNITED STATES COURT OF VETERANS APPEALS, THIRD EDITION.*

(c) The public policy issues presented are basic and will require an innovative blend of retaining and enhancing the best features of VA's existing adjudication and appeals system, and removing the administrative and procedural barriers that make the system time consuming and inefficient.

(d) Any move away from VA's traditional paternalism may be perceived as limiting rights of veterans.

B. The Secretary should promulgate regulations that provide his construction of the statute and that incorporate and formalize VA's experience in adjudicating millions of benefit claims.

All benefit claims are adjudicated on behalf of the Secretary. Adjudicators at all levels act as the Secretary's agents. Regulations are the means by which the Secretary instructs adjudicators and informs claimants how, and under what standards, claims decided on his behalf are to be adjudicated. Ably formulated regulations promote fair and consistent adjudication, as well as program integrity and accountability. They should be designed to narrow areas of subjectivity by individual adjudicators, because in principle the Secretary is the sole decision maker.

Regulations Need to Narrow Decision Making Subjectivity.

There is a regulations void, which should be filled, on such fundamental adjudicative issues as:

- the weight given to the various forms of evidence, in hierarchical order;
- the presumptions attached to the various kinds of evidence and the kinds of critical tests to which evidence should be systematically subjected;
- the acceptable sources of evidence; and
- the responsibilities of the respective parties in obtaining it, considering its source.

There is also a lack of a practical definition of the term "well grounded," with acknowledgment and authoritative discussion of its adjudicative implications. It is on these fundamental issues that the CVA is making policy because of the regulatory void, which the Secretary should fill.

Regulations Lead to New Process.

These regulations should provide the foundation for the recommended adjudication and appeals process, which the Commission describes below, because what has to be proven, and by what means, determine the nature of the process. The redesigned process should be incorporated into regulations.

It is particularly important that regulations address the substantive issues presented by the vast majority of claims. The data in Chapter I show that the majority of cases are repeat claims filed by represented veterans who are already in benefit status. The typical veteran presents disabilities which have been or will be rated zero or ten percent. The typical case involves relatively simple substantive issues and the evidentiary and procedural rules needed to fairly and efficiently resolve those issues can be similarly simple.

The Commission recommends that VA form a dedicated, high-visibility, intra-Departmental team to develop new regulations.

Pros:

(a) Common sense procedural and evidentiary rules that are grounded in experience and practical reality make the adjudication process easier for claimants and adjudicators. Such rules are

essential for due process because claimants as well as adjudicators would know explicitly what must be proved and how to do it. When specific evidentiary requirements are met (or not) adjudicative decisions are more objective and consistent, thus promoting program integrity.

(b) Specific procedural and evidentiary rules facilitate decision making and would improve VA's ability to "get it right the first time." They also narrow and simplify the issues and reduce the element of subjective judgment in the appeals process. Compliance or noncompliance with clearly stated procedural and evidentiary rules is not a difficult issue to decide on appeal.

(c) VBA appears to be receptive to change. A number of innovative case processing procedures have been tested and implemented in ROs, and the Commission is impressed with the direction being taken by the BPR project.

Cons:

(a) The common misconception that regulations complicate adjudication and make it more difficult and time consuming must be overcome.

(b) VA regulations traditionally have been vague and ill-defined. For example, the practical meaning of 38 CFR §4.6 is unclear to the Commission. That regulation, in its entirety, reads:

> The element of the weight to be accorded the character of the veteran's service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law.

The regulation, which appears to address (although vaguely) some conceptual hierarchy of evidence, also appears to be substantively questionable. Ordinarily, as the Commission understands it, the character of service would not be a factor in evaluating medical disability. Instead, character of service would be considered in determining whether or not a disability may be considered service connected. This kind of "broad brush" approach to setting criteria for evaluating evidence is consistent with a tendency among paternalistic organizations to be reluctant to share specialized knowledge that can be used by claimants. Implementing specific regulations could require significant institutional adjustment.

(c) Formalizing procedural and evidentiary rules in regulations could be seen as a significant step away from paternalism, which may be opposed by proponents of the current system.

2. Build Claims Processing Partnership Between Claimant/Representative and VA.

The Commission believes that the expertise of VSO representatives is a valuable resource with great potential for further application in the claims processing system. By working in partnership with VSOs to find ways of systematically engaging them in the claims process, VA can improve its service to veterans. As recommended in Chapter III, appropriate roles and responsibilities of the partners would be negotiated among VA and the VSOs, in the context of the VBA's BPR initiative, and, ultimately, formalized in regulation to provide a conceptual framework that would guide claim-specific partnerships among the parties to a claim.

The Commission endorses in principle the following suggested elements of a claims processing partnership. These key elements should be addressed by the claims processing partnership group.

- A duty to inform, *i.e.,* ensuring that the claimant knows what benefits he or she is potentially eligible for, including the *degree* of disability he or she could reasonably hope to prove, the evidence needed (in hierarchical order) to establish the claim, and how VA proposes to complete the evidentiary record. In addition, VA would *ask the claimant/representative* whether any additional information relevant to the claim exists and/or whether the claimant/representative believes any additional action should be taken by VA to complete the record. Pending reply, VA would proceed to develop evidence according to its explicit proposal.

- Establishing the respective roles and responsibilities of the claimant and VA in obtaining a complete and focused record. The purpose would be to narrow the claim to the *relevant* issues and focus development on evidence that is most persuasive and material in resolving those issues.

- Ensuring the evidentiary record is complete prior to decision.

Advantages and disadvantages of these elements will be discussed as they pertain to the redesigned process discussed below.

3. Redesign Adjudication and Appeals Process.

The Commission endorses the following redesigned process in principle but acknowledges that further expert analysis is needed before the net effects of the proposed changes can be projected accurately. Several of these process issues are appropriate for consideration within the context of VA's claims processing partnership with the VSOs. Generally, the Commission regards process *design* issues as appropriately within the authority and responsibility of the Department as administrator of veterans law. However, to the extent that process design affects claims processing mechanics, VA should be acutely interested in the views of its VSO partners. The redesigned process reflects the Commission's view that fundamental changes in the existing process are necessary and offers a conceptual framework for the direction those changes should take.

A redesigned process could work as follows:

A. Initial Adjudication

1. Commitment by VSO, Claimant, and VA.

VSOs would enter into partnership agreements with the ROs. The ROs would provide the VSOs with the materials and any training needed to enable them to submit fully documented claims whenever possible. Simplified application forms would be developed that would focus on the benefits being sought. Claimants/representatives would be advised of the requirements for entitlement for the benefits claimed and what is the best evidence for establishing entitlement, what is in the claimant's file, and what evidence is needed to support the claim. In claims for rating increase, the evidentiary record and adjudication will focus solely on that issue. VSOs could be given Automated Medical Information System (AMIE) and military request authority through VA's computer system. If the claimant is unrepresented, a VA benefits counselor will be assigned to discharge the "duty to inform" and assist the claimant in obtaining relevant evidence, if necessary.

Pros:

(a) A partnership based on the duty to inform focuses case management planning, reducing the uncertainty and anxiety veterans often now experience when entering the adjudication process.

(b) It sets a tone of cooperation and reaffirms the nonadversarial nature of the VA adjudication process.

(c) It clarifies the respective responsibilities of claimants and VA in the making and development of a claim.

(d) It relieves VA of a good deal of labor-intensive, often repetitive (*i.e.,* the need to follow-up) development functions, thus allowing VA to redeploy resources to adjudicative decision-making functions.

(e) It formalizes the responsibilities of VSO representatives and enhances their professional roles. Certification or licensing of VSO representatives would be a natural adjunct of enhanced professional roles.

(f) It will encourage the submission of complete, well documented claims that can be decided quickly and fairly.

Cons:

(a) Initially, considerable VA resources will be required for the development of public information material and for training employees and VSO representatives.

(b) To the extent that VA adjudicators and VSO representatives view themselves as adversaries in the process, a change in role perceptions will be needed.

(c) With their responsibilities formalized and their professional status enhanced, VSOs may be apprehensive about the potential for legal liability if veterans are dissatisfied with their representation. Congress may have to address this issue specifically.

2. Duty to Inform.

As part of initial development, VA would explicitly inform the claimant/representative of:

- what benefits he or she is potentially eligible for, including the *degree* of disability he or she could reasonably hope to prove;
- the evidence needed (in hierarchical order) to establish the claim;
- VA's proposal of how it will obtain the necessary evidence; and
- what the claimant/representative must do.

In addition, VA would *ask the claimant/representative* whether any additional information relevant to the claim exists and/or whether the claimant/representative believes any additional action should be taken by VA to complete the record. Pending reply, VA would proceed to develop evidence according to its explicit proposal. If the claimant/representative reports additional evidence or requests additional action, VA would proceed appropriately. If a claimant asks for development of evidence that is not regarded as relevant to the claim, VA would explain why it was not relevant in the decision letter.

Pros:

(a) These procedures are the essence of due process and a meaningful partnership. A claimant must be able to specify and comment on the evidence being used to decide his or her claim to be confident that the claim has been presented fully. When there is an unresolved dispute regarding

the adequacy of the record or its potential to be perfected, the dispute should be addressed on the record as an integral part of the adjudication process.

(b) These procedures would make moot much of the confusion and controversy surrounding "duty to assist" issues. The issue on appeal would be confined to cases where there is an actual dispute that the record is inadequate and that issue will have been addressed in the initial decision.

Cons:

(a) Adjudicators would be required to articulate their reasons for not obtaining evidence that the claimant/representative contends is material to the claim. This is a new practice which will take time to learn and implement properly.

(b) The virtually open-ended, unilateral application of the duty to assist concept currently in practice would cease. Claimants/representatives would have a shared duty and responsibility with VA to obtain the evidence necessary to decide the claim properly, and disputes would be addressed on the record. Some claimants and VSO representatives may be reluctant to accept this duty and responsibility.

3. Full Disclosure of Reasons for Decisions.

The initial denial decision should tell the claimant (and representative) what evidence the decision was based on, and where (and by how much) he or she has fallen short in terms of the evidence necessary to establish entitlement to the benefit(s) sought. This will enable claimants to realistically assess the likelihood of success on appeal and, if they choose to appeal, to focus their efforts on obtaining what is needed and/or persuading the new decision maker that the claimant's assessment and evaluation of the evidence, rather than the initial decision maker's, is correct. Claimants who wish to pursue their claims would file a substantive appeal. At this point, the jurisdiction of the Agency of Original Jurisdiction (AOJ) would end.

Pros:

This is consistent with the "duty to inform" and provides a number of practical benefits. It enables claimants to make an informed judgment on whether to appeal and the likelihood of success. It sharpens the issues if an appeal is made and permits a quick and favorable decision if the evidence needed is obtained.

Cons:

It takes additional time and effort to inform claimants where they have fallen short in meeting the requirements for the benefits claimed.

B. Appeals

A redesigned appeals process should narrow and sharpen the issues rather than expand and obfuscate them. This includes: replacing the NOD with a formal appeal and eliminating the Statement of the Case; shortening the appeal period to 60 days; expanding the role of the Hearing Officer to make it the mandatory first step in the appeals process; and changing the nature of the BVA's review from *de novo* to appellate.

1. Eliminate NOD and SOC; Allow 60 Days to Appeal.

Under the current system, all adjudicative activity beginning with the filing of a NOD and ending with the RO's certification of a formal appeal to the BVA is a continuation of the initial adjudication. The purpose of this extended initial adjudication is to ensure that the claimant knows the "reasons and bases" for the denial of his claim and to permit him to respond fully to the material issues with additional evidence and argument.

With the kind of initial adjudication and decision the Commission recommends, the claimant and representative will have all the information they need to decide whether or not to appeal, obviating any need for a NOD and a responding SOC. The next step in the process then would be a formal appeal which specifies the area(s) of disagreement with the decision. Because of the nature of VA disability claims, the Commission believes that the issues on appeal should be as similar and contemporaneous as possible to those adjudicated by the initial decision. The Commission recommends a 60-day period for filing an appeal.

Other major federal disability compensation programs have filing periods similar to that proposed here:[131]

- The Department of Labor's Benefits Review Board requires that an appeal be filed within 10 days of the ALJ's decision. Approximately 75 percent of cases heard by the Board are black lung cases, and another 20 percent are longshore and harbor workers cases.

- The Social Security Administration's Appeals Council requires that appeals be filed within 60 days of the decision. More than 92 percent of the cases decided by the Council during FYs 1994 and 1995 involved disability issues arising in claims for disability insurance benefits and/or supplemental security income benefits under the Social Security Act.

To accommodate concerns that a shortened period for appeal is depriving veterans of a right they now have, there should be liberal "good cause" provisions for untimely filing and generous periods should be allowed for the submission of additional evidence.

Pros:

(a) Eliminates the necessity of the claimant filing a NOD and VA responding with a SOC. A well articulated and focused initial decision is the best means of providing a statement of the case.

(b) Streamlines the administrative requirements associated with appeals processing, potentially reducing elapsed processing times and improving the information on which the decision is based. This amounts to a significant practical advantage for appellants.

(c) Shortening the appeal period permits the issues on appeal to be as similar and contemporaneous as possible to those decided in the initial decision. With the initial decision informing the claimant what is needed to perfect the claim, much, if not all, of the guesswork about deciding whether or not to appeal vanishes. Liberal allowances for time to obtain additional evidence can be built into the system.

Cons:

(a) Shortening the period to file an appeal may be considered a diminishment of a right veterans now have (they now have up to a year to file a NOD).

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[131] Social Security Administration, *The Office of Hearing and Appeals Law Journal,* Appellate Administrative Tribunal: A Comparative Survey, David G. Hatfield and Catherine Ravinski, pg. 19.

(b) The effectiveness of the recommendations relating to appeals depends largely on the successful and coordinated implementation of the Commission's recommendations relating to initial adjudication.

2. Expand Hearing Officer Position.

The Commission observes that notices of disagreement are submitted to the regional office in fewer than 15 percent of disability compensation claims. Fewer than five percent of compensation claims are pursued to the point of appeal to the BVA. Those appeals, however, enter a process which is complex, lengthy, and ill-suited to resolve disputes quickly. Appendix M shows the proportion of claims that are appealed to the BVA and the CVA. For those veterans who opt to have a hearing before a hearing officer, however, the difficulties of the appeals process are diminished considerably. In FY 1995, for example, the average processing time from request for hearing to decision was 194 days. This contrasts with an average BVA response time of 763 days. The hearing officer development rate was 57.4 percent, and the grant rate was 38.4 percent. It is also significant that in FY 1995 over 10,000 requests for hearings (approximately one-third of total hearing officer dispositions) were canceled, which the Commission has been informed indicates that the claim was resolved to the satisfaction of the veteran.

The proceedings before hearing officers fully comport with due process, yet they are informal and nonadversarial. They are also conducted close to the veteran's residence and where the bulk of VA's adjudication resources are concentrated. The Commission believes that these advantages and resources should be maximized by expanding the role of hearing officers in the appeals process.

Currently, a veteran must request a hearing to obtain the benefit of hearing officer adjudication and, absent "clear and unmistakable error," a hearing officer cannot grant a claim without "new and material" evidence. These restrictions in the role of the hearing officer have no apparent benefit, either for the veteran or VA. Many, if not most, appeals can be resolved without a hearing, and if a claim deserves to be granted on appeal without additional evidence, there is no reason why a hearing officer should be unable to do so. Based on the demonstrated performance of hearing officers in their restricted role, the Commission believes that both veterans and VA would benefit by expanding the role of hearing officers to include full decisional authority. Moreover, the Commission believes that all veterans should have the benefit of hearing officer adjudication. Whether this adjudication would include an evidentiary hearing or simply be an on-the-record decision would be determined at the veteran's option.

The Commission recommends that the first appeal should be to a hearing officer and that this appeal should be a *mandatory* step in the appeals process. The hearing officer adjudication would be *de novo*, although it would focus on the issues presented by the appeal. The hearing officer would have full decisional authority, including the authority to remand. The results of the hearing officer review would be used for quality appraisal purposes. (The Commission believes that the results of actual appealed adjudications are good indicators of quality and an effective means to address commonly occurring problems.)

3. Create Appeals Officer Position.

The primary purpose of the mandatory appeal to a hearing officer is to resolve disputes as early in the appeals process as possible. This requires the quick identification of deserving claims that can be granted based on the existing record without a hearing and, when the record is deficient, identifying the material evidence that is needed to complete it and how it can most easily be obtained. It also involves the identification of the relevant issues that are actually in dispute so that the issues at hearing can be as narrow and focused as possible. These are vital tasks which must be performed for an appeals system to operate fairly and efficiently, but they can be done by an individual who does not have final decisionmaking authority. The Commission recommends that a new position of appeals officer be created to perform them.

The appeals officer would work in conjunction with and under the direction of the hearing officer. Appeals officers would perform functions, including decision drafting, which would enable the hearing officers to concentrate on their primary responsibilities of holding hearings and deciding appeals. This division of labor would optimize the timeliness and productivity of the hearing officer adjudication.

Pros:

(a) Although making the hearing officer adjudication a mandatory first step in the process is a major change, the Commission has encountered little, if any, opposition to it. Perhaps this will materialize later, but there appears to be a general consensus that, at a minimum, hearing officers should have an expanded role.

(b) The time required for claimants to obtain a decision on appeal will be shortened considerably.[132]

(c) With the assistance of Appeals Officers, many cases will be resolved without a need for a hearing.

(d) The hearing officer adjudication should reduce the number of subsequent appeals both because meritorious claims will be allowed and, if the claim is denied, claimants will have a full explanation.

(e) A *de novo* hearing officer decision following an evidentiary hearing will permit a change in the nature of the review conducted by the BVA.

Cons:

(a) Making the hearing officer adjudication a mandatory step in the process will require additional resources.

(b) A *de novo* hearing officer decision following an evidentiary hearing will change the nature of the review conducted by the BVA.

4. The BVA Becomes an Appellate Review Board.

The hearing officer decision would represent the final decision of the Secretary unless reversed or modified on appeal. The appeal would be to the BVA, but the BVA would conduct an appellate rather than a *de novo* review. So that an appellate review could be conducted, the evidentiary record would be closed with the hearing officer decision. The BVA's review standard would be similar to the CVA's, and the purpose of the BVA's review would be to correct clear error and ensure the legal sufficiency of the hearing officer's decision. The BVA, of course, would retain remand authority. If the BVA determined that the hearing officer's decision was legally sufficient (which presumes that it was not clearly in error), the BVA would decline review and the hearing officer's decision would become the final decision of the Secretary, which would be subject to judicial review.

In cases where the BVA determined that the facts or circumstances are such that the correct application of the law, regulations, or VA policy is in dispute, unsettled, or unclear, it could issue a decision on behalf of the Secretary that would provide the Secretary's definitive interpretation as to the manner in which cases presenting similar facts and circumstances should be adjudicated at all levels. As with hearing officer decisions, the results of the BVA's case reviews would be used for quality appraisal purposes.

Pros:

[132] This strength assumes that Hearing Officer productivity remains consistent with current levels and that staffing of the position is proportional to the workload, which would be expected to increase moderately.

(a) The Secretary's final decision will be made by a hearing officer located in the RO after a full due process, evidentiary hearing. With the procedures designed to obtain a complete record at both the initial adjudication and hearing officer levels, the evidentiary record would be closed with the hearing officer decision. This would enable the BVA to conduct an appellate review. (If the evidentiary record remained open, the BVA's review would be *de novo*, at least with respect to the additional evidence.)

(b) In conducting an appellate review, the BVA would be acting on behalf of the Secretary to ensure that the hearing officer's decision is legally sufficient and therefore can stand as the Secretary's final decision.

(c) An appellate review would focus the BVA's legal expertise on purely legal issues.

(d) An appellate review would be considerably less resource intensive than the hybrid *de novo*/appellate review it now conducts. In cases where the hearing officer's decision was legally sufficient, the BVA could issue a brief order denying review, rather than issuing a lengthy *de novo* decision as is now the practice.

(e) Having the issues decided by the BVA as similar as possible to those decided by the CVA would sharpen the issues before the CVA. This should fairly test the conformity of the Secretary's regulations to the provisions and intent of the statute.

(f) In appropriate cases, the BVA could articulate the Secretary's construction of the statute as it applies to particular issues, for the benefit of both VA adjudicators and the CVA.

(g) Having the BVA conduct an appellate review on behalf of the Secretary will unify the adjudication and appeals process, with each step having a clearly defined purpose and function.

Cons:

(a) Closing the evidentiary record at any point is a source of concern for some. (Additional evidence, of course, could be submitted in connection with a subsequent claim or be the basis for a request to reopen.)

(b) Appellants may regard an appellate review by the BVA as restrictive and the associated closing of the record as an infringement of their opportunity to prove their appeals.

(c) There may be institutional resistance to changing the BVA's role.

(d) An amendment to the statute may be required to implement the recommendation.

Summary of Current Adjudication/Appeals Process

This summary of the process is intended to convey the qualitative characteristics of the process rather than represent discrete processing steps.

Initial Decision

- Claimant files claim with VA office or through representative. Claim is for all possible VA benefits.

- There is no evidentiary threshold for the making of a "well-grounded" claim. VA assumes responsibility for developing a complete record in line with its "duty to assist."
- VA unilaterally decides when and if the record is sufficient for adjudication. (There are no formal, systematic procedures for soliciting the participation of the claimant and representative in building a complete record sufficient for decision or for resolving disputes regarding the completeness of the record.)
- RO issues its decision. 38 USC §5104(b) of the statute provides that in any case where the Secretary denies a benefit sought, the notice of decision shall include (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary.

Appeals

- Claimants dissatisfied with any aspect of the RO decision initiate the appeals process by filing a notice of disagreement (NOD). The NOD must be filed within one year after the date of the RO decision. Claimants may submit additional evidence.
- The RO responds with a statement of the case (SOC) which by law shall include (1) a summary of the evidence pertinent to the issue(s) with which disagreement has been expressed; (2) a citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision; and (3) the decision on each issue and a summary of the reasons for such decision.
- If claimants submit additional evidence or contentions after receiving the SOC, the RO considers same and either revises its decision or issues a supplemental statement of the case (SSOC).
- Claimants have the option of requesting a hearing before a hearing officer. The hearing officer may not overturn a decision based on the same factual evidence. Hearing officers have no jurisdiction unless a hearing is held. Hearing officers may issue a decision denying the claim or, if the record is supplemented with new and material evidence, grant the claim in whole or in part. If the claimant is still dissatisfied, he or she may continue the appeals process.
- Claimants may request a hearing before or after filing a NOD or before or after receiving a SOC (or SSOC).
- Claimants who remain dissatisfied after receiving a SOC (or SSOC), file a "formal" appeal (VA FORM 9) within 60 days to pursue the appeal to the BVA.
- When a formal appeal is filed, the RO reviews the case and certifies it to the BVA.
- The BVA conducts a *de novo* adjudication. Claimants may submit additional evidence and request a hearing.
- The BVA may issue a decision denying or granting the claim, or remand the case for compliance with procedural requirements and/or additional development.
- Claimants dissatisfied with the BVA's decision or denial of review may file for judicial review.

Proposed Adjudication/Appeals Process

Initial Decision

- Claimant files claim with VA office or through representative. The criteria for submitting a "well grounded claim" have been clarified and sharpened to reduce the incidence of unsupportable claims that nevertheless set in motion the labor intensive duty-to-assist machinery.
- VA/claimant partnership is established (1) by VA executing its "duty to inform," describing an evidentiary threshold, by advising claimant of the requirements for establishing entitlement to the benefits being sought and the evidence necessary to meet those requirements; (2) by the claimant and/or representative agreeing to be responsible for submitting as complete a claim as possible; and (3) soliciting the claimant/representative's feedback regarding adequacy of the proposed evidence development process.
- Before the RO decides the case, VA executes its proposal to develop evidence necessary to support the claim. In addition, VA acts on claimant/representative comments on proposed development. Unresolved disputes regarding the sufficiency of the record are addressed in the RO decision.
- In addition to "reasons and bases," an RO denial decision would include a statement regarding what evidence is necessary and/or what facts must be proved for the claimant to establish entitlement to the benefit sought.

Appeals

- Claimants dissatisfied with the initial decision could file an appeal, within 60 days, to a hearing officer. The hearing officer step would be mandatory. Claimants would have the option of waiving their right to a hearing and requesting a hearing officer decision based on the documentary record. The hearing officer would have complete decisional authority.
- An appeals officer would conduct a prehearing review to ensure the completeness of the record and focus the issues for hearing. The appeals officer may recommend to the hearing officer that a hearing is not necessary to provide the claimant with the relief sought.
- The hearing officer conducts a *de novo* adjudication based on hearing and/or other evidence, and denial decisions contain the information required by section 5106 of Title 38.
- The evidentiary record is closed with the hearing officer's decision.
- Claimants dissatisfied with the hearing officer's decision may request review, within 60 days, by the BVA.
- The BVA conducts an appellate review. The BVA's review standard is similar to the CVA's, *i.e.,* correct clearly erroneous findings of fact and ensure that the hearing officer's decision is otherwise legally sufficient.
- The BVA may reverse or modify the hearing officer's decision, remand, or, if the decision is legally sufficient, deny review. If review is denied, the hearing officer's decision becomes the final decision of the Secretary subject to judicial review.
- Claimants dissatisfied with the BVA's decision or denial of review may file for judicial review.

4. Implementation.

The Commission believes that the claims and appeals process described above would be much more functional, efficient, and fair than the current process. The Commission, however, emphasizes that it is

being offered only as a conceptual framework for a redesigned process. Therefore, prior to implementation, the underlying premises of the redesigned process must be rigorously evaluated and tested by VA to determine if they will result in an administratively practical adjudication system, which is a task the Commission had neither the time nor the resources to perform.

The redesigned process was developed independently by the Commission but the VBA also has been active in this area. At its last public meeting on July 16, 1996, the Commission received a briefing from the VBA's BPR team. The BPR team reported that the VBA had just completed a systematic and thorough review of the initial adjudication part of the claims process. The Commission believes that the BPR team's redesign proposal is very promising. There are, however, two serious weaknesses with the redesign effort: (1) although a Business Process Reengineering approach was used, the entire process was not included, *i.e.,* the BVA step; and (2) a thorough and open communication plan has not been put in place.

The Commission recommends that:

(a) A second stage design phase should be established to look at the BVA part of the process.

(b) A comprehensive communication plan should be developed and implemented.

(c) The ideas put forth in this chapter regarding the appeals process should be considered by the second stage team.

5. Compensation and Pension Business Process Reengineering (BPR)

As discussed above, the Commission received[133] an impressive informational briefing entitled, "The Case for Change, Presentation of the C&P Business Process Reengineering Guidance Team." This presentation spoke to reengineering claims processing.

The Commission began publicly deliberating on potential conceptual revisions of the adjudication and appeals process at its third public meeting in June 1995 and presented its preliminary findings and conclusions on the adjudication and appeals process in its report to Congress on February 7, 1996. Some similarities exist in the Commission's report and the initial BPR proposals. Both the Commission and BPR address VA/VSO Partnership, rules simplification, and modification of the Hearing Officer concept, role, or authority, but specifics—even in some areas of general agreement—differ.

The Commission notes that, while six of its members have embraced the Commission's conceptual framework for a redesigned adjudication and appellate process, three members have not. Their Alternative Views are expressed in Chapter XI.

V. Process Design: Claims Adjudication and Appeals

Major Findings and Conclusions

[133] The BPR team presented its briefing at the Commission's eighth, and final, multi-day public meeting in Washington, D.C., on July 16 and 17, 1996.

The Commission's preliminary findings and conclusions, as updated and expanded in this final report, support the following:

- ***The adjudication and appeals process:***
  - ***involves too many "hand-offs" at the initial adjudication level;***
  - ***lacks clear and definitive rules that can be fairly and efficiently applied to the processing of the vast majority of cases;***
  - ***fails to provide meaningful due process to claimants by not making them partners in the adjudicative process;***
  - ***imposes time-consuming and labor-intensive redundancies, e.g., the notice of disagreement and statement of the case prior to the filing of a formal appeal;***
  - ***blurs accountability due to ill-defined jurisdictional lines and failure to use the results of actual adjudications for quality control and employee rating purposes; and***
  - ***generally fails to treat the claims and appeals process as a continuum which should narrow and sharpen issues as a claim proceeds through the process, rather than expanding and obfuscating them.***

Neither VA nor the taxpayers can afford the luxury of the resource intensity required of a paternalistic adjudication system. Neither should veterans have to tolerate the imposed complexities and delays inherent in a system of "adversarial paternalism." The current system is particularly ill-adapted to the task of fairly and efficiently processing repeat claims, which represent the bulk of the compensation workload.

Both veterans and the system need Congress to express its intent clearly by clarifying statutory terms and concepts such as "burden of proof," "well grounded claim," "duty to assist," and whether or not there is a distinction between "evidence" and "facts" as those terms apply to the "duty to assist." They also need a clear statutory/regulatory expression as to the respective duties and responsibilities of claimants, representatives, and VA, as well as the extent and nature of the proofs necessary to establish entitlement to benefits.

Regulations are needed to incorporate and formalize VA's experience in adjudicating millions of claims, so that all parties, including the CVA, will know the rules under which claims are adjudicated on the Secretary's behalf and the basis for those rules. This is particularly true with respect to:

- ***the weight given to the various forms of evidence, in hierarchical order;***
- ***the presumptions attached to the various kinds of evidence and the kinds of critical tests to which they should be systematically subjected, particularly for purposes of reopening;***
- ***the acceptable sources of that evidence; and***
- ***the responsibilities of the respective parties in obtaining it, considering its source.***

Hearing officers and VSO representatives are an underutilized resource. Both should have a greatly expanded role in a nonadversarial, nonpaternalistic redesigned adjudication and appeals process.

Major Recommendations

The Commission's recommendations fall into three broad categories: (1) the need for Congress and the Secretary to exercise their respective policymaking responsibilities; (2) building partnership between VA and the claimant/representative; and (3) the Commission's proposals for a redesigned adjudication and appeals process.

I. Review and Reaffirmation of Major Policies Needed

Congress should review the policies established by the Court of Veterans Appeals (CVA) to determine whether they are consistent with the compensation program's purposes and the intent of Congress. Where they are not, Congress should legislate or direct the Secretary to regulate.

Several key policy areas require early attention because of the manner in which the Court has interpreted intent. While these interpretations may be in keeping with Congressional intent, they are also critical drivers of extended development and thus of additional time and resources in the process. They also create confusion on the part of the Department's field staff, claimants, and representatives.

These areas include:

- ***"burden of proof;"***
- ***"well grounded claim," including:***
  - ***the nature of evidence sufficient to establish a well grounded claim;***
  - ***whether or not a well grounded claim is a threshold test, which requires a summary denial if not met; and***
  - ***whether an allegation of disability is sufficient to establish a well grounded claim without accompanying credible medical evidence;***
- ***"duty to assist;"***
- ***the distinction between "evidence" and "facts" as those terms apply to the "duty to assist;" and***
- ***the interrelationship of "burden of proof," "well grounded claims," and "duty to assist," and the sequence in which they are to be applied.***

These policies drive critical steps in the claims process. The expected outcome of the review of these major policies and subsequent legislation and regulations would be clear guidance as to the respective roles and responsibilities of the veteran, representatives, and VA in the claims process. It would put the Congress in charge of the statement of program purpose and policy with VA responsible for interpretation and application of those policies. The Court would then have a more traditional role of ensuring proper application of policies to individual litigants.

The Secretary should promulgate regulations that provide his construction of the statute and that incorporate and formalize VA's experience in adjudicating millions of benefit claims.

There is a regulations void, which should be filled, on such fundamental adjudicative issues as:

- ***the weight given to the various forms of evidence, in hierarchical order;***
- ***the presumptions attached to the various kinds of evidence and the kinds of critical tests to which they should be systematically subjected;***
- ***the acceptable sources of that evidence; and***
- ***the responsibilities of the respective parties in obtaining it, considering its source.***

There is also a lack of a practical definition of the term "well grounded," with acknowledgment and authoritative discussion of its adjudicative implications. It is on these fundamental issues that CVA is making policy because of the regulatory void, which the Secretary should fill.

These regulations should provide the foundation for a redesigned adjudication and appeals process, which the Commission recommends below, because what has to be proved—and by what means—determines the nature of the process. The redesigned process should be incorporated into regulations. It is particularly important that regulations address the substantive issues presented by the vast majority of claims. The data in Chapter I show that the majority of cases are repeat claims filed by represented veterans who are already in benefit status. The typical veteran presents disabilities which have been or will be rated zero or ten percent. The typical case includes relatively simple substantive issues and the evidentiary and procedural rules needed to fairly and efficiently resolve those issues can be similarly simple.

II. VSOs and VA Should Build a Claims-Processing Partnership

The Commission believes that the expertise of VSO representatives is a valuable resource with great potential for further application in the claims processing system. By working in partnership with VSOs to find ways of systematically engaging them in the claims process, VA can improve its service to veterans. As recommended in Chapter III, appropriate roles and responsibilities of the partners would be negotiated among VA and the VSOs, in the context of the VBA's BPR initiative, to provide a conceptual framework that would guide claim-specific partnerships among the parties to the claim.

III. Redesign the Adjudication and Appeals Process to Make it More Functional, Fair, and Efficient.

The Commission endorses the following conceptual process redesign in principle but acknowledges that further expert analysis is needed before the net effects of the proposed changes can be projected accurately. The redesigned process would feature the following characteristics.

- ***A duty to inform, i.e., ensuring that the claimant knows what benefits he or she is potentially eligible for, including the degree of disability he or she could reasonably hope to prove, and the evidence needed (in hierarchical order) to establish the claim.***
- ***Establish the respective roles and responsibilities of the claimant and VA in obtaining a complete and focused record. The purpose would be to narrow the claim to the relevant issues and focus development on evidence that is most persuasive and material in resolving those issues.***

- ***Ensure the evidentiary record is complete prior to decision.***

- ***An appeals process that narrows and sharpens the issues rather than one that expands and obfuscates them. This includes: replacing the NOD with a formal appeal and eliminating the Statement of the Case; shortening the appeal period to 60 days; expanding the role of the Hearing Officers to make it the mandatory first step in the appeal process; and changing the nature of the BVA's review from de novo to appellate.***

I. Background

Scope of Claims and Appeals Process Analysis.

VA's adjudication and appeals process is the fulcrum around which the Commission's entire deliberative effort has turned for the very good reason that each and every area the Commission was charged to evaluate and assess by Public Law 103-446 relates directly to VA's adjudication and appeals process. The Commission's task was not easy for two reasons: first, it was necessary to review and analyze a mountainous quantity of data in order to gain an informed grasp of the details of the entire process; second, it was difficult to establish a baseline for measuring realistically VA's success or failure in implementing congressional expectations.

The second difficulty gives rise to two fundamental questions:

- Is the procedural complexity of the adjudication and appeals process, especially as it has evolved since the creation of the Court of Veterans Appeals (CVA), what Congress intends?

- If so, are the inevitable delays caused by this complexity a tolerable and necessary adjunct of congressional intent, as interpreted by the CVA?

- If both questions are answered "yes," a third question is posed: To what extent, if at all, can the existing adjudication and appeals process be improved, or "fine tuned," to minimize delays while ensuring quality adjudication and full due process?

Because the Commission first had to become familiar with the particulars of the existing process, and because it was operating under the presumption that the existing process was what Congress intended, the Commission's deliberations did not follow the sequence of the questions posed above. After becoming familiar with the existing process, the Commission attempted to answer the third question first because if that question could be answered in the affirmative, it would obviate the need to answer the first two questions. The Commission, however, was unable to answer the question in the affirmative, as its Report on Preliminary Findings and Conclusions attests.

Broad Changes Required.

The Commission concluded that the problems with the existing system are so many and varied that it cannot be fine tuned into a system that will consistently produce timely and high-quality adjudicative products. This conclusion perhaps was not unexpected because there was a general consensus that the system was failing both in terms of the quality and timeliness of its decision making on benefit claims, which is what occasioned the creation of the Commission. The question was: "Why?" To answer this basic question, the Commission believed it was necessary to conduct a fundamental reexamination of the nature, purpose, and intent of the system for adjudicating veterans benefits claims, or, to put it more colloquially, "to go back to square one." Only then would it be possible to determine what could be done realistically to improve the system within the parameters of congressional expectations and the resources provided to VA by Congress.

It was at this point that the Commission posed to itself the first two questions cited above in order to ensure that its recommendations would comport with congressional intent and direction. For example,

- Did Congress intend, or at least anticipate, that a remand rate of approximately 50 percent would become the norm both for the CVA and BVA?

- Did Congress expect judicial review to reveal that adjudication at the BVA and the ROs was so procedurally deficient as to justify such high remand rates by the CVA and BVA? More specifically,
- Did Congress expect and intend that the nature of VA's adjudication would change fundamentally with judicial review so that it would be more time consuming and costly?

If so, to what degree, if at all, is VA failing to deliver the kind of system Congress wants, in the manner it intends?

The Commission was unable to find definitive answers to these questions. The Commission believes it is time for Congress to reexamine all facets of the system and how the changing characteristics of the veteran consumer affect the nature of the claims he or she submits.

VA Paternalism: A Source of Difficulties.

Prior to the creation of the CVA by Public Law 100-687 in 1988, as a practical matter, clear congressional direction was not essential. By all accounts, the adjudication and appeals system was "paternalistic," but VA was able to process benefit claims in a reasonably timely manner and, without judicial review, VA was the judge of what constituted "quality" decisions. The Commission has discovered nothing that would contradict the universal perception that VA's adjudication and appeals system was and still is paternalistic. This fact has great significance because in order to fix a problem, you first must know what the problem is. The Commission believes that VA's traditional paternalism is the source of much of its present difficulties. The question is whether this is the kind of system Congress still wants.

A paternalistic system *requires* that claimants not be informed regarding such fundamental matters as the specific requirements for presenting and proving their claims; otherwise, they will become partners in the adjudicative process, and, of course, the system will no longer be paternalistic. In a paternalistic system, such rules as there are mean what the paternalistic decision maker says they mean. This is particularly true when there is no formalized, independent, third-party review of agency decisions.

Without independent, third-party oversight a paternalistic system is generally accountable only to itself. This permits certain administrative efficiencies; for example, cursory decisions with little or no explanation of the material factors leading to the decision. But such a system also has built-in inefficiencies, the foremost of which is that the agency assumes complete responsibility for evidence gathering. Another important downside is that as long as the system produces reasonably timely decisions and escapes broad congressional criticism, there is little, if any, institutional incentive to actively pursue increased efficiencies. Change and innovation are not characteristics of an unreviewed system. The Commission believes that this description can be accurately applied to VA as it existed prior to the enactment of P.L. 100-687.

With the creation of independent, third-party review, however, the paternalistic VA system was confronted with the worst of both possible worlds: it was saddled with the built-in inefficiencies and institutional inertia of paternalism, but it also was no longer able to take advantage of the lack of accountability that permitted decision making efficiencies. This is because effective oversight of agency decisions requires that they be fully rationalized and comply with relevant statutory and regulatory provisions. The absence of clear and definitive rules governing administrative adjudication procedures, which is characteristic of a paternalistic system, compounded VA's problems even more, and has placed VA in a reactive posture with respect to the formulation of adjudicative policy. Vague rules, which previously had not been a problem because they were subject only to VA's interpretation, suddenly took on an entirely different meaning when interpreted by the CVA. Invariably, the CVA's interpretation of statutory and regulatory provisions was more expansive than VA's and required VA to do more for claimants. These developments have produced a phenomenon which is another overriding theme of this report.

During the process of formulating its preliminary findings and conclusions, the Commission struggled to find an accurate term that would characterize the nature of the current adjudication and appeals process. After much deliberation, the Commission settled on the term "adversarial paternalism," which admittedly is an oxymoron because "adversarial" and "paternalism" are contradictory terms. But it is this contradiction in terms that drives the adjudication system and dooms it to inefficiency. By definition, the proceedings before the CVA are adversarial. When an adversarial review is imposed on a paternalistic adjudication and there are no definitive rules that describe the limits of adjudicative paternalism, for all practical purposes the judicial review standard becomes, "Was VA paternalistic enough?" As each case presents different circumstances, the boundaries of paternalism can be and are continually extended. And, because three-judge rulings are precedential, extended boundaries resulting from appeals decided by three-judge panels must be applied to all cases.

Many of the problems associated with adversarial paternalism have been described in the Commission's Preliminary Findings and Conclusions and will be more fully discussed in connection with the Commission's final recommendations. The point is that an administratively efficient adjudication system requires simple, easy-to-understand rules that are binding on all parties and can be applied across-the-board. Such rules should be designed to facilitate the production of adjudicative decisions rather than complicate it. This is just as true for procedural rules as for the actual adjudicative standards for determining disability. Not having clear and binding procedural rules is akin to trying to determine the degree of disability without the rating schedule. The rules may be liberal or exacting, depending on congressional intent, but there must be clear rules if there is to be administrative efficiency.

Discerning congressional intent from statutory language, however, poses a problem because the language seems to be inconsistent with the reality of VA's paternalistic system. For example, the statute appears to place the burden of proof on the claimant, and the burden is heavy, *i.e.,* ". . . a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded."[134] A literal reading of this provision places a heavy responsibility on the claimant that is clearly inconsistent with a paternalistic adjudication system.[135]

Duty to Assist and Burden of Proof.

The remaining language of subsection 5107(a) does not change this perception. It provides that: "The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title." Section 5106 refers to information in the possession of any federal department or agency. Although the first sentence has been interpreted as imposing an almost open-ended "duty to assist" on the Secretary to develop *evidence* for the claimant pertinent to the claim, the statute does not say this at all. It says that the Secretary shall assist the claimant in developing the *facts* pertinent to the claim. Presumably, if Congress had meant "evidence," it would have said "evidence." Logically and legally, evidence and facts are two different things. The *facts* pertinent to the claim are the issues to be evaluated in the context of the criteria for entitlement; *evidence* is the material necessary to establish those facts as true. The only specific statutory exception applies to pertinent information (evidence) in the possession of a federal department or agency. Thus, a literal reading of the statute requires the Secretary to assist the claimant in identifying the facts that must be established, but the burden of submitting evidence to establish those facts remains with the claimant.

Subsection 5107(b) appears to reinforce this view. After enacting the "benefit of the doubt" rule, the section concludes by stating: "Nothing in this subsection shall be construed as shifting from the claimant

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[134] See also 38 USC §5107(a).

[135] See also 38 USC §5103(a).

to the Secretary the burden specified in subsection (a) of this section," *i.e.,* the burden never shifts to the Secretary, it always remains with the claimant.

Within the statutory scheme, there is a general exception to the rule that the burden of proof is on the claimant. It is expressed in the opening phrase of subsection 5107(a) as follows: "Except when otherwise provided by the Secretary in accordance with the provisions of this title. . . ." "[In] accordance with the provisions of this title" means that such exceptions as the Secretary may provide must be promulgated under the Administrative Procedures Act (APA) rulemaking procedures.

Under this interpretation of the statutory provisions, congressional intent appears to be quite clear. Moreover, the provisions are in effect a restatement of VA regulations that existed prior to the creation of the CVA. Yet, in practice, VA then and now operates as a paternalistic adjudication system. The difference is that, with judicial oversight, VA can no longer unilaterally and arbitrarily decide the extent to which it wishes to be paternalistic by departing from its own and Congress's rule that the burden of proof is on and remains on the claimant. At a minimum, any departure or exception to the rule must be done through rulemaking and by regulation. Such regulations do not exist.

When legislative history is ambiguous, the courts take on a legislative function by making judgments about what Congress intended.[136] It is perfectly appropriate that the CVA would interpret a statute in light of VA's past practices in interpreting and implementing it, which were decidedly paternalistic. ("VA's duty to assist arises out of its long tradition of *ex parte* proceedings and paternalism toward the veteran."[137]) This is particularly true in the absence of regulations specifying exceptions where VA would partially relieve the claimant of the burden of proof by obtaining evidence on his behalf. Indeed, the alternative would be to give a construction to the statute that is contrary to the Secretary's, as demonstrated by decades of past VA practice.

The statute is not clear in other important respects. For example, it is difficult to determine with any degree of certainty what the statute means by a "well grounded" claim; what exactly a claimant's "burden of proof" is; when or if the claimant's burden of proof shifts to the Secretary; how, if at all, the Secretary's "duty to assist" is related to the claimant's burden of proof; whether the Secretary's duty to assist was meant to be triggered only upon a determination that a claim is "well grounded;" and how, if at all, these provisions and the "benefit of the doubt" provision interrelate. On a case-by-case basis, virtually any interpretation is possible, but policymaking under these circumstances can only be confusing, disruptive, and inefficient.

Removing from the claimant the burden "of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded" results in decreased adjudicative timeliness and efficiency. Whatever VA does for a veteran claimant that the veteran can do for himself or herself is an unnecessary and wasteful expenditure of resources. Adversarial paternalism places little, if any, responsibility or expectation on the part of the claimant. This creates a burden additional to the one already self-imposed on VA and, in the process, lifts the burden of proof from the claimant. It also tends to unnecessarily expand issues and drive the system toward requesting and obtaining evidence that is not relevant rather than concentrating resources on obtaining evidence that is focused on the issues.

The Commission believes that VA's traditional paternalism is no longer sustainable or affordable now that it has to be defended within the adversarial context of, "Was the VA paternalistic enough?" This being so,

[136] For a discussion of judicial review of legislative and administrative acts, see *Managing the Public's Business*, by Laurence E. Lynn, Jr., Harper, 1981.

[137] *Connolly v. Derwinski*, 1 Vet. App. 566, 569 (1991).

the adjudication and appeals system we recommend would be neither "adversarial" nor "paternalistic." The Commission believes that its recommended system is fully consistent with the language of existing statutory provisions, but whether it fully comports with congressional intent is an issue only Congress can decide. It is essential that this issue be resolved, because without clear congressional direction it is doubtful that any recommended solutions will be implemented and sustained. If adopted, the Commission's recommendations will take the VA's adjudication and appeals system in a different direction than it has followed traditionally. Although most of the Commission's recommendations may not require statutory changes, fundamental changes of the kind we recommend should be implemented only with congressional endorsement, after full consideration of the views and interests of all major parties to the system.

The Commission believes that the claims processing partnership between the claimant/representative and VA should be grounded on *a duty to inform*, which is introduced and described below. Each party would have specific roles and responsibilities. The Commission also believes that having ill-defined procedural rules, or no rules at all, creates complexity and inefficiency. The Commission's solution theme for this problem is simplification of the system, with the simplification being formalized in easy-to-understand, easy-to-apply, common sense rules. Such ill-defined and confusing terms as "well grounded claim" and "duty to assist" would be subsumed within, and given meaning and substance by, this simplified system.

II. Findings

The Commission affirms its preliminary findings and conclusions as they relate to the nature of VA's adjudication and appeals process and the fundamental problems that are inherent to the system as currently operated. The following updates data and expands upon the Commission's preliminary findings and conclusions which provide the bases for the Commission's recommendations.

Repeat Disability Compensation Claims.

Repeat disability compensation claims continue to drive the process. Since FY 1990, the ratio of repeat claims to initial claims has been almost three to one. Among initial and repeat claims for disability compensation received in FY 1996, through May, about 74 percent were repeat claims and about 32 percent were initial claims.

In addition, the "typical" claimant has a lower-rated disability and has professional representation.[138]

[138] See Chapter III, *Interaction: The Veteran Meets the System*, for statistics regarding claimant representation.

Table 1 - Claimants With Lower Rated Service-Connected (SC) Disabilities

	Number of Veterans as of 9/30/95	*Percent*
Veterans with a Combined Degree of 10% for a SC Disability	886,279	39.64%
Veterans with a Combined Degree of 20% for a SC Disability	365,241	16.34%
Veterans with a Combined Degree of 30% for a SC Disability	306,997	13.73%
Total Veterans with Combined Degrees of 10, 20, and 30%	**1,558,517**	**69.71%**
Total Veterans Receiving Benefits	**2,235,675**	**100.00%**

Source: RCS 20-0223 Report

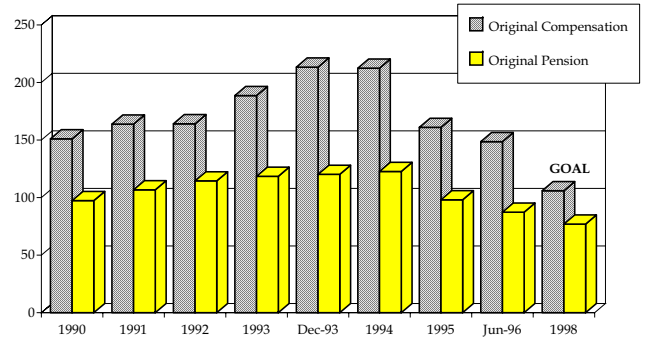
The VBA continues to progress toward meeting its timeliness goal for processing original compensation claims—average processing time has declined from 212 days at the end of FY 1994 to 150 days at the end of May 1996. However, the Commission regards this improvement not as having been achieved by increased productivity, as measured by task time per case, but by a combination of increased decision making FTE, heavy use of overtime, and decreased receipts. The following data update the VBA's workload processing statistics through June 1996:

Table 2 - Average Processing Days for Original and Repeat Disability Compensation and Pension Claims

	Original		*Repeat*	
Fiscal Year	*Compensation*	*Pension*	*Compensation*	*Pension*
1990	151.1	97.4	96.5	96.5
1991	163.9	106.8	99.4	99.4
1992	164.2	114.5	105.1	105.1
1993	188.7	118.5	123.6	123.6
December 1993*	213.4	120.2	136.2	136.2
1994	212.5	122.7	135.0	198.0
1995	161.0	98.1	134.8	110.5
June 1996**	148.6	87.4	106.1	81.0
1998 (Target)	106.0	77.0	82.0	82.0

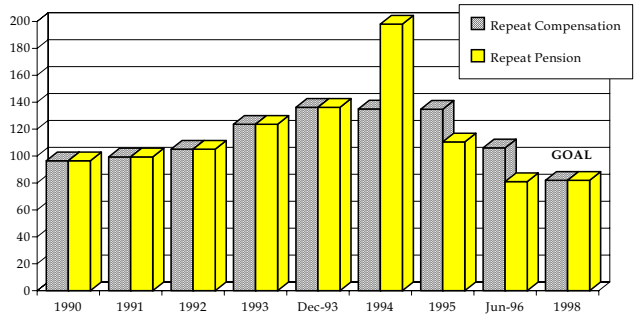
Source: COIN DOOR 1015 Reports
*December 1993 is FYTD (10/1/93 - 12/31/93)
**June 1996 is FYTD (10/1/95 - 6/30/96)
Note: Repeat Compensation and Pension processing days are the same until fiscal year 1994. VBA controlled repeat compensation and pension claims under the same end product until fiscal year 1994.

Chart 1 - Average Processing Days for Original Compensation and Pension Claims



Source: COIN DOOR 1015 Reports

Chart 2 - Average Processing Days for Repeat Compensation and Pension Claims



Source: COIN DOOR 1015 Reports
Note: VBA controlled repeat compensation and pension claims under the same end product until FY 1994. The significant increase in repeat pension processing days in FY 1994 is most likely due to the creation of separate end products for repeat compensation and pension claims. Not all repeat compensation and pension claims were classified under their new end product until FY 1995.

The early results of the separation examination pilot initiative are quite promising in terms of improving the fairness and efficiency of original compensation claims processing. This initiative is discussed in Chapter IX, Section 1.

Business Process Reengineering.

The VBA's Business Process Reengineering (BPR) initiative has great potential for improving the system by making it more responsive to claimants and more administratively efficient. The Commission is impressed with the BPR's practical orientation and its willingness to rethink the process in order to make it more efficient and functional to the needs of claimants. The Commission endorses the BPR approach taken thus far. Assuming that VA adopts an energetic and complete communications plan[139] and includes the BVA in the implementation process, the redesign should become the overarching blueprint for future changes in the process and the information technology to support it.

Appeals.

Since the Commission issued its preliminary findings and conclusions, VA has reported on a number of initiatives it has undertaken to improve appeals processing. These include:

- A 100 percent review by regional offices of all appeals before forwarding them to the BVA.
- The development of a "Precertification/Certification Worksheet" to facilitate the 100 percent review.
- Increasing the number of decision makers at the BVA, and increasing the ratio of attorneys and Board members to support staff.
- Improving communications and cooperation among the VBA, BVA, and VHA.
- Improving the BVA's quality assurance system.
- Developing a performance agreement between the Chairman of the BVA and the Secretary.

These and other BVA initiatives coincide with improvements in appeals processing. The following tables update the appeals workload processing statistics in the preliminary report to include all of FY 1995 and the first eight months of FY 1996:

[139] A communication plan refers to a plan/schedule for communicating with all the stakeholders/parties who will be interested in the BPR team's work. The communication plan sets out a plan for communicating with the stakeholders/parties from the *beginning* to the *end* of the team's work.

Table 3 - FY 1995 and 1996 Apeals Workload Processing Statistics

	FY 1995	*FY 1996 (thru May)*
Decisions	28,195	21,570
Appeals Received	39,990	22,337
Pending End of Year	58,943	59,710
BVA FTE	433	471
Decision per FTE	65.1	70.2
Response Time (days)	763	641

Source: BVA, May 1996

Table 3 (above) reveals that pending appeals have increased slightly while the number received has dropped noticeably. In FY 1995, an average of 3,332 appeals were received per month. But in FY 1996 (through May), the average per month is 2,792. In addition, FTE at the Board has increased by eight percent. More staff have decided more cases, while fewer have been received. There has been an increase of five dispositions per FTE per year but the Commission does not have data that would indicate whether this increase is due to improved efficiencies, an increased use of overtime, or a combination of both.

A study of the cases called in by the BVA during the period September 1995 through June 1996 was the subject of a BVA report. (From February 1994 until July 1995, certified appeals—that is, appeals ready for BVA action—were held in the ROs because of a heavy appeals backlog in the BVA.) The study was instituted by the Deputy Secretary and included the above-cited 100 percent review of appeals being certified to the BVA by the ROs. The study revealed the following results for cases decided by the BVA:

Table 4 - Study of Cases Called in by the Board of Veterans' Appeals

Period	*Decisions*	*Remand*	*%*	*Allowed*	*%*	*Denied*	*%*	*Other*	*%*
FY 1995	19,295	10,114	52.4%	3,118	16.2%	4,041	20.9%	2,022	10.5%
9/95	1,384	621	44.9%	271	19.6%	377	27.2%	115	8.3%
9/95-6/96	6,525	2,953	45.2%	1,064	16.3%	2,025	31.1%	481	7.4%

Source: Board of Veterans' Appeals, Study of Cases, May 1996

The percentage of remanded appeals in the study dropped from 52.4 percent in FY 1995 to 45.2 percent in FY 1996 and the proportion of appeals denied increased.
The study report also includes data relating to the total number of cases called up by the Board.

Table 5 - Board of Veterans' Appeals Status of Advanced File Call-ups by Month							
Call up Period	*Active*	*Remands*	*Decided by BVA*	*Decided in Field*	*Total*	*Cases Not Received*	*Total Call Ups*
Sep-95	520	685	699	369	2,273	717	2,990
Oct-95	613	481	479	338	1,911	1,089	3,000
Nov-95	759	429	479	295	1,962	1,033	2,995
Dec-95	1,601	666	621	531	3,419	2,572	5,991
Jan-96	988	270	292	372	1,922	2,075	3,997
Feb-96	1,614	283	335	477	2,709	3,279	5,988
Mar-96	1,101	188	210	318	1,817	2,180	3,997
Apr-96	1,038	133	127	331	1,629	2,370	3,999
May-96	754	33	78	212	1,077	4,917	5,994
Jun-96	247	7	19	43	316	3,684	4,000
Total	**9,235**	**3,175**	**3,339**	**3,286**	**19,035**	**23,916**	**42,951**

Source: Board of Veterans' Appeals, Study of Cases, May 1996

The results of the cases decided by the BVA reveal a slight decrease in the percentage of BVA remands and a stable BVA grant rate of approximately 16 percent. But these statistics do not tell the whole story. The 100 percent RO review resulted in almost as many cases being decided in the field as at the BVA (3,286 *vs.* 3,339). More than half the cases called up have not been received, presumably because some additional action is being taken by the ROs on those cases. One can only speculate what the BVA remand and grant rates would be without the 100 percent review, but it is certain they would be higher.

The Commission believes that the lengthy intervening period between the initial decision and the appeal certification frequently changes the issues and the evidence needed to decide them (*e.g.,* medical evidence can no longer be considered current). The Commission considers this a significant factor in the continuing high rate of BVA remands.

The CVA reviews the BVA's *de novo* decisions, and in FY 1995 only 23 percent of the BVA's dispositions were denial decisions. The BVA remanded 47.6 percent and granted 19.5 percent of the cases it reviewed and 10.2 percent were classified as "other." But of the relatively minuscule number of cases subject to CVA review, Chief Judge Nebeker has reported to the Commission that there is "prejudicial error" in more than 60 percent of the cases (see Appendix J). These errors relate almost exclusively to procedural, as opposed to substantive, issues. The Commission believes that the lack of clearly defined and commonly understood procedural regulations is a significant factor in the high prejudicial error rate found by the CVA.

Since the creation of the CVA, VA has devoted an ever increasing amount of time and resources to what the Commission believes has been a good faith effort to comply with the realities of judicial review. During this period, productivity, as measured by task time and cost per case, has deteriorated to the point that it takes twice the work hours to adjudicate the average case. Processing times, particularly for appeals, have increased drastically. Yet, as measured by the actual results of the BVA and CVA adjudications, VA has fallen far short of achieving what would be considered an acceptable "error rate" for an efficient and functional adjudication and appeals system. Moreover, the results of the 100 percent case review prior to appeal certification offer little, if any, hope of improvement within the current system. The solution, therefore, is not to devote even more resources to adjudicating within the current system, but rather to make fundamental changes to the system.

The one aspect of the current system that appears to be working well both in terms of processing times and quality adjudication, is the hearing officer program, as the following FY 1995 tables reveal.

Table 6 - FY 1995 Hearing Officer Program			Table 7 - FY 1995 Hearing Officer Data	
	Number	*Percent of Total*		*FY 1995*
Number of Dispositions	30,839	100.0%	*Grant Rate*	38.4%
Completed	17,189	55.7%	*Development Rate*	57.4%
Failed to Show	3,300	10.7%	*Average Days:*	
Cancelled	10,273	33.3%	*Request to Hearing*	80 days
Prior Decisions Affirmed	10,314	60.0%	*Average Days:*	
Granted	6,708	39.0%	*Hearing to Decision*	114 days
Decreased	32	0.2%		

Source: VBA Compensation and Pension Service, June 1996

Both the hearing officer grant rate and development rate are significant. The Commission believes that the personal, face-to-face contact between the hearing officer and the veteran and his representative promotes the objective of obtaining a complete and focused evidentiary record, which in turn results in fair and equitable decisions. Currently, hearing officers average 474 dispositions and 264 decisions per year. Total average processing time, which includes development time, amounts to 194 days. The Commission believes that the hearing officer disposition rates and processing times are quite encouraging, particularly when they are contrasted with the BVA's average disposition rates and processing times.

III. Conclusions

1. Fundamental Reevaluation Essential.

It is clear to the Commission that neither VA nor the taxpayers can afford the luxury of the resource intensity required of a paternalistic adjudication system. Neither should veterans have to tolerate the imposed complexities and delays inherent in a system of "adversarial paternalism." Since creation of the CVA, VA's average task time has doubled at the VBA, while task time and cost per case have doubled at the BVA, as have processing times. These performance changes have not resulted in discernible reduction in the high CVA and BVA remand rates. Moreover, the underlying philosophy of paternalism, *i.e.,* that veterans and their representatives are not competent to present their claims effectively, is both demeaning and anachronistic. For these reasons, a fundamental reevaluation of the claims adjudication and appeals process is essential.

2. Product and Process are Directly Related.

Any reevaluation of the adjudication and appeals process, however, cannot avoid involving the program product. The nature of the product fundamentally affects—ideally, should dictate—the process for producing it.

3. Congressional Endorsement Needed for Fundamental Changes in Adjudication and Appeals Process.

As part of its analysis of the adjudicative product, the Commission compiled original data[140] that have direct relevance for redesigning the adjudication and appeals process, as well as broad program policy implications that warrant congressional attention. The Commission has used and applied these data for two basic purposes:

(1) to recommend ways of making the adjudication and appeals process more functional, equitable, and efficient in the near term; and

(2) to provide analyses and options for legislating program changes that could serve Congress in developing its direction for VA benefit programs into the next century.

4. Repeat Claims Dominate the System.

The Commission's primary conclusion about the adjudication process is that repeat claims dominate the system. More focused and efficient ways of adjudicating these claims are essential. Chapter I, Sections 2 and 4, address the significance of repeat claims.

5. Most Claimants are Already Receiving Compensation; Many Disabilities are Minimal.

The typical veteran claimant is already in benefit status, having at least once previously negotiated the claims and/or appeals process successfully. The majority of claimants (69.7 percent) filing repeat disability claims have relatively minimal disabilities (zero to 30 percent) and are represented (57 percent at the RO level and over 90 percent at the BVA level). The Commission notes that 86 percent of the service-connected disabilities among veterans newly awarded compensation during FY 1995 were evaluated zero or 10 percent disabling.

6. Process Can Be Simplified.

The fundamental issues in the vast majority of disability compensation claims are simple and straightforward: (1) that a disability exists, (2) whether it is service connected, and (3) the degree to which it disables the veteran. Approximately 65 percent of all compensation and related claims are repeat claims. Repeat claims should present limited and narrow issues, particularly if the prior decision included well articulated "reasons and bases." The Commission believes the process can be simplified significantly.

7. Claims and Evidence Development Not Focused on Real Issues.

There is no clearly defined evidentiary threshold for the making of a claim for purposes of determining whether it is "well grounded" or not. In practice, a bare allegation of a disability and its service connection suffice to set the adversarial paternalistic adjudication machinery in motion. The effect is that VA is put in the position of trying to "prove a negative," *i.e.*, that the claimant is *not* entitled to all possible VA benefits. As a result, claims and evidence development do not focus on the real issues presented, and baseless claims, or those with the least merit, often require the most development and expenditure of VA resources.

8. VA Rules Need to Reflect VA's Experience.

The Secretary should expeditiously promulgate regulations that incorporate and formalize VA's experience in adjudicating millions of claims. Then all parties, including the CVA, will know the rules under which claims are adjudicated and the basis for those rules. This is particularly true with respect to:

- the weight given to the various forms of evidence, in hierarchical order;

[140] See Chapter I, Section 4, *Concept Paper on Repeat Disability Compensation Claims.*

- the presumptions attached to the various kinds of evidence and the kinds of critical tests to which they should be systematically subjected, particularly for purposes of reopening; (The Commission believes that the Transition Assistance Program and Disabled Transition Assistance Program (TAP/DTAP) and the initiative to enhance the medical examination process are effective means for processing original compensation claims. However, even though these claims are fully developed prior to or shortly after the veteran's separation, no presumptive weight (subject to systematic critical testing) is assigned to the evidence and no finality is accorded to decisions denying service connection based on that evidence.)

- the acceptable sources of evidence; and

- the responsibilities of the respective parties in obtaining it, considering its source.

The Commission observes that Social Security Administration (SSA) regulations on determining disability and blindness[141] are much more specific than VA regulations in these areas. SSA's regulations took time to develop, however. For years SSA regulations on determining disability were extremely vague, and the system was very paternalistic. Driven by a number of factors, regulations specifying how vocational factors were evaluated within the context of the statutory definition of disability were promulgated in 1978. Detailed regulations specifying how medical evidence is to be evaluated in determining disability were promulgated in 1991. The vagueness of the prior regulations and the success of class action lawsuits are cited by many as a critical cause and effect equation. SSA's expanded regulations, which have been upheld, basically incorporate long-standing SSA policies. Many observers believe that had those policies always been articulated in regulations, many problems with the federal judiciary and Congress could have been avoided.

When such regulations are promulgated by VA, their consistency with relevant statutory provisions as well as their legal sufficiency and administrative efficacy will be fairly tested during the APA rulemaking process. When finally promulgated, such regulations will be given due deference by the CVA, and the uncertainty regarding the adequacy of VA's adjudicative procedures will diminish.

9. Good Regulations Will Lead to Better Adjudicative Decisions.

Many people have come to associate regulations with unnecessary complexity and obfuscation. If regulations are developed and promulgated effectively, however, the exact opposite is true.

With judicial review, it is essential that the Secretary articulate his construction of the statute and that this be done by rulemaking. Regulations must, of course, reflect congressional intent in applying VA's administrative and legal experience. If this is done, regulations have the force and effect of law and, accordingly, are binding on the courts. Absent such regulations, however, the vacuum will be filled by the judiciary's independent interpretation of the statute. Indeed, the court will have no responsible alternative. Therefore, it is in everyone's interest for VA to fulfill its statutorily imposed responsibility of promulgating well informed regulations that reflect the Secretary's construction of the statute.

Regulations are the primary means of informing the public, VA's constituencies, Congress, and the courts of what exactly is needed to establish entitlement to benefits and of the rules for obtaining and evaluating relevant evidence. As such, regulations are the cornerstone of the adjudication and appeals process.

On a purely practical level, regulations provide common rules and procedures for handling commonly occurring issues fairly and consistently. When procedures make sense and actually focus on real-world

[141] 20 CFR part 404, Subpart P-4040.1501 ff.

problems and concerns, the proper way to handle particular issues and circumstances has already been authoritatively decided. In effect, regulations eliminate the necessity of constantly "reinventing the wheel."

VA's massive experience—gained by having decided millions of claims over the years—should be used to make it easier to decide claims at all levels, focusing on efficient, common sense adjudicative rules and procedures that not only comport with due process requirements but incorporate them fully. To the extent this is done, the areas requiring true analytical and adjudicative skills are narrowed, as are the number of cases requiring those skills for accurate decisions. Good regulations simplify what otherwise would be complex by providing an organizing framework that can be systematically applied to the administrative process. Vague or nonexistent regulations make complex what otherwise would be simple.

10. Processes are Dysfunctional.

The traditional adjudication and appeals process:

- involves too many "hand-offs" at the initial adjudication level;
- lacks clear and definitive rules for processing the vast majority of cases;
- does not make claimants partners in the adjudicative process and, as a result, withholds meaningful due process;
- imposes time consuming and labor intensive redundancies, *e.g.*, the notice of disagreement and statement of the case prior to the filing of a formal appeal;
- blurs accountability (jurisdictional lines are ill defined and results of appealed adjudications are not used for quality control and employee rating purposes); and
- is not administered as a single continuum which should narrow and sharpen issues as a claim proceeds, rather than expanding and obfuscating them.

11. Application Process is Flawed.

At the claims intake point, the application is lengthy, unfocused, and, in many instances, asks for information that is extraneous to the benefit sought. The instructions provided with the application do not:

- explain direct, secondary, or presumptive service connection;
- adequately specify the criteria needed to establish entitlement to benefits;
- describe the nature of the evidence required to meet those criteria;
- communicate the need to explicitly authorize VA to obtain medical records; or
- explain that providing records with claims will speed the adjudication process.

12. Duty to Inform.

The Commission believes that fundamental due process requires that VA clearly describe for claimants:

- what must be proved;
- the exact requirements for establishing entitlement;
- the best evidence for establishing entitlement; and

- the most effective way to obtain the evidence.

These requirements can be accurately described as a "duty to inform," and it is this duty to inform that the Commission believes is incorporated within the statutory provision that "[t]he Secretary shall assist such a claimant in developing the facts pertinent to the claim." Ideally, this function would be performed by the knowledgeable employee who ultimately decides the claim. However, the Commission believes that representatives, particularly VSO representatives, are in an excellent position to assist the VA in fulfilling its "duty to inform" responsibility. This requires building a claims processing partnership between VA and the claimant/representative.

13. VA/VSO Claims Processing Partnership.

As discussed in Chapter III, VA's claims processing system does not make effective, systematic use of the accumulated knowledge and communication base embodied by VSO representatives. VA regulations concerning VSO representation should be restudied and modified to set out specific roles, responsibilities, and limitations of the representative so that VSO support of the claims process may be maximized as the proposed partnership is formulated. A fully documented claim presented to VA can be readily decided. Some regional offices have agreements with VSOs under which a well documented claim presented to the RO will be adjudicated immediately. These agreements demonstrate the mutual benefits of building partnership between claimants/representatives and VA.

The Commission believes that well informed claimants and their representatives, acting in partnership with VA, are in an excellent position to know whether "duty to assist" and, indeed, all due process requirements have been followed in adjudicating their claims. By making these judgments a routine part of the claims process, procedural issues associated with adversarial paternalism could be minimized.

14. "Getting It Right The First Time."

The CVA rarely reverses VA's decisional outcome but quite frequently remands cases for more rigorous compliance with the statutory "duty to assist" and/or "reasons and bases" requirements. Thus, as a practical matter, the procedures followed in reaching a decision are as important as the decision itself. A partnership in the adjudicative process is the best way of achieving this goal. Prior to the CVA, VA did not have to deal with this reality; now it most assuredly does.

15. Nature and Structure of Appeals Process a Major Problem.

If a good faith effort has been made to follow clear due process procedures in reaching an initial decision, the issues on appeal should be few:

- was due process, in fact, provided;
- is the record complete; and
- did the adjudicator properly evaluate the evidence in accordance with applicable law and regulations.

The nature and structure of the appeals process contribute substantially to the problems VA has experienced in processing and deciding appeals, especially in the area of timeliness. For example, the issuance of the Statement of the Case (SOC) in response to a Notice of Disagreement (NOD) overlaps with the requirement for initial decisions to express "reasons and bases," as contained in section 5104(b) of 38 USC. Title 38, USC, specifically requires, "(1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary." The provision which relates to the Statement of the Case, section 7105(d)(1), 38 USC, mandates that the SOC shall include, "(A) A summary of the evidence

in the case pertinent to the issue or issues with which disagreement has been expressed." It also requires, "(B) A citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision." Also, the law requires, "(C) The decision on each issue and a summary of the reasons for such decision."

In addition, both the ROs and the BVA conduct continuing *de novo* reviews throughout the appeals process, which now on average encompasses a period of more than two and a half years from the date the NOD is received. The Commission believes that the practice of *de novo* review unnecessarily impedes the functionality, efficiency, and fairness of the appeals process. The Commission believes that fundamental changes in the appeal process are needed.

16. BVA's Adjudicative Function.

As a result of many initiatives it has undertaken and the additional FTE it has obtained, the BVA recently has improved the timeliness of its dispositions, decreasing its average response time from 763 days in FY 1995 to 641 days during the first eight months of FY 1996. The total appellate system average processing time, however, increased from 1,098 days to 1,134 days during the same period. The BVA anticipates that in FY 1996, for the first time in years, appeals dispositions will approximate receipts. The appeals backlog, however, remains at approximately 60,000 cases. Moreover, there is no indication that the more than 60 percent "prejudicial error" rate that the CVA finds in its review of the BVA's decisions is decreasing. These data indicate that the current operation of the appeals system can at best maintain an unsatisfactory *status quo*. The Commission does not believe that an influx of resources to support the BVA's operation would bring about a solution to the problems besetting the appeals process.

Prior to the institution of the CVA, the BVA functioned as a "court of last resort" and conducted a *de novo* adjudication. It still conducts a *de novo* adjudication but also functions as an appellate body in reviewing RO decisions, which accounts for the dramatic increase in BVA remands. The BVA's dual functions are seen as a contributing factor to the deterioration in its timeliness and productivity, which began in FY 1990 and has only recently been allayed.

17. Hearing Officers Record is Encouraging.

During the course of its meetings and deliberations, the Commission has been impressed by what appears to be overwhelming approval of the performance of VA's hearing officers. Of particular interest is a finding from the "Code 41" Study that none of the cases in the sample that had been decided by hearing officers would be remanded by the BVA, based on the record upon which they reached their decisions. Currently, a hearing and decision by a hearing officer is an option for a claimant.

18. Hearing Officer Role a Cornerstone.

An on-the-record evidentiary hearing during which a claimant can fully present his or her claim represents a cornerstone of due process. Hearing officers are ideally qualified to perform this function in an informal, nonadversarial setting.[142] The statistics relating to hearing officer performance cited above in the Commission's findings indicate that the hearing officer program is functioning fairly and with a relatively high degree of efficiency. The Commission believes it is noteworthy that the hearing officer adjudication, which is conducted within the framework of a partnership between the claimant/representative and the hearing officer, is a part of VA's adjudication and appeals process that appears to be working well. An expanded role for hearing officers is clearly in order.

[142] Hearing Officers meet claimants face-to-face, develop and review evidence, and can make decisions, although, under current guidelines, such decisions are limited to those which involve clear and unmistakable error or new and material evidence.

IV. Recommendations

The Commission's recommendations fall into ***three*** broad categories:

(1) the need for Congress and the Secretary to exercise their respective policymaking responsibilities;

(2) building a claims processing partnership between VA and the claimant/representative; and

(3) the Commission's proposals for a redesigned adjudication and appeals process.

1. Review and Reaffirmation of Major Policies Needed.

In the conduct of an entitlement program, Congress establishes the basic policy framework in statute, providing background to its actions in conference and other committee reports. The executive branch interprets the statute to guide decision makers and to establish clarity for claimants. Presumably, this is done through regulations published under the Administrative Procedures Act with adequate opportunity for public comment. Such regulations have the effect of law, are binding on all decision makers, and are entitled to deference by the courts when properly promulgated. When the claimant seeks judicial review, the courts may rule on interpretation of the statute, the consistency of regulations with statutory intent, or both. In the case of the CVA, the Court's panel decisions establish precedents which the Department must follow if it does not appeal (in cases where the Court interprets statute) or publish clarifying regulations (in cases that involve VA's interpretation of its regulations).

The preceding pages describe VA's failure to issue regulations covering some of the most important aspects of the statute. With the introduction of the CVA in 1988, many of those policies have been tested in litigation. Absent clear statutory detail or regulatory interpretation, the Court has issued precedents that now set policy in those areas. Thus, the Court has become by default the major determiner of policy in compensation and pension programs.

A. Congress should review the policies established by the Court's decisions to determine whether they are consistent with the compensation program's purposes and the intent of Congress. Where they are not, Congress should legislate or direct the Secretary to regulate.

Several key policy areas require early attention because of the manner in which the Court has interpreted intent. While these interpretations may be in keeping with Congressional intent, they are also critical drivers of extended development and thus of additional time and resources in the process. They also create confusion on the part of the agency's field staff, claimants, and representatives. These areas include:

- "burden of proof;"
- "well grounded claim," including:
  - the nature of evidence sufficient to establish a well grounded claim;
  - whether or not a well grounded claim is a threshold test, which requires a summary denial if not met; and
  - whether an allegation of disability is sufficient to establish a well grounded claim without accompanying credible medical evidence;
- "duty to assist;"

- the distinction between "evidence" and "facts" as those terms apply to the duty to assist; and
- the interrelationship of "burden of proof," "well grounded claims," and "duty to assist," and the sequence in which they are to be applied.

The BVA Decisionmaking Process diagram in Appendix K, which gives CVA case citations for each of the many steps in the process, graphically illustrates this point. Appendix L also includes:

- a case example from GAO[143] shows the practical difficulties VA encounters in attempting to comply with CVA rulings; and
- a C&P Service publication that[144] illustrates how complex the task of adjudicating claims following CVA rulings has become.

These policies drive critical steps in the claims process. The expected outcome of the review of these major policies and subsequent legislation and regulations would be clear guidance as to the respective roles and responsibilities of the veteran, representatives, and VA in the claims process. It would put the Congress in charge of the statement of program purpose and policy, with VA responsible for interpretation and application of those policies. The Court would then have a more traditional role of ensuring proper application of policies to individual litigants.

Pros:

(a) Would place program and adjudication policymaking in the hands of Congress and the Secretary, where it properly belongs.

(b) Would give definitive and authoritative direction on benefit programs policy and the manner in which Congress intends claims to be adjudicated.

(c) Would clarify the respective roles of the Secretary and the CVA in implementing and interpreting congressional intent.

(d) Would generate a fundamental reevaluation of the adjudication and appeals system, with an opportunity to establish a system where "form follows function," *i.e.,* a system designed to serve the needs of its customers and facilitate the production of the adjudicative product.

Cons:

(a) Requires a significant shift in the respective policymaking roles of Congress and the Secretary as they have evolved over the decades, and an assessment of the policymaking role of the CVA as it has evolved since its creation. Changes in policymaking roles may engender resistance from affected parties.

(b) The kind of reformation of public policy the Commission recommends is an inherently difficult task, requiring the building of consensus among parties with varied interests and concerns.

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[143] GAO report, *GAO/HEHS-95-190, VETERANS BENEFITS, Effective Interaction Needed Within VA to Address Appeals Backlog*, issued in 1995.

[144] VBA, Compensation and Pension Service, *SUMMARY OF SIGNIFICANT HOLDINGS, THE UNITED STATES COURT OF VETERANS APPEALS, THIRD EDITION.*

(c) The public policy issues presented are basic and will require an innovative blend of retaining and enhancing the best features of VA's existing adjudication and appeals system, and removing the administrative and procedural barriers that make the system time consuming and inefficient.

(d) Any move away from VA's traditional paternalism may be perceived as limiting rights of veterans.

B. The Secretary should promulgate regulations that provide his construction of the statute and that incorporate and formalize VA's experience in adjudicating millions of benefit claims.

All benefit claims are adjudicated on behalf of the Secretary. Adjudicators at all levels act as the Secretary's agents. Regulations are the means by which the Secretary instructs adjudicators and informs claimants how, and under what standards, claims decided on his behalf are to be adjudicated. Ably formulated regulations promote fair and consistent adjudication, as well as program integrity and accountability. They should be designed to narrow areas of subjectivity by individual adjudicators, because in principle the Secretary is the sole decision maker.

Regulations Need to Narrow Decision Making Subjectivity.

There is a regulations void, which should be filled, on such fundamental adjudicative issues as:

- the weight given to the various forms of evidence, in hierarchical order;
- the presumptions attached to the various kinds of evidence and the kinds of critical tests to which evidence should be systematically subjected;
- the acceptable sources of evidence; and
- the responsibilities of the respective parties in obtaining it, considering its source.

There is also a lack of a practical definition of the term "well grounded," with acknowledgment and authoritative discussion of its adjudicative implications. It is on these fundamental issues that the CVA is making policy because of the regulatory void, which the Secretary should fill.

Regulations Lead to New Process.

These regulations should provide the foundation for the recommended adjudication and appeals process, which the Commission describes below, because what has to be proven, and by what means, determine the nature of the process. The redesigned process should be incorporated into regulations.

It is particularly important that regulations address the substantive issues presented by the vast majority of claims. The data in Chapter I show that the majority of cases are repeat claims filed by represented veterans who are already in benefit status. The typical veteran presents disabilities which have been or will be rated zero or ten percent. The typical case involves relatively simple substantive issues and the evidentiary and procedural rules needed to fairly and efficiently resolve those issues can be similarly simple.

The Commission recommends that VA form a dedicated, high-visibility, intra-Departmental team to develop new regulations.

Pros:

(a) Common sense procedural and evidentiary rules that are grounded in experience and practical reality make the adjudication process easier for claimants and adjudicators. Such rules are

essential for due process because claimants as well as adjudicators would know explicitly what must be proved and how to do it. When specific evidentiary requirements are met (or not) adjudicative decisions are more objective and consistent, thus promoting program integrity.

(b) Specific procedural and evidentiary rules facilitate decision making and would improve VA's ability to "get it right the first time." They also narrow and simplify the issues and reduce the element of subjective judgment in the appeals process. Compliance or noncompliance with clearly stated procedural and evidentiary rules is not a difficult issue to decide on appeal.

(c) VBA appears to be receptive to change. A number of innovative case processing procedures have been tested and implemented in ROs, and the Commission is impressed with the direction being taken by the BPR project.

Cons:

(a) The common misconception that regulations complicate adjudication and make it more difficult and time consuming must be overcome.

(b) VA regulations traditionally have been vague and ill-defined. For example, the practical meaning of 38 CFR §4.6 is unclear to the Commission. That regulation, in its entirety, reads:

> The element of the weight to be accorded the character of the veteran's service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Department of Veterans Affairs to the end that decisions will be equitable and just as contemplated by the requirements of the law.

The regulation, which appears to address (although vaguely) some conceptual hierarchy of evidence, also appears to be substantively questionable. Ordinarily, as the Commission understands it, the character of service would not be a factor in evaluating medical disability. Instead, character of service would be considered in determining whether or not a disability may be considered service connected. This kind of "broad brush" approach to setting criteria for evaluating evidence is consistent with a tendency among paternalistic organizations to be reluctant to share specialized knowledge that can be used by claimants. Implementing specific regulations could require significant institutional adjustment.

(c) Formalizing procedural and evidentiary rules in regulations could be seen as a significant step away from paternalism, which may be opposed by proponents of the current system.

2. Build Claims Processing Partnership Between Claimant/Representative and VA.

The Commission believes that the expertise of VSO representatives is a valuable resource with great potential for further application in the claims processing system. By working in partnership with VSOs to find ways of systematically engaging them in the claims process, VA can improve its service to veterans. As recommended in Chapter III, appropriate roles and responsibilities of the partners would be negotiated among VA and the VSOs, in the context of the VBA's BPR initiative, and, ultimately, formalized in regulation to provide a conceptual framework that would guide claim-specific partnerships among the parties to a claim.

The Commission endorses in principle the following suggested elements of a claims processing partnership. These key elements should be addressed by the claims processing partnership group.

- A duty to inform, *i.e.,* ensuring that the claimant knows what benefits he or she is potentially eligible for, including the *degree* of disability he or she could reasonably hope to prove, the evidence needed (in hierarchical order) to establish the claim, and how VA proposes to complete the evidentiary record. In addition, VA would *ask the claimant/representative* whether any additional information relevant to the claim exists and/or whether the claimant/representative believes any additional action should be taken by VA to complete the record. Pending reply, VA would proceed to develop evidence according to its explicit proposal.

- Establishing the respective roles and responsibilities of the claimant and VA in obtaining a complete and focused record. The purpose would be to narrow the claim to the *relevant* issues and focus development on evidence that is most persuasive and material in resolving those issues.

- Ensuring the evidentiary record is complete prior to decision.

Advantages and disadvantages of these elements will be discussed as they pertain to the redesigned process discussed below.

3. Redesign Adjudication and Appeals Process.

The Commission endorses the following redesigned process in principle but acknowledges that further expert analysis is needed before the net effects of the proposed changes can be projected accurately. Several of these process issues are appropriate for consideration within the context of VA's claims processing partnership with the VSOs. Generally, the Commission regards process *design* issues as appropriately within the authority and responsibility of the Department as administrator of veterans law. However, to the extent that process design affects claims processing mechanics, VA should be acutely interested in the views of its VSO partners. The redesigned process reflects the Commission's view that fundamental changes in the existing process are necessary and offers a conceptual framework for the direction those changes should take.

A redesigned process could work as follows:

A. Initial Adjudication

1. Commitment by VSO, Claimant, and VA.

VSOs would enter into partnership agreements with the ROs. The ROs would provide the VSOs with the materials and any training needed to enable them to submit fully documented claims whenever possible. Simplified application forms would be developed that would focus on the benefits being sought. Claimants/representatives would be advised of the requirements for entitlement for the benefits claimed and what is the best evidence for establishing entitlement, what is in the claimant's file, and what evidence is needed to support the claim. In claims for rating increase, the evidentiary record and adjudication will focus solely on that issue. VSOs could be given Automated Medical Information System (AMIE) and military request authority through VA's computer system. If the claimant is unrepresented, a VA benefits counselor will be assigned to discharge the "duty to inform" and assist the claimant in obtaining relevant evidence, if necessary.

Pros:

(a) A partnership based on the duty to inform focuses case management planning, reducing the uncertainty and anxiety veterans often now experience when entering the adjudication process.

(b) It sets a tone of cooperation and reaffirms the nonadversarial nature of the VA adjudication process.

(c) It clarifies the respective responsibilities of claimants and VA in the making and development of a claim.

(d) It relieves VA of a good deal of labor-intensive, often repetitive (*i.e.,* the need to follow-up) development functions, thus allowing VA to redeploy resources to adjudicative decision-making functions.

(e) It formalizes the responsibilities of VSO representatives and enhances their professional roles. Certification or licensing of VSO representatives would be a natural adjunct of enhanced professional roles.

(f) It will encourage the submission of complete, well documented claims that can be decided quickly and fairly.

Cons:

(a) Initially, considerable VA resources will be required for the development of public information material and for training employees and VSO representatives.

(b) To the extent that VA adjudicators and VSO representatives view themselves as adversaries in the process, a change in role perceptions will be needed.

(c) With their responsibilities formalized and their professional status enhanced, VSOs may be apprehensive about the potential for legal liability if veterans are dissatisfied with their representation. Congress may have to address this issue specifically.

2. Duty to Inform.

As part of initial development, VA would explicitly inform the claimant/representative of:

- what benefits he or she is potentially eligible for, including the *degree* of disability he or she could reasonably hope to prove;
- the evidence needed (in hierarchical order) to establish the claim;
- VA's proposal of how it will obtain the necessary evidence; and
- what the claimant/representative must do.

In addition, VA would *ask the claimant/representative* whether any additional information relevant to the claim exists and/or whether the claimant/representative believes any additional action should be taken by VA to complete the record. Pending reply, VA would proceed to develop evidence according to its explicit proposal. If the claimant/representative reports additional evidence or requests additional action, VA would proceed appropriately. If a claimant asks for development of evidence that is not regarded as relevant to the claim, VA would explain why it was not relevant in the decision letter.

Pros:

(a) These procedures are the essence of due process and a meaningful partnership. A claimant must be able to specify and comment on the evidence being used to decide his or her claim to be confident that the claim has been presented fully. When there is an unresolved dispute regarding

the adequacy of the record or its potential to be perfected, the dispute should be addressed on the record as an integral part of the adjudication process.

(b) These procedures would make moot much of the confusion and controversy surrounding "duty to assist" issues. The issue on appeal would be confined to cases where there is an actual dispute that the record is inadequate and that issue will have been addressed in the initial decision.

Cons:

(a) Adjudicators would be required to articulate their reasons for not obtaining evidence that the claimant/representative contends is material to the claim. This is a new practice which will take time to learn and implement properly.

(b) The virtually open-ended, unilateral application of the duty to assist concept currently in practice would cease. Claimants/representatives would have a shared duty and responsibility with VA to obtain the evidence necessary to decide the claim properly, and disputes would be addressed on the record. Some claimants and VSO representatives may be reluctant to accept this duty and responsibility.

3. Full Disclosure of Reasons for Decisions.

The initial denial decision should tell the claimant (and representative) what evidence the decision was based on, and where (and by how much) he or she has fallen short in terms of the evidence necessary to establish entitlement to the benefit(s) sought. This will enable claimants to realistically assess the likelihood of success on appeal and, if they choose to appeal, to focus their efforts on obtaining what is needed and/or persuading the new decision maker that the claimant's assessment and evaluation of the evidence, rather than the initial decision maker's, is correct. Claimants who wish to pursue their claims would file a substantive appeal. At this point, the jurisdiction of the Agency of Original Jurisdiction (AOJ) would end.

Pros:

This is consistent with the "duty to inform" and provides a number of practical benefits. It enables claimants to make an informed judgment on whether to appeal and the likelihood of success. It sharpens the issues if an appeal is made and permits a quick and favorable decision if the evidence needed is obtained.

Cons:

It takes additional time and effort to inform claimants where they have fallen short in meeting the requirements for the benefits claimed.

B. Appeals

A redesigned appeals process should narrow and sharpen the issues rather than expand and obfuscate them. This includes: replacing the NOD with a formal appeal and eliminating the Statement of the Case; shortening the appeal period to 60 days; expanding the role of the Hearing Officer to make it the mandatory first step in the appeals process; and changing the nature of the BVA's review from *de novo* to appellate.

1. Eliminate NOD and SOC; Allow 60 Days to Appeal.

Under the current system, all adjudicative activity beginning with the filing of a NOD and ending with the RO's certification of a formal appeal to the BVA is a continuation of the initial adjudication. The purpose of this extended initial adjudication is to ensure that the claimant knows the "reasons and bases" for the denial of his claim and to permit him to respond fully to the material issues with additional evidence and argument.

With the kind of initial adjudication and decision the Commission recommends, the claimant and representative will have all the information they need to decide whether or not to appeal, obviating any need for a NOD and a responding SOC. The next step in the process then would be a formal appeal which specifies the area(s) of disagreement with the decision. Because of the nature of VA disability claims, the Commission believes that the issues on appeal should be as similar and contemporaneous as possible to those adjudicated by the initial decision. The Commission recommends a 60-day period for filing an appeal.

Other major federal disability compensation programs have filing periods similar to that proposed here:[145]

- The Department of Labor's Benefits Review Board requires that an appeal be filed within 10 days of the ALJ's decision. Approximately 75 percent of cases heard by the Board are black lung cases, and another 20 percent are longshore and harbor workers cases.

- The Social Security Administration's Appeals Council requires that appeals be filed within 60 days of the decision. More than 92 percent of the cases decided by the Council during FYs 1994 and 1995 involved disability issues arising in claims for disability insurance benefits and/or supplemental security income benefits under the Social Security Act.

To accommodate concerns that a shortened period for appeal is depriving veterans of a right they now have, there should be liberal "good cause" provisions for untimely filing and generous periods should be allowed for the submission of additional evidence.

Pros:

(a) Eliminates the necessity of the claimant filing a NOD and VA responding with a SOC. A well articulated and focused initial decision is the best means of providing a statement of the case.

(b) Streamlines the administrative requirements associated with appeals processing, potentially reducing elapsed processing times and improving the information on which the decision is based. This amounts to a significant practical advantage for appellants.

(c) Shortening the appeal period permits the issues on appeal to be as similar and contemporaneous as possible to those decided in the initial decision. With the initial decision informing the claimant what is needed to perfect the claim, much, if not all, of the guesswork about deciding whether or not to appeal vanishes. Liberal allowances for time to obtain additional evidence can be built into the system.

Cons:

(a) Shortening the period to file an appeal may be considered a diminishment of a right veterans now have (they now have up to a year to file a NOD).

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[145] Social Security Administration, *The Office of Hearing and Appeals Law Journal,* Appellate Administrative Tribunal: A Comparative Survey, David G. Hatfield and Catherine Ravinski, pg. 19.

(b) The effectiveness of the recommendations relating to appeals depends largely on the successful and coordinated implementation of the Commission's recommendations relating to initial adjudication.

2. Expand Hearing Officer Position.

The Commission observes that notices of disagreement are submitted to the regional office in fewer than 15 percent of disability compensation claims. Fewer than five percent of compensation claims are pursued to the point of appeal to the BVA. Those appeals, however, enter a process which is complex, lengthy, and ill-suited to resolve disputes quickly. Appendix M shows the proportion of claims that are appealed to the BVA and the CVA. For those veterans who opt to have a hearing before a hearing officer, however, the difficulties of the appeals process are diminished considerably. In FY 1995, for example, the average processing time from request for hearing to decision was 194 days. This contrasts with an average BVA response time of 763 days. The hearing officer development rate was 57.4 percent, and the grant rate was 38.4 percent. It is also significant that in FY 1995 over 10,000 requests for hearings (approximately one-third of total hearing officer dispositions) were canceled, which the Commission has been informed indicates that the claim was resolved to the satisfaction of the veteran.

The proceedings before hearing officers fully comport with due process, yet they are informal and nonadversarial. They are also conducted close to the veteran's residence and where the bulk of VA's adjudication resources are concentrated. The Commission believes that these advantages and resources should be maximized by expanding the role of hearing officers in the appeals process.

Currently, a veteran must request a hearing to obtain the benefit of hearing officer adjudication and, absent "clear and unmistakable error," a hearing officer cannot grant a claim without "new and material" evidence. These restrictions in the role of the hearing officer have no apparent benefit, either for the veteran or VA. Many, if not most, appeals can be resolved without a hearing, and if a claim deserves to be granted on appeal without additional evidence, there is no reason why a hearing officer should be unable to do so. Based on the demonstrated performance of hearing officers in their restricted role, the Commission believes that both veterans and VA would benefit by expanding the role of hearing officers to include full decisional authority. Moreover, the Commission believes that all veterans should have the benefit of hearing officer adjudication. Whether this adjudication would include an evidentiary hearing or simply be an on-the-record decision would be determined at the veteran's option.

The Commission recommends that the first appeal should be to a hearing officer and that this appeal should be a *mandatory* step in the appeals process. The hearing officer adjudication would be *de novo*, although it would focus on the issues presented by the appeal. The hearing officer would have full decisional authority, including the authority to remand. The results of the hearing officer review would be used for quality appraisal purposes. (The Commission believes that the results of actual appealed adjudications are good indicators of quality and an effective means to address commonly occurring problems.)

3. Create Appeals Officer Position.

The primary purpose of the mandatory appeal to a hearing officer is to resolve disputes as early in the appeals process as possible. This requires the quick identification of deserving claims that can be granted based on the existing record without a hearing and, when the record is deficient, identifying the material evidence that is needed to complete it and how it can most easily be obtained. It also involves the identification of the relevant issues that are actually in dispute so that the issues at hearing can be as narrow and focused as possible. These are vital tasks which must be performed for an appeals system to operate fairly and efficiently, but they can be done by an individual who does not have final decisionmaking authority. The Commission recommends that a new position of appeals officer be created to perform them.

The appeals officer would work in conjunction with and under the direction of the hearing officer. Appeals officers would perform functions, including decision drafting, which would enable the hearing officers to concentrate on their primary responsibilities of holding hearings and deciding appeals. This division of labor would optimize the timeliness and productivity of the hearing officer adjudication.

Pros:

(a) Although making the hearing officer adjudication a mandatory first step in the process is a major change, the Commission has encountered little, if any, opposition to it. Perhaps this will materialize later, but there appears to be a general consensus that, at a minimum, hearing officers should have an expanded role.

(b) The time required for claimants to obtain a decision on appeal will be shortened considerably.[146]

(c) With the assistance of Appeals Officers, many cases will be resolved without a need for a hearing.

(d) The hearing officer adjudication should reduce the number of subsequent appeals both because meritorious claims will be allowed and, if the claim is denied, claimants will have a full explanation.

(e) A *de novo* hearing officer decision following an evidentiary hearing will permit a change in the nature of the review conducted by the BVA.

Cons:

(a) Making the hearing officer adjudication a mandatory step in the process will require additional resources.

(b) A *de novo* hearing officer decision following an evidentiary hearing will change the nature of the review conducted by the BVA.

4. The BVA Becomes an Appellate Review Board.

The hearing officer decision would represent the final decision of the Secretary unless reversed or modified on appeal. The appeal would be to the BVA, but the BVA would conduct an appellate rather than a *de novo* review. So that an appellate review could be conducted, the evidentiary record would be closed with the hearing officer decision. The BVA's review standard would be similar to the CVA's, and the purpose of the BVA's review would be to correct clear error and ensure the legal sufficiency of the hearing officer's decision. The BVA, of course, would retain remand authority. If the BVA determined that the hearing officer's decision was legally sufficient (which presumes that it was not clearly in error), the BVA would decline review and the hearing officer's decision would become the final decision of the Secretary, which would be subject to judicial review.

In cases where the BVA determined that the facts or circumstances are such that the correct application of the law, regulations, or VA policy is in dispute, unsettled, or unclear, it could issue a decision on behalf of the Secretary that would provide the Secretary's definitive interpretation as to the manner in which cases presenting similar facts and circumstances should be adjudicated at all levels. As with hearing officer decisions, the results of the BVA's case reviews would be used for quality appraisal purposes.

Pros:

[146] This strength assumes that Hearing Officer productivity remains consistent with current levels and that staffing of the position is proportional to the workload, which would be expected to increase moderately.

(a) The Secretary's final decision will be made by a hearing officer located in the RO after a full due process, evidentiary hearing. With the procedures designed to obtain a complete record at both the initial adjudication and hearing officer levels, the evidentiary record would be closed with the hearing officer decision. This would enable the BVA to conduct an appellate review. (If the evidentiary record remained open, the BVA's review would be *de novo*, at least with respect to the additional evidence.)

(b) In conducting an appellate review, the BVA would be acting on behalf of the Secretary to ensure that the hearing officer's decision is legally sufficient and therefore can stand as the Secretary's final decision.

(c) An appellate review would focus the BVA's legal expertise on purely legal issues.

(d) An appellate review would be considerably less resource intensive than the hybrid *de novo*/appellate review it now conducts. In cases where the hearing officer's decision was legally sufficient, the BVA could issue a brief order denying review, rather than issuing a lengthy *de novo* decision as is now the practice.

(e) Having the issues decided by the BVA as similar as possible to those decided by the CVA would sharpen the issues before the CVA. This should fairly test the conformity of the Secretary's regulations to the provisions and intent of the statute.

(f) In appropriate cases, the BVA could articulate the Secretary's construction of the statute as it applies to particular issues, for the benefit of both VA adjudicators and the CVA.

(g) Having the BVA conduct an appellate review on behalf of the Secretary will unify the adjudication and appeals process, with each step having a clearly defined purpose and function.

Cons:

(a) Closing the evidentiary record at any point is a source of concern for some. (Additional evidence, of course, could be submitted in connection with a subsequent claim or be the basis for a request to reopen.)

(b) Appellants may regard an appellate review by the BVA as restrictive and the associated closing of the record as an infringement of their opportunity to prove their appeals.

(c) There may be institutional resistance to changing the BVA's role.

(d) An amendment to the statute may be required to implement the recommendation.

Summary of Current Adjudication/Appeals Process

This summary of the process is intended to convey the qualitative characteristics of the process rather than represent discrete processing steps.

Initial Decision

- Claimant files claim with VA office or through representative. Claim is for all possible VA benefits.

- There is no evidentiary threshold for the making of a "well-grounded" claim. VA assumes responsibility for developing a complete record in line with its "duty to assist."
- VA unilaterally decides when and if the record is sufficient for adjudication. (There are no formal, systematic procedures for soliciting the participation of the claimant and representative in building a complete record sufficient for decision or for resolving disputes regarding the completeness of the record.)
- RO issues its decision. 38 USC §5104(b) of the statute provides that in any case where the Secretary denies a benefit sought, the notice of decision shall include (1) a statement of the reasons for the decision, and (2) a summary of the evidence considered by the Secretary.

Appeals

- Claimants dissatisfied with any aspect of the RO decision initiate the appeals process by filing a notice of disagreement (NOD). The NOD must be filed within one year after the date of the RO decision. Claimants may submit additional evidence.
- The RO responds with a statement of the case (SOC) which by law shall include (1) a summary of the evidence pertinent to the issue(s) with which disagreement has been expressed; (2) a citation to pertinent laws and regulations and a discussion of how such laws and regulations affect the agency's decision; and (3) the decision on each issue and a summary of the reasons for such decision.
- If claimants submit additional evidence or contentions after receiving the SOC, the RO considers same and either revises its decision or issues a supplemental statement of the case (SSOC).
- Claimants have the option of requesting a hearing before a hearing officer. The hearing officer may not overturn a decision based on the same factual evidence. Hearing officers have no jurisdiction unless a hearing is held. Hearing officers may issue a decision denying the claim or, if the record is supplemented with new and material evidence, grant the claim in whole or in part. If the claimant is still dissatisfied, he or she may continue the appeals process.
- Claimants may request a hearing before or after filing a NOD or before or after receiving a SOC (or SSOC).
- Claimants who remain dissatisfied after receiving a SOC (or SSOC), file a "formal" appeal (VA FORM 9) within 60 days to pursue the appeal to the BVA.
- When a formal appeal is filed, the RO reviews the case and certifies it to the BVA.
- The BVA conducts a *de novo* adjudication. Claimants may submit additional evidence and request a hearing.
- The BVA may issue a decision denying or granting the claim, or remand the case for compliance with procedural requirements and/or additional development.
- Claimants dissatisfied with the BVA's decision or denial of review may file for judicial review.

Proposed Adjudication/Appeals Process

Initial Decision

- Claimant files claim with VA office or through representative. The criteria for submitting a "well grounded claim" have been clarified and sharpened to reduce the incidence of unsupportable claims that nevertheless set in motion the labor intensive duty-to-assist machinery.
- VA/claimant partnership is established (1) by VA executing its "duty to inform," describing an evidentiary threshold, by advising claimant of the requirements for establishing entitlement to the benefits being sought and the evidence necessary to meet those requirements; (2) by the claimant and/or representative agreeing to be responsible for submitting as complete a claim as possible; and (3) soliciting the claimant/representative's feedback regarding adequacy of the proposed evidence development process.
- Before the RO decides the case, VA executes its proposal to develop evidence necessary to support the claim. In addition, VA acts on claimant/representative comments on proposed development. Unresolved disputes regarding the sufficiency of the record are addressed in the RO decision.
- In addition to "reasons and bases," an RO denial decision would include a statement regarding what evidence is necessary and/or what facts must be proved for the claimant to establish entitlement to the benefit sought.

Appeals

- Claimants dissatisfied with the initial decision could file an appeal, within 60 days, to a hearing officer. The hearing officer step would be mandatory. Claimants would have the option of waiving their right to a hearing and requesting a hearing officer decision based on the documentary record. The hearing officer would have complete decisional authority.
- An appeals officer would conduct a prehearing review to ensure the completeness of the record and focus the issues for hearing. The appeals officer may recommend to the hearing officer that a hearing is not necessary to provide the claimant with the relief sought.
- The hearing officer conducts a *de novo* adjudication based on hearing and/or other evidence, and denial decisions contain the information required by section 5106 of Title 38.
- The evidentiary record is closed with the hearing officer's decision.
- Claimants dissatisfied with the hearing officer's decision may request review, within 60 days, by the BVA.
- The BVA conducts an appellate review. The BVA's review standard is similar to the CVA's, *i.e.,* correct clearly erroneous findings of fact and ensure that the hearing officer's decision is otherwise legally sufficient.
- The BVA may reverse or modify the hearing officer's decision, remand, or, if the decision is legally sufficient, deny review. If review is denied, the hearing officer's decision becomes the final decision of the Secretary subject to judicial review.
- Claimants dissatisfied with the BVA's decision or denial of review may file for judicial review.

4. Implementation.

The Commission believes that the claims and appeals process described above would be much more functional, efficient, and fair than the current process. The Commission, however, emphasizes that it is

being offered only as a conceptual framework for a redesigned process. Therefore, prior to implementation, the underlying premises of the redesigned process must be rigorously evaluated and tested by VA to determine if they will result in an administratively practical adjudication system, which is a task the Commission had neither the time nor the resources to perform.

The redesigned process was developed independently by the Commission but the VBA also has been active in this area. At its last public meeting on July 16, 1996, the Commission received a briefing from the VBA's BPR team. The BPR team reported that the VBA had just completed a systematic and thorough review of the initial adjudication part of the claims process. The Commission believes that the BPR team's redesign proposal is very promising. There are, however, two serious weaknesses with the redesign effort: (1) although a Business Process Reengineering approach was used, the entire process was not included, *i.e.,* the BVA step; and (2) a thorough and open communication plan has not been put in place.

The Commission recommends that:

(a) A second stage design phase should be established to look at the BVA part of the process.

(b) A comprehensive communication plan should be developed and implemented.

(c) The ideas put forth in this chapter regarding the appeals process should be considered by the second stage team.

5. Compensation and Pension Business Process Reengineering (BPR)

As discussed above, the Commission received[147] an impressive informational briefing entitled, "The Case for Change, Presentation of the C&P Business Process Reengineering Guidance Team." This presentation spoke to reengineering claims processing.

The Commission began publicly deliberating on potential conceptual revisions of the adjudication and appeals process at its third public meeting in June 1995 and presented its preliminary findings and conclusions on the adjudication and appeals process in its report to Congress on February 7, 1996. Some similarities exist in the Commission's report and the initial BPR proposals. Both the Commission and BPR address VA/VSO Partnership, rules simplification, and modification of the Hearing Officer concept, role, or authority, but specifics—even in some areas of general agreement—differ.

The Commission notes that, while six of its members have embraced the Commission's conceptual framework for a redesigned adjudication and appellate process, three members have not. Their Alternative Views are expressed in Chapter XI.

[147] The BPR team presented its briefing at the Commission's eighth, and final, multi-day public meeting in Washington, D.C., on July 16 and 17, 1996.

VI. Product Issues: Driving the System?

Section 1 – Introduction

Many authors have commented on the complexity of the relationship between process and product in service organizations, particularly in government. Chapter I, Section 4, of this report discusses VA disability compensation and the process by which the benefit is delivered. In many ways, the "products," even ancillary ones, of a service operation shape its processes. Although the analogy exaggerates the relationship, it is useful to visualize the service product as a container and the process as a liquid that conforms (more or less, depending on the suitability of the process *design*) to the container's dimensions.

The projections of disability compensation workload in 2015 described in Chapter I raised legitimate concerns among Commissioners about the effect of VA's disability product design on the system for disposition of benefit claims. On the basis of these concerns, the Commission proceeded to explore issues associated with product design that appeared to most significantly complicate or otherwise congest the claims processing system.

Commissioners do not endorse the concept of designing a disability compensation product around the single criterion of processing expediency. However, they reasoned that program advantages need not necessarily be inconsistent with process advantages. They decided to investigate whether alternative configurations of the benefit could yield product advantages for veterans *and* relieve congestion in the processing system.

To carry out their investigation, Commissioners explored issues of program intent and issues of program innovation. They wanted to consider how nearly the disability compensation program as administered conforms with what Congress intended, and intends, for the program to accomplish. In doing so, Commissioners sought to develop modified or alternative ways of achieving the purpose of disability compensation that would be consistent with streamlining the claims process.

Similarly, Commissioners scanned the environment for innovative ideas. Among other possibilities, they were looking for product features and/or administrative practices that would meet three criteria. They would be:

- attractive to veterans,
- consistent with VA's program purpose, and
- consistent with the objective of improving the claims process.

Section 2 – The State of Disability Compensation Programs

Major Findings

Although VA's disability compensation program is fundamentally unique, its primary function, like that of other organizations that administer disability benefits, is to process disability claims.

During the last ten years, these [public and private disability insurance] programs have undergone rapid growth. The number of claims filed each year has increased significantly. At the same time, the number of beneficiaries who recover and are terminated from programs has decreased.

States and the Federal government, as well and the private insurance sector, were unable to predict the large and unexpected shifts in disability incidence rates that occurred over the last decade.

It seems important for any evaluation to study VA's program in the context of the disability environment as it exists today. Recent experience of non-VA disability insurance programs has shown unpredicted changes in the nature of claims, claimants, and disabilities. These changes have caused other disability programs to redefine disability, restructure insurance policies, develop backlogs of claims, and sustain higher costs.

I. Rapid Growth of Other Public and Private Disability Programs

The Commission reviewed the current practices in other Federal agencies and private sector insurance. The composition of the Commission included two members from other Federal agencies (Social Security Administration and Federal Employees Compensation) and one from the private sector insurance industry. Although VA's disability compensation program is fundamentally unique, its primary function, like that of other organizations that administer disability benefits, is to process disability claims. Some of the same processes and functions required in the administration of VA's program are employed by other organizations.

Government agencies and private sector insurance companies have experienced changes over the past decade which have had an impact on disability benefit programs. During the last ten years, these programs

have undergone rapid growth. The number of claims filed each year has increased significantly. At the same time, the number of beneficiaries who recover and are terminated from programs has decreased. Long term claims now represent the majority of cases. This has resulted in an increase in the number of beneficiaries on program rolls and a rapid rise of overall program costs.

Changes that have occurred in the Social Security Disability Insurance (DI) program, the Federal Employees Compensation (FEC) program, and disability programs administered by State governments and private insurance companies illustrate these trends.

Between 1989 and 1993, the number of claims filed under the Social Security Administration's Disability Insurance (DI) program increased from less than one million to 1.4 million. During that same period, the proportion of beneficiaries whose benefits terminated because of medical recovery or return to work declined from 12 percent to about 2 percent.[148] This led to a significant increase in the number of persons on the program rolls and to an increase in program expenditures by half, from $22.9 billion in 1989 to $34.6 billion in 1993.[149] The growth in the annual number of claims has been problematic for the Social Security Administration. The backlog of applications created delays in claims processing and subsequent delays in benefit awards.

The Federal Employees Compensation (FEC) program experienced a similar pattern of growth. The FEC program provides workers compensation benefits to Federal workers who sustain work-related injuries or diseases. The number of FEC cases created each year steadily increased between 1988 and 1994 from 168,616 cases to almost 186,000. The majority, 56 percent, of FEC expenditures represent benefits for long-term disabilities. The total expenditures for the program also rose from nearly $1 million in 1990 to $1.8 million in 1994.[150]

States' workers compensation systems also experienced rapid growth of their programs and overall costs during the 1980s and early 1990s. The number and duration of lost-time injuries increased, and the

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[148] First Unum, *The State of the Disability Insurance Industry*, p. 3, citing "Preliminary Status Report of the Disability Policy Panel," March 1994, convened by National Academy of Social Insurance.

[149] John C. Hennessey and L Scott Muller, *The Effect of Vocational Rehabilitation and Work Incentives on Helping the Disabled-Worker Beneficiary Back to Work*, Social Security Bulletin, Spring 1995, 58 nl pp. 15-28.

[150] U.S. Department of Labor, *OWCP Annual Report to Congress FY 1994*, p. 8.

average cost per claim for indemnity benefits more than doubled between the years 1980 and 1990.[151] California's State Disability Insurance Program reflects the experience of many other states. In California, the annual number of new claims rose to nearly one million and the average length of disability increased to 16 weeks between 1989 and 1992. By 1993, the program had become insolvent.[152] At least 17 states have reformed their workers compensation laws in response to escalating program costs.[153]

Increased claims activity has occurred in the commercial disability insurance industry, as well. Unanticipated increases in the frequency and severity of disability claims resulted in substantial losses for insurance carriers over the past 10 years. For each year from 1986 to 1995, the industry paid out more in claims and expenses than it took in from premium and investment income.[154]

II. Change in Types of Claims

In addition to increases in the number of claims received by the Social Security Disability Insurance, Federal Employees Compensation, and private insurance industry programs, the nature and type of disability claims have also changed in recent years. In general, the percentage of claims based on mental and musculoskeletal disorders has increased. Included among these disorders are new conditions, such as Chronic Fatigue Syndrome, Carpal Tunnel Syndrome, and tendon disorders. These conditions are based largely on self-reported symptoms including loss of concentration, stiffness, headache, fatigue, and stress which are often difficult to diagnose or verify and are more subjective in nature.

During the same period, the incidence of workers compensation claims based on injuries that are easier to diagnose, such as fractures, lacerations, and contusions declined.[155] This change reflects, to some extent, a

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[151] National Council on Compensation Insurance, *Favorable Financial Results Continue as Trend Extends to 3 Years*, 1996 Issues Report, p. 3.

[152] Presley Reed, *Disability Management: Lessons from California,* Human Resource Focus, November 1995, p. 10.

[153] Michael Camilleri, Lynn Szymoniak and Lori Lovgren, *Workers Compensation Law: Recent Developments*, Workers' Compensation and Employers' Liability Law.

[154] Russel W. Anderson, *Companies Face Off Over Future of Disability Insurance*, National Underwriter Life & Health-Financial Service Edition, July 17, 1995, n29 p. 14(1).

[155] NCCI, 1996 Issues Report, Workers Compensation: Defining the Future, *The Changing Composition of Workplace Injuries*, p.50.

change in U.S. occupations from manufacturing jobs to service jobs. Injuries now result from repetitive movements, such as Carpal Tunnel Syndrome, or subjective conditions, rather than physical exertion.

The average age of claimants and the relative number of women injured at work have also increased.[156] These factors are indicative of the changing demographics of the working population. Other indications of change in the nature and type of claims are described below.

- **Long-term disabilities.** The majority of current claims are based on long-term disabilities. The percentage of individuals who now return to the workforce or otherwise leave disability programs because of medical recovery has decreased. The majority of terminations occur when the beneficiary retires or dies.

- **New disabilities.** There has been a significant growth in claims for new conditions. Carpal Tunnel Syndrome, Chronic Fatigue Syndrome, and tendon disorders are now among the top 20 reasons that employees are receiving disability benefits. The fastest percentage increases in claims submitted over the past five years have been for Carpal Tunnel Syndrome and mental and nervous conditions. HIV-related illnesses and AIDS now form one of the fastest-growing categories of claims.

- **Increased mental and musculoskeletal disorders.** Between 1986 and 1993, the percentage of recipients of disability benefits with circulatory disorders decreased and the percentage with mental and musculoskeletal disorders increased. These conditions are usually based on self-reported symptoms.

- **Different industry segments.** Claims filed by professional groups, such as physicians and attorneys, have increased. These groups were previously considered favorable risks. The dollar amount of claims filed by these occupational segments is usually high and has had a significant impact on the financial status of disability insurance carriers.[157]

III. Difficulty of Predicting Disability Incidence Rates

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[156] *Ibid.*, p.50.

[157] Unum Corporation Report of Management, *Unum 1995 Annual Report, Securities and Exchange Commission, Form 10K*, p.20.

States and the Federal government, as well as the private insurance sector, have been faced with large and unexpected increases in disability incidence rates that occurred over the last decade. Analyses have identified a wide variety of reasons for these increases. As researchers understand more of the dynamics of disability trends, policy makers are wrestling with the appropriate parameters of the programs.

The nation's largest disability programs, administered by the Social Security Administration (SSA), provide a good illustration. While SSA has been able to provide reasonably reliable actuarial estimates of the more mature and stable old age and survivors programs, the body of experience and research are still evolving with respect to the disability programs. Thus the large upsurge in applications for both the Disability Insurance and Supplemental Security Income programs in the past decade overwhelmed the agency.[158] The backlogs at initial and appellate stages in the claims process reached unacceptable levels. As a result, SSA is now reengineering the entire disability determination process, including both the underlying policies as well as the steps in the process from initial claims through administrative appeals. In addition, Congress has acted to reduce eligibility in the SSI program by establishing new requirements for citizenship and eliminating eligibility for certain diagnoses. SSA is also conducting research that is expected to improve its ability to predict trends and identify patterns that will affect the disability programs.[159]

Many state workers compensation programs were inadequately funded due to the inability of state governments to predict the rapid growth of their disability programs. California's workers compensation program became insolvent due to the unpredicted increases in claims. In response to skyrocketing costs, state legislatures reformed their workers compensation laws.

Commercial insurance companies were also unable to properly estimate program costs and suffered substantial financial losses during the late 1980s and early 1990s. Many carriers no longer offer traditional or modified disability insurance products.

IV. Recent Changes in Private and State Administered Disability Programs

[158] Martynas A. Ycas, *Disability Insurance Forecasts*, Social Security Bulletin, Spring 1995, nl p.48-56.
[159] *ibid.*, p.48-56.

During the last few years, fundamental changes in disability benefit programs have been made based on the experience of the prior decade. The basic product design of commercial policies has been modified. For instance, UNUM Life Insurance Company of America, a leading carrier of disability insurance, discontinued sales of traditional noncancellable disability insurance and replaced it with a guaranteed renewable policy. The new product permits renewal to age 70, but premiums can be raised on a market-segment basis.[160]

A growing number of insurers are limiting benefits. At least three leading private insurers recently introduced a two-year limit on benefits for illnesses which are based on "self-reported" symptoms, such as those associated with Chronic Fatigue Syndrome or back and muscle pain and stress. Other insurance carriers have introduced limits of coverage for similar conditions for which medical tests cannot detect a specific problem.

Changes are also occurring in state workers disability compensation programs. State legislatures are introducing reforms of their systems that are directed toward cost containment. Changes which have been introduced include instituting managed care systems and loss prevention programs, implementing anti-fraud programs, redefining "disability" for compensation purposes, and refining appeal procedures.

V. Implications for VA's Compensation and Disability Program

In some ways, VA's disability compensation program is markedly different from other programs. One major difference, for instance, is that while Social Security Disability Insurance and most private insurance policies are payable only on the basis of total disability, VA disability compensation law provides for l0 different degrees of disability. Another difference is that most private insurance disability policies deal with a singular determination. That is, disability either is or is not severe enough to warrant payment. In VA, any service-connected disability that is at least 10 percent disabling is compensable.

Many of the factors influencing VA compensation benefits are not relevant to other disability programs. At the same time, the experience of disability programs over the last 10 years does provide some perspective and a general understanding of environmental factors and common trends which are occurring in all disability programs. It seems reasonable for any evaluation of VA's program to consider the context of the wider disability environment as it exists today. Recent experience has seen unpredicted changes in

[160] Linda Koco, *Unum Life Insurance Company Now Woos Individual Market with GR Contract*, National Underwriter Life & Health Financial Services Edition, July 31, 1995, n31 p. 11(2).

the nature of claims, claimants, and disabilities. These changes have caused other disability programs to redefine disability, to restructure insurance policies, to develop backlogs of claims, and to sustain higher costs.

Current Trends in Disability Compensation Programs (Non-VA)

I. Increase in number of claims.

- Social Security DI claims increased from less than one million in 1989 to 1.4 million in 1993.[161]
- Federal Employee Compensation (FEC) program injury claims increased from 168,616 in 1988 to almost 186,000 in 1994.[162]
- The frequency of claims per worker for disability compensation in the insurance industry increased 12 percent annually from 1982 to 1985. After a drop in 1985, the frequency rate continued to rise steadily from 1986 to 1988.[163]

II. Increase in number of beneficiaries on program rolls.

- The number of current pay beneficiaries on Social Security's DI rolls rose nearly 30 percent from 2.9 million in 1989 to 3.7 million in 1993.[164]
- The number of beneficiaries on FEC rolls rose from 47,905 in 1985 to 60,136 in 1994.[165]

III. Long term disability claims have increased and represent the majority of cases.

- The number of FEC long-term disability cases increased from 41,103 in 1985 to 51,763 in 1992. Of $1.9 billion total FEC benefits paid in FY 1994, almost $1.3 billion were paid on long-term disability claims.[166]

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[161] *op cit,* Social Security Bulletin, Spring 1995.
[162] *op cit, OWCP Annual Report*, p. 35.
[163] National Council on Compensation Insurance, Inc., *Workers Compensation: Defining the Future*, 1996 Issues Report, p. 4.
[164] *op cit,* Social Security Bulletin, Spring 1995.
[165] *op cit, OWCP Annual Report*, p. 34.
[166] *op cit, OWCP Annual Report*, pp. 9 and 34.

- The percentage of Social Security DI termination's (those no longer receiving benefits divided by the number still receiving benefits) decreased from 25 percent in 1980 to less than 2 percent in 1993.[167]
- Fifty-three percent of Social Security DI beneficiaries leave the program by conversion to retirement. Only 11 percent of beneficiaries leave the program because of work or medical recovery.[168]

IV. The cost of disability benefits programs has risen.

- Total Social Security DI expenditures rose by more than half from $22.9 billion in 1989 to $34.6 billion in 1993.[169]
- Total FEC benefit costs rose from approximately $1 billion in 1985 to nearly $1.9 billion in 1994.[170]
- Workers compensation costs rose steadily between 1980 and 1994. The average cost per claim for indemnity benefits more than doubled, rising from $4,200 per case in 1980 to $9,400 per case in 1994. The average annual increase was 8 percent.[171]
- The ratio of losses to premiums in the insurance industry rose from 64.3 in 1982 to 83.9 in 1992.[172]

V. Disabilities are more complex and subjective in nature.

- 60 percent of beneficiaries receiving DI between 1986 and 1993 were disabled by a condition in one of three diagnostic groups: mental, musculoskeletal, or circulatory.[173]

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[167] National Academy of Social Insurance, *Preliminary Status Report of the Disability Policy Panel*, March 1994 reproduced in First Unum, *The State of the Disability Insurance Industry*, p. 3.

[168] *op cit,* Social Security Bulletin, Spring 1995.

[169] *ibid.*

[170] *op cit, OWCP Annual Report*, p. 36.

[171] *op cit,* National Council on Compensation Insurance, Inc., p. 3.

[172] *ibid.*, p. 2.

[173] Donald T. Ferron, *Diagnostic Trends of Disabled Social Security Beneficiaries, 1986-93*, Social Security Bulletin, Fall 1995, il v58, pp. 15-31.

- Carpal Tunnel Syndrome, mental and nervous disorders, and back/disc conditions represent the three fastest growing categories of disability claims between 1989 and 1994.[174]
- Back injuries represent 25 percent of reported FEC cases and account for nearly 35 percent of total cases.[175]

Section 3 – VA Disability Compensation and Private Disability Insurance

Major Findings and Conclusions

The purpose of VA's disability compensation program is broader in scope and less precisely defined than is the purpose of commercial disability insurance programs.

The objective of VA's disability compensation program is to make up for the lost earning capacity of service-connected disabled veterans. The objective of commercial disability insurance is to achieve "maximum medical recovery" and restore the individual to employability.

For purposes of entitlement to VA compensation, the disabling effects of medical conditions are evaluated according to a disability rating schedule that was developed in 1945.

VA does not appear to place high priority on integrating VA physicians into the system for developing appropriate medical evidence for use in deciding disability claims.

Veterans may claim VA disability compensation as long after discharge from service as they desire.

Most, if not all, of the significant product and practice differences between VA and private insurers are driven by the fact that VA's role as an agency of the government is inherently unique.

Major Recommendations

VA leadership should establish and empower a Department-level group, including high-level VBA and VHA representation but led by a third-party office, to:

- ***discuss and negotiate disability rating examination issues;***
- ***solicit and catalog best disability rating examination practices currently in place in the field (in paired adjudication and medical center operations);***

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[174] First Unum, *The State of the Disability Insurance Industry*, Unum Long Term Disability Database, p. 1.

[175] *op cit, OWCP Annual Report*, p. 14.

- ***establish one or more pilot operations to develop, test, and implement a prototype Rating Examination Excellence Center;***
- ***compare the results achieved by the Excellence Center pilot(s) with the results of the pilot authorized by P.L. 104-204 to contract C&P examinations through non-VHA physicians; and***
- ***export the best of these approaches to all adjudication offices system-wide.***

VA should conduct a high-level review of its benefits programs' goals and outcomes. The objective of the review would be to improve overall outcomes of veteran involvement with VA by identifying and acting on opportunities to better coordinate VA programs and align program goals to more complementary effect.

Background

VA's disability compensation program serves a specialized purpose. It fulfills the Nation's moral and statutory obligation to compensate veterans for earning capacity lost as the result of permanent disability during or as the result of military service. The program is funded by annual appropriations from the Federal budget. Commercial disability insurance serves an analogous purpose in that it protects clients from financial hardship due to disability. However, commercial programs are funded by explicit contributions from members of the insured pool, and these programs are designed to be both competitive and profitable in the marketplace.

Because VA is insulated from the incentive structure of the marketplace, VA programs and practices are not subjected to either "bottom-line" economic tests or market appeal tests in the same way that those of commercial insurers are. The Commission does not regard this condition as entirely advantageous or disadvantageous for veterans, taxpayers, or VA itself. However, it does tend to make commercial insurers more innovative and aggressive in their approaches to cost-saving and product-feature strategies. Consequently, it is reasonable for the Commission to review program and administrative practices of commercial insurers to determine whether they would be suitable for adoption or adaptation by VA. Commissioners interviewed the President of *Unum America's*[176] Integrated Disability Management Division. The purpose of the meeting was to gather facts and information about the design and administration of disability insurance in general, and long-term disability insurance specifically.

I. Findings

1. The purpose of *VA*'s disability compensation program is broader in scope and less precisely defined than is the purpose of *commercial* disability insurance programs.

- *VA* compensates for all levels of (chronic) medical disability, based on estimated average impairment of earning capacity associated with clinical impairment. Other disability programs (*commercial*, workers' compensation, etc.) compensate for functional impairment that interferes with or precludes gainful employment.

[176] Unum America is one of the country's leading writers of disability insurance. Pat Owens, the President of the Integrated Disability Management Division, is a former Associate U.S. Commissioner of Disability, U.S. Social Security Administration.

- In theory, *VA* compensation rates are determined according to an average loss of earning capacity among similarly disabled members of the civilian workforce. However, the methodology for determining these rates cannot be validated, nor have recent data been applied to confirm that the rates are accurately representative. The law[177] calls for VA to "readjust" the schedule in accordance with experience "from time to time."

  In 1971, VA conducted a detailed study[178] with the Bureau of Census to validate the economic impairment caused by disabilities. The study results indicated that the rating schedule, in general, overstated the economic impairment caused by physical disabilities and understated that caused by mental disorders. This phenomenon was attributed primarily to society-wide changes in the nature of work between 1933, when the schedule was first implemented in the conceptual framework that exists today, and 1971. However, opposition to VA's recommended changes was strong, and the recommendations were never implemented.

  Commercial disability insurance programs are characterized by contractually defined benefit rate structures that are typically associated with actual earnings.

2. The objective of *VA*'s disability compensation program is to make up for the lost earning capacity of service-connected disabled veterans. The objective of *commercial* disability insurance is to achieve "maximum medical recovery" and restore the individual to employability.

- As administered, the VA program compensates for lost earnings in equal monthly installments. *Commercial* disability insurance (and workers' compensation) programs concentrate benefit payments in the early stages of disability.

3. *VA*'s disability compensation program uses medical impairment (clinical variation from "normal" or typical function of a body part) as the basis for evaluating degree of disability. *Commercial* disability insurance programs determine medical impairment and use that information to evaluate functional impairment (interference with ability to carry out job functions). Benefits are paid only if the disability actually interferes with the person's ability to work.

4. *VA*'s disability compensation program is not methodically integrated into the array of *VA* programs. *Commercial* disability insurance programs coordinate resources to provide financial assistance during the period of occupational disability, promote maximum medical improvement, and restore the individual to employability.

- "Historically, VA has organized itself and its work processes to administer each separate benefit program, with a minimum of interaction between programs."[179]

5. For purposes of entitlement to *VA* compensation, the disabling effects of medical conditions are evaluated according to a disability rating schedule that was developed in 1945. Although sections of the schedule have been technically updated since that time to reflect advances of medical knowledge and technology, the fundamental principles and purposes of the rating schedule remain consistent with 1945 ideas about disability. *Commercial* disability insurance rating schedule criteria have evolved

[177] 38 USC §1155.

[178] *Economic Validation of the Rating Schedule.*

[179] Department of Veterans Affairs, Office of Management, Master Veteran Record, *Business Analysis and Design Report,* November 17, 1995.

both technically and philosophically over the years. As a result, they are more consistent than are *VA*'s criteria with current professional and cultural attitudes toward disability and rehabilitation.

6. *VA* does not appear to place high priority on integrating *VA* physicians into the system for developing appropriate medical evidence for use in deciding disability claims. This lack of priority is illustrated by the fact the Commission finds no evidence of a cooperative, organized means to educate VHA physicians about VBA's information needs. Although some progress in this arena has been reported at a few sites, no system-wide effort is currently in place. Generally, rating personnel have interacted minimally, at most, with examining physicians. *Commercial* disability insurers reportedly invest significantly in physician education and policies. In addition, rating personnel often contact examining physicians to clarify an examination report or to request information.

7. Parties to *VA*'s overall entitlement determination process do not have explicit, negotiated roles that clearly delineate the relationships and responsibilities of each. *Commercial* disability insurers enter explicit contractual relationships which address, if not perfectly define, such relationships and responsibilities.

8. VBA appears to place a low priority on engaging VA's own medical community in dialogue regarding needs and issues associated with disability evaluation. At best, its relationship with VHA can be described as "formal." The Commission discerned no sense of partnership between the organizations, nor did it find evidence of a top-down appreciation of the organizational interdependencies that affect the quality of veterans' lives. In the *commercial* disability insurer community, relationships with the medical community are described as "critical." Insurers reportedly meet regularly with physicians' groups to improve processes.

9. Veterans may claim *VA* disability compensation as long after discharge from service as they desire. Some original claims are initiated decades after service. Proving such claims is often extremely difficult for veterans and for VA, because entitling evidence may have been damaged, lost, or destroyed. The industry norm for *commercial* disability insurers requires that claims be filed within six months of the "insurable event." In exceptional cases, private insurance claims may be filed as long as 18 months after the event. Beyond that period, the insurer's ability to investigate the claim is considered compromised.

10. *VA* disability compensation is payable monthly. Payments are not subject to change, except for cost-of-living adjustments, unless the disability evaluation is changed. *Commercial* disability insurers are not prohibited from paying benefits by a mutually agreeable alternative schedule. About five to 10 percent of cases are settled by lump sum payment.

II. Conclusions

1. Most, if not all, of the significant product and practice differences between VA and private insurers are driven by the fact that VA's role as an agency of the government is inherently unique. However, this does not compel government to reject private industry products and practices without considering their suitability for application in VA.

2. Related disability programs, especially the compensation program and the vocational rehabilitation and counseling program, are not effectively coordinated to produce favorable outcomes. This compounds the unsuitability of the compensation program for achieving successful outcomes.

3. The absence of a time limit for filing VA disability compensation claims:

- discourages veterans from applying early, when a relationship between disability and military service (and, consequently, entitlement to compensation) is most readily established;
- invites a mistaken belief among veterans that passage of time presents no barrier to establishing entitlement to disability compensation;
- diverts scarce resources away from processing of claims timely filed; and
- channels resources into possibly prolonged processing of claims for which evidence is increasingly likely to have been lost, destroyed, or otherwise degraded.

As a result, all claims are unnecessarily delayed.

The pros and cons of establishing a "delimiting date" for filing disability compensation claims are discussed in section 6 of this chapter.

4. Paying all disability compensation in equal monthly increments throughout a veteran's lifetime (assuming unchanging level of entitlement) may not best serve the legitimate interests of either veterans or government. This possibility is most distinct at lower entitlement levels. It is questionable, for example, whether monthly compensation at the 10 percent disability rate meaningfully assists with a veteran's rehabilitation or meaningfully promotes the veteran to economic parity with his or her civilian contemporaries. Moreover, as noted in Chapter I, Section 2, claims allowed at the lower levels of disability account for a high proportion of repeat claims for increased benefits. Another approach to compensating veterans at the lower disability levels—an approach which the Commission does not endorse but believes has potential—would be to concentrate the benefit around the point of veterans' transitions to civilian life. One way to do so would be to pay compensation benefits in a lump sum to veterans with the least disabling service-connected conditions.

The pros and cons of paying compensation by lump sum to veterans rated 10 percent disabled are discussed in Section 7 of this chapter.

5. Business dynamics for VA are markedly different than they are for commercial insurers. In commerce, for example, capital or other business investments can be justified on the basis of expected future earnings (or savings). In government, however, investment tends to be postponed because the perceived opportunity cost of spending current dollars to gain future savings is too high, especially in times of scarce resources.

III. Recommendations

1. VA leadership should establish and empower a Department-level group, including high-level VBA and VHA representation but led by a third-party office, to:

- discuss and negotiate disability rating examination issues;
- solicit and catalog best disability rating examination practices currently in place in the field (in paired adjudication and medical center operations);
- establish one or more pilot operations to develop, test, and implement a prototype Rating Examination Excellence Center;
- compare the results achieved by the Excellence Center pilot(s) with the results of the pilot authorized by P.L. 104-204 to contract C&P examinations through non-VHA physicians; and

- export the best of these approaches to all adjudication offices system-wide.

The Excellence Center pilots should encourage interaction among local adjudication and medical offices and provide an accountability structure to reward local initiatives in this area. Pilot sites should establish baseline timeliness and quality measures and develop measurable goals to evaluate success of the test.

2. VA should conduct a high-level review of its benefits programs' goals and outcomes. The objective of the review would be to improve overall outcomes of veteran involvement with VA by identifying and acting on opportunities to better coordinate VA programs and align program goals to more complementary effect.

Section 4 – Defining Disability and Broad Program Intent

Major Findings and Conclusions

The amount of compensation payable to a veteran is generally based on the average impairment of earning capacity resulting from such a disability in civil occupations. The language in Title 38 USC and VA regulations strongly suggests that compensation is intended to compensate for lost earning capacity. Federal courts have ruled similarly. Congress has stated on numerous occasions in reports accompanying legislation that the purpose of VA compensation is to provide relief from impairment of earning capacity due to service-connected disability.

In spite of its expression of intent in committee reports, Title 38 is silent on program purpose. There is no clear statement of purpose as there is for other programs.

Because "disability" is not defined for purposes of monetary benefits in either statute or regulation, fundamental program purpose is vague.

A clear statement of purpose codified in Title 38 would help program managers assure that congressional intent is met.

I. Background

Title 38, United States Code (38 USC) describes basic entitlement to disability compensation as follows:

> For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service . . . the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the person's own willful misconduct or abuse of alcohol or drugs.[180]

The title further instructs the Secretary of Veterans Affairs to "adopt and apply a schedule of ratings of reductions of earning capacity for specific injuries or combinations of ratings."[181] The Schedule for Rating Disabilities is "a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service."[182]

Neither 38 USC, nor the Schedule for Ratings, explicitly states the purpose of compensation or the definition of the term "disability."

II. Findings

[180] 38 USC §1110 for wartime service, and 38 USC §1131 for peacetime service.

[181] 38 USC §1155.

[182] 38 CFR, part 4, §4.1.

1. Opinion of the General Counsel. The Commission asked VA's General Counsel for an opinion on the congressional intent with respect to the purpose of disability compensation. Her opinion is presented in the following paragraphs.[183]

The amount of compensation payable to a veteran is generally based on the average impairment of earning capacity resulting from such a disability in civil occupations. The language in 38 USC and VA regulations strongly suggests that compensation is intended to compensate for lost earning capacity. Federal courts have ruled similarly. Congress has stated on numerous occasions in reports accompanying legislation that the purpose of VA compensation is to provide relief from impairment of earning capacity due to service-connected disability.

VA has determined the amount of compensation to be paid for particular disabilities based on the average impairment, not the claimant's actual impaired earning capacity. This principle of average impairment is derived from similar provisions from earlier laws providing benefits to disabled veterans. Section 302 of the War Risk Insurance Act provided:

> A schedule of rating of reductions in earning capacity from specific injuries or combinations of injuries of a permanent nature shall be adopted and applied by the [Veterans' Bureau]. . . . The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations and not upon the impairment in earning capacity in each individual case, so that there shall be no reduction in the rate of compensation for individual success in overcoming the handicap of a permanent injury.

Similar provisions were enacted in the World War Veterans' Act of 1924. In 1933, Congress authorized the President to issue regulations governing the degrees of compensable disability and the rates payable for such degrees. The President subsequently issued Veterans' Regulation No. 3(A), Executive Order 6157 which directed the Administrator of Veterans' Affairs to adopt a schedule of ratings based on average impairments of earning capacity. In 1957 and 1958 Congress enacted codification statutes to revise and restate in 38 USC, most of the existing laws governing veterans benefits. The 1958 codification enacted section 355 (now section 1155) virtually identical to Veterans' Regulation 3(A) which has remained in effect without substantive change.

2. 38 USC is Silent on Program Purpose. In spite of its expression of intent in committee reports, Title 38 is silent on program purpose. There is no clear statement of purpose as there is for other programs. For example, chapter 30, the All-Volunteer Force Educational Assistance Program, contains a section on purposes that lists six specific purposes so program managers can potentially know whether their implementation of the program is meeting congressional intent.[184]

3. The Concept of "Disability" is Vague. Because "disability" is not defined for purposes of monetary benefits in either statute or regulation, fundamental program purpose is vague. The Commission distinguishes here between clinical impairment and functional impairment. The VA program appears to compensate for medical impairment which means some deviation from normal, or typical, function of a body part. In contrast, the private insurers use AMA's *Guides to the Evaluation of Permanent Impairment* to establish clinical impairment in conjunction with actual lost earnings as evidence of functional impairment[185] to determine extent of disability.[186]

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[183] The Commission's letter requesting General Counsel advice and the General Counsel's response, contained in a letter dated September 10, 1996, are reproduced in Appendix N.

[184] In addition to the purpose statement in chapter 30, similar explicit purpose statements are contained in, among others, chapters 31, 35, and 41.

[185] Functional impairment is interference with the ability to carry out employment and social roles.

III. Conclusions

A clear statement of purpose codified in 38 USC would help program managers assure that congressional intent is met.

Section 5 – The VA Rating Schedule

Recommendation

The Commission recommends that VA, specifically the VBA, develop and implement a business plan initiative to increase its involvement with other federal and state government agencies, with private insurers, and with medical associations which deal in disability determinations. This involvement can provide VA much useful information concerning current administrative and medical evaluation theories and practices in the field of disability determinations.

Major Findings and Conclusions

Numerous administrative tools are used by other federal and state government agencies, and by private insurers, to guide disability determinations. One of the more widely used is the American Medical Association's Guides to the Evaluation of Permanent Impairment.

VA's primary administrative tool for making disability determinations is the VA Schedule for Rating Disabilities (with its adjunct, the Physician's Guide for Disability Evaluation Examinations). With numerous changes, the schedule being used today is the 1945 Rating Schedule. VA is solely responsible for keeping it up to date with changing working conditions and medical science and technology. Although it is used by the Department of Defense for disability retirement evaluations, VA's Rating Schedule is largely unfamiliar to medical practitioners outside VA. It contains great detail concerning evaluation of disabilities that apply significantly to the veteran population, such as amputations, gunshot wounds, and spinal cord injuries.

The VA system for evaluation of disabilities would benefit from greater communication and exchange with others involved in similar (not identical) evaluations of disability.

The Commission notes that the General Accounting Office has recently conducted a study of the VA Rating Schedule. We understand that their report on VA disability compensation, prepared for the Subcommittee on Compensation, Pension, Insurance, and Memorial Affairs, Committee on Veterans' Affairs, U.S. House of Representatives, is in the final phases.

I. Background

The primary tool VA uses to process claims for disability compensation is the VA Rating Schedule, with its adjunct, the *Physician's Guide for Disability Evaluation Examinations*. Generally, the term Rating Schedule as used in this section refers also to the *Physician's Guide*. Considering that VA's Rating Schedule serves an administrative function, the Commission looked outside VA to see if there were similar administrative tools in use by other organizations from which some insight or benefit could be gained for application to VA's system.

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[186] See Section 5 of this Chapter, *The VA Rating Schedule*, for further discussion of this issue.

VA's Veterans Benefits Administration uses reports of medical examinations and other clinical information to establish the presence of injuries, diseases, or residual disabilities and the severity of the disabling conditions for purposes of determining entitlement to disability compensation and pension payments. Within the VBA, claims for compensation and pension are adjudicated by rating specialists. The rating specialists evaluate disabilities according to criteria specified in Title 38, Code of Federal Regulations, Part 4, "Schedule for Rating Disabilities." The rating schedule is VA's official register of standardized diagnostic codes and associated disability levels by which clinical findings are evaluated for the purpose of determining a claimant's benefit entitlement.

VA is required by 38 USC §1155 to use a rating schedule in adjudicating claims:

> The Secretary shall adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combinations of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The schedule shall be constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 percent [and upward in 10 percent increments through] 100 percent. The Secretary shall from time to time readjust this schedule in accordance with experience.

The VA rating schedule provides a means of evaluating disabilities, in multiples of 10 percent, from zero to 100 percent. "The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbation or illnesses proportionate to the severity of the several grades of disability."[187] VBA rating boards, the Board of Veterans' Appeals, and the Court of Veterans Appeals routinely use the rating schedule. Physical Evaluation Boards in the respective military services also use the VA rating schedule to evaluate disabilities for purposes of retaining or retiring service members.

Although the custom of compensating disabled veterans can be traced back to ancient Greece and Rome, the War Risk Insurance Act Amendments of 1917 introduced in the United States the concept of a disability rating schedule based on average impairment of earning capacity. The first rating schedule under the act was adopted in 1919 and was expanded and revised in 1921.

Evolution of the Rating Schedule. The World War Veterans Act of 1924 yielded a rating schedule based on the average impairment of earning capacity resulting from injuries in civilian occupations similar to the occupation of the disabled veteran before entering military service. This concept was based on state industrial accident insurance programs. It differed from the "average impairment" principle of the earlier schedules, in that the evaluation was intended to consider the effects of disability within the context of each veteran's pre-service occupation. "Injury variants" for various occupations were applied in evaluating disabilities; *e.g.*, the variant for finger injuries would be higher for a typist than for a manual laborer.

However, this design was flawed. Many veterans had entered service so young that their pre-service occupation was classified as "student." As a result, the variants for their injuries bore no relationship to the actual degree of disability encountered in post-service employment.

In 1933, the VA developed a new rating schedule which abandoned the concept of considering occupation as a factor in evaluating disability. The 1933 schedule restored the policy of evaluating disability based on the concept of average impairment of earning capacity. This schedule required evidence of actual impairment of ability to function in the workplace.

[187] Title 38, Code of Federal Regulations (38 CFR) §4.1.

In 1945, VA adopted the rating schedule still in use today, which was intended to reflect society's reduced reliance on manual labor and acknowledge the magnified significance of mental disability in the workplace. Although more detailed, the 1945 schedule was essentially based on the 1933 schedule. While several changes have been made based on advancements in medical knowledge and technology, the 1945 Rating Schedule is still used by VA. During the 1980s, the General Accounting Office criticized VA's rating schedule as outdated by the standards of existing medical technology. Since then, the Compensation and Pension Service has completed revisions to eight of the schedule's 16 body systems. Further revisions of the schedule are pending.

The rating schedule forms the basis for adjudicating claims for service-connected disability compensation. Recognizing this, Congress excepted the schedule from judicial review when it established the Court of Veterans Appeals in the Judicial Review Act.[188]

II. Findings

1. Other Administrative Tools Exist for Evaluating Disability.

Other systems exist for estimating severity of impairment resulting from disease or injury. These are used by private disability insurers, the Social Security Administration, other federal programs, and by states for workers' compensation claims. Each has its own peculiarities. Social Security requires inability to engage in any substantially gainful employment from almost any cause. State programs generally protect against financial loss as a result of work-caused injury or illness. There are numerous and varying restrictions, requirements, and coverage's in private disability insurance policies. However, the systems and tools used may provide insights useful to managing the VA system and maintaining its Rating Schedule.

One component of a significant number of these other systems is the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. The *Guides* is intended to be "a standard framework and method of analysis through which physicians can evaluate . . . impairments of any human organ system."[189] The *Guides* combines the characteristics of VA's *Physician's Guide* and the VA Rating Schedule: it provides standardized examination protocols and a method of deriving estimates of impairment from clinical findings.

A primary use of the *Guides* is in workers' compensation cases. "[U]se of the *Guides* is *mandated* or *recommended* by law in workers' compensation cases" in 38 states and two territories.[190]

Unlike VA's rating schedule, the *Guides* explicitly defines "disability." According to the *Guides*, disability is "an alteration of an individual's capacity to meet personal, social, or occupational demands, or statutory or regulatory requirements because of an impairment. Disability refers to an activity or task the individual cannot accomplish."[191] "Impairments" are defined as "conditions that interfere with an individual's 'activities of daily living. . . .' Activities of daily living include, but are not limited to, self-care and personal hygiene; eating and preparing food; communication, speaking, and writing; maintaining one's posture, standing, and sitting; caring for the home and personal

[188] Title 38, United States Code (38 USC) §7252(b).

[189] American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (Fourth edition, 1993), p.1/1

[190] *Ibid.,* p. 1/3.

[191] *Ibid.*, p. 1/2.

finances; walking, traveling, and moving about; recreational and social activities; and work activities."[192] As defined by the *Guides*, an impairment may cause disability: "Disability may be thought of as the gap between what a person *can* do and what the person *needs* or *wants* to do."[193] A "disability"—"disease, injury, or other physical or mental defect"—as defined by the Court[194] of Veterans Appeals would likely be considered an "impairment"—a condition that interferes "with an individual's activities of daily living"—under the *Guides*.

2. Summary of Other Major Public Disability Programs.

(a) State and Federal Workers' Compensation. "In general, state and federal workers' compensation programs are based on the concept that a worker who either sustains an injury or incurs an illness arising during and because of employment is entitled to protection against financial loss. . . . [S]tate workers' compensation systems guarantee benefits to the covered workers who meet the law's requirements."[195] By contrast, VA's service-connected disability compensation program provides payments for any disability "incurred or aggravated . . . in the active military, naval, or air service."[196] While the law does require that an entitling disability be contemporaneous with military service (or with one of the "presumptive" periods following discharge), there is no explicit requirement in the law that the disability result from carrying out military duties.

VA's Rating Schedule was developed to meet the requirement in 38 USC §1155 that disability percentage evaluations should be assigned to reflect, "as far as practicable . . . the average impairments of earning capacity resulting from such injuries in civil occupations." By contrast, the *Guides* is used to estimate the impact of disease or injury (as applied, disease or injury caused by or related to the person's work) on an individual's ability to accomplish a broad range of personal and social activities, including work. "An impairment estimate based on *Guides* criteria is intended . . . to be an estimate of the degree to which an individual's capacity to carry out daily activities has been diminished."[197] Activities of daily living, as described above, include a wide range of functions.

(b) Social Security Administration. The Social Security Administration (SSA) also makes determinations of disability for purposes of administering its disability insurance and supplemental security income programs. Under Social Security, there is no provision for the payment of benefits based on partial percentage disability. SSA is actively involved in reviewing its disability standards and has published its research plan in the Federal Register. The following paragraphs summarize the SSA's current approach to determining disability for entitlement purposes:

- Under the disability insurance and supplemental security income programs, the definition of disability is the same: "the inability to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. The Social Security Act defines a physical or mental impairment as "an impairment

[192] *Ibid.*, p. 1/1.

[193] *Ibid.*, p. 1/2.

[194] Leopaldo v. Brown 4 Vet. App. 216 (1993)

[195] *Ibid.*, p. 1/4.

[196] 38 USC §101(16).

[197] *Guides*, p. 316.

that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." The statute further provides that "an individual . . . shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . . ." The statutory definition of disability thus includes consideration of both medical and vocational factors.

- In determining whether the claimant meets the statutory definition of disability, claimants can be found disabled based on medical factors alone if their impairment(s) meets or equals the level of severity described in the SSA's Listing of Impairments. The listings are organized by body system, with medical evaluation criteria for each section. The criteria describe impairments in terms of specific signs, symptoms, and laboratory findings that are presumed to be severe enough to keep an individual from working for a year or longer. The listing describes more than 100 diseases or disorders which are so serious or life-threatening that, if the claimant meets one of them and is not engaged in substantial gainful activity, he or she is deemed to be disabled.
- If the claimant's impairment does not meet the level of severity described in the Listing of Impairments, SSA's evaluation proceeds to determining the specific work-related limitations that are imposed by the impairment(s). Those limitations are then compared with the requirements of the claimant's past relevant work. If the claimant retains the residual functional capacity to perform past relevant work, the claim is denied. If the limitations prevent past relevant work, the evaluation continues to determine if, considering age, education, and prior work experience, the claimant can or cannot perform and make a vocational adjustment to other substantial gainful work in occupations which exist in significant numbers in the national economy.

(c) Railroad and Maritime Workers. Railroad and maritime workers are compensated for injury through the Federal Employer's Liability Act (FELA), not by state workers' compensation laws. Under FELA, the injured employee must file a lawsuit claiming negligence of the employer in failing to provide a safe workplace. The employer must be shown to have foreseen that a condition or activity might have caused the injury or disease. A jury decides the degree of the injured employee's disability. Recoverable amounts include those for necessary medical expenses, pain and suffering, and loss of past and future earnings. There are no limits on the amount of awards.[198]

3. VA's 1945 Rating Schedule Has Been Modified But is Still Used to Process Disability Benefit Claims.

As previously noted, 38 USC §1155 requires "the Secretary . . . from time to time [to] readjust this schedule in accordance with experience." The Rating Schedule currently used by VA was adopted in 1945 and was essentially based on the 1933 rating schedule. VA has made numerous changes to the medical criteria of the 1945 Rating Schedule based on advances in medical knowledge. No changes appear to have been made in its construction of clinical impairment, disability, impairment of earning capacity, or the relationships between and among these.

4. Involvement in the Long-Term Disability Community.

VA's rating schedule addresses in uncommon detail disability issues that apply significantly to the veteran population. Examples of such issues are amputations, gunshot wounds, and spinal cord

[198] *Ibid.*, p. 1/5.

injuries. However, many other disability issues addressed by the schedule are common to the general population. Unlike the SSA, which may be motivated by the fact that it uses externally developed criteria to evaluate disability, VA has not initiated or maintained contact with other organizations that publish long-term disability evaluation instruments. SSA, for example is represented in the group that is carrying out a revision of the AMA *Guides*.

III. Conclusions

1. VA's rating schedule and its adjunct, the ***Physician's Guide for Disability Evaluation Examinations***, are well known in the VA community. This includes medical practitioners actually on staff at VA medical facilities. However, they have no application outside VA (and some parts of the DoD) and are therefore not used or well known by the general medical community. Conversely, the AMA's *Guides to the Evaluation of Permanent Impairment* is widely known and applied in the general medical community. Medical information received from non-VA sources may not conform to the evaluation criteria specified in VA's *Physician's Guide* and Rating Schedule.

2. The VA rating schedule contains great detail concerning evaluation of injuries and diseases associated with combat and military service. The nature of military service is such that veterans are likely to experience a higher incidence of certain types of injuries or diseases than would be seen in the general population. Examples include spinal cord injuries, shell fragment wounds, and tropical diseases, such as malaria. Data the Commission has reviewed and presented indicate that most veterans receiving compensation do not have these kinds of disabilities. Commission data show that the majority of rated disabilities are more congruent with those suffered by the general population.

3. The VA Rating Schedule and the *Physician's Guide* must be periodically reviewed, updated, and changed to keep pace with changes in the workplace and in medical science and technology. Since these tools are used solely by VA (and some parts of the DoD), it is solely VA resources, FTEE, time, and money which must be used to accomplish these reviews. If those resources are not available for any reason, such updates do not occur.

4. Association with other groups, both public and private, who evaluate disability claims could provide VA with valuable information it could use and apply in its efforts to keep its tool, the Rating Schedule and the *Physician's Guide*, up to date. It is probable, particularly for those disabilities commonly shared by the general population, that VA could adopt (with minor changes as necessary) theories, practices, and procedures found to be viable by these other organizations. This could help insure that these tools were kept current while reducing the administrative cost to the Department.

IV. Recommendation

The Commission recommends that VA, specifically the VBA, develop and implement a business plan initiative to increase its involvement with other federal and state government agencies, with private insurers, and with medical associations which deal in disability determinations. This involvement can provide VA much useful information concerning current administrative and medical evaluation theories and practices in the field of disability determinations.

Section 6 – Delimiting Period: Pros and Cons

Major Findings and Conclusions

The Commission examined the pros and cons of a delimiting date for claiming disability compensation. In such an arrangement, veterans would be allowed a liberal time period, for example, five years from military discharge or until expiration of any applicable presumptive period, whichever is longer, to claim disability compensation.

"Pros" of a delimiting period:

- ***provides incentive to file early;***
- ***increases awareness of time as a barrier to establishing entitlement;***
- ***timely filed claims can be processed quicker and more fairly;***
- ***conforms with private, other government, and other VA programs; and***
- ***pre-discharge services decrease need for lifelong filing window.***

"Cons" of a delimiting period:

- ***veterans may be unaware of the need to file;***
- ***veterans with minimal disabilities may believe it unnecessary to file;***
- ***some veterans may "fall through the cracks;" and***
- ***veterans may be unaware of benefit entitlement.***

I. Background

The purpose of this section is to explore—without attempting to resolve—the pros and cons of establishing a delimiting date for claiming disability compensation. Veterans would be allowed a liberal time period, for example, five years from military discharge or until expiration of any applicable presumptive period, whichever is longer, to claim disability compensation.

As noted in Section 1 of this chapter, veterans may claim VA disability compensation as long after discharge from service as they desire. Although no data are kept describing how long after service veterans first apply for compensation, the Commission understands it is not unusual for veterans to file initial claims years, or even decades, later. Veterans who postpone filing may have legitimate reasons for doing so. However, generally they do not gain anything by waiting. Proving such claims is often extremely difficult for veterans and for VA, because entitling evidence may have been damaged, lost, or destroyed.

The Commission decided to look into claim-filing rules applied in the commercial disability insurance industry. Doing so could give Commissioners a frame of reference in which to consider VA's policies in this area. Because VA has no filing time limit, it was reasonable to assume that private industry rules were more restrictive. Private industry may offer insights from its perspective as to what purposes may be served by restricting filing times. In addition to private industry rules, the Commission considered relevant evidence from VA and other sources, as noted.

II. Findings and Conclusions

1. Industry Norm is Limited.

The industry norm for commercial disability insurers requires that claims be filed within six months of the "insurable event."[199] With extensions for various reasons, claims may be honored as long as 18 months after the event. Insurers will consider accepting claims after that period of time only if they are confident that their ability to investigate has not been "prejudiced" by the passage of time.

2. Open-Ended Filing Can Disserve Veterans.

Veterans may initially claim VA disability compensation literally as long after separation from service as they desire. The absence of a time limit for filing initial claims can in some instances disserve veterans because it:

- provides no incentive to apply early, when the disability's relationship to military service (and, consequently, the veterans' entitlement to compensation) is most readily established;
- can invite a false belief that passage of time presents no barrier to establishing entitlement;
- diverts scarce resources away from processing of claims timely filed; and
- channels resources into possibly prolonged processing of claims for which evidence is increasingly likely to have been lost, destroyed, or otherwise degraded.

3. Quick Filing Can Enhance Success.

Conversely, veterans who file soon after separation from military service can enhance their ability to establish entitlement to benefits. The events and circumstances are more recent, service medical records are more current and easily attainable, and the disability's relationship to military service is not complicated by post-service medical events.

4. Reasons for Not Filing Vary.

Veterans who say they suffered a service-related injury but never filed a claim provide various reasons for not filing: [200]

- no need/thought they were not eligible (41%);
- "red tape"/lack of information (30%);
- disability not sufficiently disabling (21%); and
- other (7%).

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[199] Interview with Pat Owens, President, Integrated Disability Management, a division of *UNUM America* and former Associate U.S. Commissioner of Disability, U.S. Social Security Administration, May 1, 1996.

[200] Department of Veterans Affairs, Office of Assistant Secretary for Policy and Planning, National Center for Veteran Analysis and Statistics, *1992 National Survey of Veterans*.

The Commission notes that two separate responses are consolidated in each of the first two bullets above. The manner in which the data are consolidated makes it impossible to discern how many of the 41 percent had "no need," how many "thought they were not eligible," and how many both had no need and thought they were not eligible.

5. Veterans Often Do Not Know Eligibility.

In May 1995 the VBA conducted eight focus groups with veterans and eight with regional office employees throughout the country. Some veterans in these focus groups reported that they were unsure about whether they were entitled to benefits and about how to apply for them.[201] They thought VA should do a better job of telling them what benefits are available and how to apply.

6. Congress Has Improved Transition Assistance Services.

The Veterans Benefits Administration Act of 1989 (P.L. 101-237) established the Transition Assistance Program (TAP) and Disabled Transition Assistance Program (DTAP). Through these programs, the Departments of Veterans Affairs, Defense, and Labor furnish employment assistance, job training assistance, and other transition services to service members who are scheduled for separation from active duty. The programs include counseling on the full range of VA benefits and services and are provided to service members stationed at military bases in the U.S., Europe, and the Far East. According to the VBA, during FYs 1992 through 1996, (through third quarter) 1,408,081 separating service members attended sessions, 514,424 of whom also received personal interviews.

The implementation of TAP and DTAP significantly increased the percentage of dischargees who file claims for VA benefits. VA also reports that TAP/DTAP have increased the number of multiple-issue compensation claims. The effect of TAP/DTAP on the number and nature of C&P claims cannot be quantified because relevant data are not maintained.[202]

7. Some Other Programs Have Statutory Limits.

Federal Benefits for Veterans and Dependents, 1995 edition, provides a summary "Veterans Benefits Timetable." Seven of the eight benefits listed have statutory time limits.

Timelimits	Benefits
90 days	Re-employment
Limited time	Unemployment
120 days or up to one year if totally disabled	Insurance / Servicemen's Group Life Insurance may be converted to Veterans Group Life Insurance
Two years from date of notice of VA disability rating	Disability Insurance (Life Insurance up to $10,000 is available to veterans with service-connected disabilities)

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[201] Department of Veterans Affairs, Veterans Benefits Administration, Office of Resource Management, Executive Summary, Claims Processing Focus Group Report. May 16, 1995. p. 1.

[202] Veterans' Claims Adjudication Commission, *Preliminary Findings and Conclusions,* p. 39.

10 years from release	Education
12 years from date of discharge	Vocational Rehabilitation
No time limit	GI Home Loans

8. VA Claims Process Works Fairly Well For Many But Quite Poorly For Others.

The VBA recently surveyed claimants served by the Roanoke, Virginia, VA regional office, and 497 responses were received.

Many respondents reported that the VA claims process works fairly well, but other claimants said it works quite poorly. On almost every measure, one-fourth to one-third of claimants expressed moderate to strong dissatisfaction with the process. Although VA staff are generally viewed as courteous and helpful, many claimants said that the process takes too long, that they cannot get the information they feel they need, that contacting VA by telephone is difficult, and that other parts of the process do not work as they should.[203]

9. VA/Army Are Testing Examining Service Members For Compensation *Before* Separation.

As cited in Chapter IX, the joint VA/Department of the Army military separation examination test is evaluating several methods of conducting examinations for separating and retiring service members who intend to file a disability compensation claim with VA. To this end:

- VA physicians are examining service members from Fort Knox at VAMC Louisville;
- Army physicians are conducting examinations at Fort Lewis, Washington, using the VA examination protocol; and
- physicians from VAMC Temple, Texas, are conducting examinations at Fort Hood.

The objectives are:

- improved customer service;
- complete and comprehensive claims development *at the earliest time* (emphasis added); and
- timely, high quality claims processing.

III. "Pros" and "Cons" of Delimiting Period

The Commission recognizes that veterans have traditionally had an unlimited period of time to claim disability compensation. This generous filing privilege may be regarded as an advantage by veterans, but it also has certain disadvantages for them. The Commission has noted that veterans' needs change over time; it is possible that the advantage of an open-ended filing period has changed with time as well. This section examines the pros and cons of imposing a delimiting date for initial compensation claims.

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[203] VBA report of customer satisfaction survey entitled "Survey of Veterans' Satisfaction with the VA Compensation and Pension Process," January 29, 1996. p. 40.

"Pros"

1. Provides Incentive to File Early.

A time limit for filing an initial disability compensation claim would encourage veterans to file relatively early—at the very time when they are most likely to be able to establish entitlement. Documentation is most readily available during the first few years following service. Service "buddies" are easier to contact for supporting evidence or testimony. Intervening medical problems, which make it more difficult to meet the legal requirements for entitlement, are less likely to occur. Postponing filing only increases the chances that evidence will be lost, destroyed, or otherwise degraded.

2. Increases Awareness of Time as a Barrier to Establishing Entitlement.

Veterans may not realize that the passage of time reduces their ability to meet the entitlement requirements of the law. Imposing a delimiting period, and appropriately informing veterans of its existence and significance, could raise awareness that legal requirements are easiest to meet soon after discharge. Increased awareness could influence veterans to improve the quality of their benefit claims beyond the extent to which simply submitting claims in a timely manner would improve them.

3. Timely Filed Claims Can Be Processed Quicker and More Fairly.

In an environment of timely filed claims, processing would be less time consuming. VA would not expend scarce resources in unproductive efforts to locate or reproduce decades-old, or lost, evidence. Resources could be concentrated on processing timely filed claims, because *all* claims would be filed in a reasonably timely manner.

4. Conforms with Private, Other Government, and Other VA Programs.

Most VA, other government, and private programs have time limits for establishing and using eligibility. It is not unreasonable to ask veterans to comply with a relatively generous time limit to preserve a reasonable opportunity for VA to decide their claims on the basis of realistically current evidence. Medical conditions that do not exist at the time of discharge or within the applicable presumptive period are not service connected. They may not *disable* the veteran within that time, but that is a separate issue which can be addressed if and when the condition progresses to the point that it becomes disabling. Service connection of a nondisabling condition can be established within the time limit and reevaluated should it become disabling in the future. A time limit on initial claims would *not* prohibit or inhibit claims for increased evaluation.

5. Pre-Discharge Services Decrease Need for Lifelong Filing Window.

Comprehensive services currently available *prior* to separation suggest any need for lifelong opportunity to claim disability compensation is decreased. Although unquantified, the transition services provided to 1.4 million separating service members world wide by VA, DoD, and DOL since FY 1992 has increased the percentage of dischargees who file claims for benefits. In addition, VA/Army's separation examination tests are evaluating several methods for conducting examinations for separating and retiring service members who intend to file a disability claim with VA. Carrying this concept to its logical extreme, VA and DoD could cooperatively track veterans' health on *entry* into service. This could lead to a paperless benefits delivery system in which veterans would not need to apply for benefits. On discharge, VA would have all information needed to pay appropriate benefits without any action on the veteran's part.

"Cons"

1. Veterans May Be Unaware of the Need to File.

In spite of best efforts, some veterans may not become aware that they must file an initial disability compensation claim within a certain period of time. While there could be exceptions for allowing veterans who were physically or mentally unable to file, it would be difficult to provide exceptions on the basis of unawareness.

2. Veterans with Minimal Disabilities May Believe It Unnecessary to File.

Again, in spite of best efforts, veterans may not realize that a condition which is not bothersome or disabling should be evaluated anyway. They may, believing themselves not entitled to compensation payments, reason that filing would be inappropriate. Should they postpone filing for this reason, they could forfeit entitlement to disability compensation.

3. Some Veterans May "Fall Through the Cracks."

As noted earlier, VA's claims process works fairly well for many but quite poorly for others: Veterans who see the system as not serving them well would be unlikely to favor a system that reduces the time available to file.

4. Veterans May Be Unaware of Benefit Entitlement.

Lack of information and knowledge regarding eligibility, and "red tape" associated with filing a claim under the current unlimited filing period, could be an even greater obstacle under a five-year filing period. Veterans who are unaware of their benefit entitlements cannot reasonably be expected to obtain specific benefit information within a time limit of which they are similarly unaware.

Section 7 – Lump Sum Payments at Lower Disability Levels: Pros and Cons

Major "Pros" and "Cons"

"Pros"

The Commission observes that a lump sum disbursement policy for minimally disabled veterans has considerable potential benefits. It would be expected to:

1. ***provide substantial financial advantages at the point of transition to civilian life for veterans evaluated 10 percent disabled;***
2. ***give these veterans a clear opportunity to make long-term investments that could greatly exceed uninvested monthly disability payments;***
3. ***considerably reduce the volume of repeat claims, allowing concentration of VBA processing efforts on claims from more seriously disabled veterans; and***
4. ***over time, potentially save taxpayer dollars by reducing administrative and program costs.***

"Cons"

The Commission acknowledges that legitimate concerns exist about potential disadvantages of a lump sum payment policy:

1. ***veterans' recourse to increased benefits for disabilities that worsen over time would be restricted;***
2. ***veterans may not use lump sum payments wisely;***
3. ***program costs would be high in the early years following policy implementation; and***
4. ***the lure of a lump sum could lead to more compensation claims, some of which may have little merit.***

I. Background

Data collected by the Commission, and reported in Chapter I of this volume, show a significant number of claims from veterans already receiving compensation for relatively minor disabilities. As of September 30, 1995, about 2.2 million veterans were receiving service-connected disability compensation. Almost 40 percent of those veterans were evaluated 10 percent disabled; 70 percent were evaluated 30 percent disabled or less.

Repeat claims account for more applications than any other broad category of disability compensation claims. In FY 1995, VA received 134,680 *initial* and 337,632 *repeat* disability compensation claims.

A review of claims and appeals pending as of November 1, 1995, showed:

- Among pending *repeat* disability *compensation claims*, 69 percent of the claimants were already receiving compensation or pension.
- Among pending *appeals* certified to the Board of Veterans Appeals, 66 percent were receiving compensation or pension.
- Thirty-two percent of the veterans who had pending *repeat compensation claims* were ages 60 to 85 and were receiving compensation or pension.
- Most veterans, 57 percent, with pending *repeat claims or appeals* were evaluated 10, 20, or 30 percent disabled.[204]

During FYs 1990 through 1995, repeat compensation claims exceeded original compensation claims by about three to one. In other words, about three-quarters of the claimants had a previous disability claim decided by VA.[205] In addition, the Commission found that the incidence of repeat claims can be expected to remain high.[206]

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[204] See Chapter I, Section 2 for additional information on pending repeat disability compensation claims and appeals.
[205] Veterans' Claims Adjudication Commission, *Preliminary Findings and Conclusions*, p. 30.
[206] See Chapter I, Section 4 for additional information on future projections of repeat disability compensation claims.

These data indicate that repeat claims from veterans with low disability ratings create heavy workload demands. Under the circumstances, Commissioners found it reasonable to consider whether this claims pattern, which concentrates claims processing resources on veterans who already receive benefits for relatively minor disabilities rather than dedicating the same resources to more severely disabled veterans, is consistent with the intent of the program.

Another question of program intent reinforced the Commission's interest in this line of inquiry: What is VA's highest purpose in its role of assisting veterans with their transitions to civilian life? The Commission developed preliminary evidence that paying less disabled veterans by lump sum could potentially provide them greater adjustment assistance, reduce program costs, *and* allow reallocation of administrative resources within VBA to better serve the needs of more severely disabled veterans.

In addition, the Commission reasoned that the needs of minimally disabled veterans are substantially different from those who are more seriously disabled. While the seriously disabled can be expected to require ongoing, long-term support, those who are minimally disabled may be better served by concentrating the support at the point of transition to civilian life. In that way, the minimally disabled may have a better opportunity to achieve full occupational competitiveness and self reliance in the civilian marketplace. Accordingly, the Commission considered this an important area of inquiry.

Using currently available information, the Commission analyzed the impact of lump sum payments on:

- those veterans to whom such payment might apply;
- the VBA processing system; and
- indirectly, on the more severely disabled veterans whose future claims would be processed in an environment of changed claims patterns.

The Commission's consideration of this issue addressed the *concept* of lump sum payments for minimally disabled veterans; for purposes of this program cost and workload analysis, "minimally" disabled veterans are defined as those whose *combined* service-connected disability evaluation is 10 percent.

The Commission analyzed and discussed three scenarios:

(1) lump sum payment based on a predetermined amount (10 years of future benefits at the current 10 percent disability payment rate) for new accessions;

(2) lump sum payment discounted for present value and based on average life expectancy for new recipients rated 10 percent disabled; and

(3) same payment details as described in (2) above, but applied to *all 10 percent veterans on the rolls*, as well as to new recipients.

While this analysis focuses on proposals that would apply only to *new accessions* (as in Scenarios One and Two), it also projects, for informational purposes, the program cost and workload impact should such a proposal be applied to *all 10 percent veterans on the rolls* (Scenario Three).

II. Findings and Conclusions

This section considers, among other factors, program costs and savings expected to be associated with lump sum payment of 10 percent disability compensation. For purposes of this analysis, program costs and savings are calculated identically: the benefit amount paid by lump sum in a given fiscal year less the amount that would have been paid monthly during that year under the traditional monthly payment schedule equals the net cost or savings for the year. The analysis shows that, in the short term, this difference is positive, denoting a program cost. In the long term, the difference is negative, denoting a program savings. Overall, long-term program savings exceed short-term program costs.

Findings and conclusions include:

1. analysis of the three lump sum payment scenarios described above;

2. summary report of a focus group session with veterans regarding payment of lump sum disability benefits;

3. lump sum payment practices of other organizations paying disability benefits; and

4. findings and endorsements of other organizations regarding lump sum payment of VA disability benefits.

1. Analysis of Lump Sum Payment Scenarios.

- **Scenario One. 10-Year Lump Sum: Payment by lump sum of 10 percent disability benefits that traditionally would have been paid monthly over 10 years.**

Basic assumptions:

1. *Applies only to **new accessions** to the rolls at the 10 percent (combined) disabled level.*

2. *Lump sum payment is equal to 10 years of benefits at the prevailing 10 percent rate (as of December 1995, $91 per month for 120 months, or $10,920).*

3. *Lump sum payments for awards made in future years would incorporate all subsequent cost of living adjustments.*

4. *Other VA benefits, including eligibility for medical care, would not change. [As implemented, provision could be made for claimants to reopen a claim if disability worsens seriously; however, this illustration assumes no subsequent claims from veterans who have received lump sum payments.]*

5. *Each veteran would be eligible for only one lump sum payment, which would be based on a combined 10 percent evaluation.*

- Lump Sum Benefit: $10,920 (subject to increase by COLAs in future years)

- Cost/Savings: The first year net program cost is projected to be $403 million, declining in each subsequent year. Annual net program savings are expected to begin in the 11th year. By the 20th year, over $500 million in program savings would be expected each year.

- Workload Impact: Based on today's characteristics of repeat claims, future caseload would be expected to decline each year as the total number of veterans receiving lump sums increases. Over 10 years, repeat claims would be expected to decline by 226,000 cases (cumulatively). In addition, counseling sessions, telephone contacts, and mail handling would be expected to decrease correspondingly.

- Impact to Veterans: A lump sum benefit payment invested in commonly available financial instruments *could* provide veterans with substantial monetary benefits during their lifetimes.

A veteran who does not invest a lump sum benefit payment may realize little or no advantage from receiving entitlement in that form. Even so, the $91 monthly benefit payable for a 10 percent disability is not likely to produce significant advantage at any point in his or her life. A lump sum payment, on the other hand, could provide transition opportunities he or she would otherwise not have in the adjustment to civilian life. A lump sum could be invested in a business, applied to a college education, or used for a down payment on a house. Concentrating the benefit at the point of transition to civilian life may conform more closely with the intent of the program for these veterans than does the monthly payout system. Appendices O and P compare invested monthly compensation with invested lump sum benefits,

(The complete analysis and methodological details of Scenario One are contained in Appendix O).

- **Scenario Two. Life Expectancy Lump Sum: Payment by lump sum of 10 percent disability benefits over the average expected lifetime of the veteran population.**

Basic Assumptions:

1. *Applies only to **new accessions** to the rolls at the 10 percent (combined) disabled level.*

2. *Lump sum payment is based on the average life expectancy[207] of veterans entitled to disability compensation at the 10 percent rate ($1,092 per year).*

3. *Various approaches may be used to calculate payment amounts. In Scenario One, no discount rate was applied to account for the time value of money. In this scenario, to illustrate a different approach, the total lump sum is discounted by 7.5 percent per year (representing the 30-year Treasury bill rate in July 1996) compounded annually for the present value ($12,772).*

4. *Lump sum payments for awards made in future years would incorporate all intervening COLAs.*

[207] Because VA does not maintain life expectancy information on the veteran population, and because compensation beneficiaries are overwhelmingly male, life expectancy for males in the general population was used.

5. *Other VA benefits, including eligibility for medical care, would not change. [As implemented, provision could be made for claimants to reopen a claim if disability worsens seriously; however, this illustration assumes no subsequent claims from veterans who have received lump sum payments.]*

6. *Each veteran would be eligible for only one lump sum payment, which would be based on a combined 10 percent evaluation.*

- Lump Sum Benefit: $12,772 (subject to increase by COLAs in future years). Because the scenario uses an average life expectancy for all veterans, the lump sum benefit, as in Scenario One, would be the same for all beneficiaries.

- Cost/Savings: The first year program cost is projected to be $479 million, declining in each subsequent year. Annual program savings are projected to begin in the 14th year. By the 23rd year, over $500 million in savings would be expected each year.

- Workload Impact: Expected workload impact would be identical to that described in Scenario One, since only the lump sum calculation and amount are different. As a result, consistent with the workload impact in Scenario One, repeat claims would be expected to decline by 226,000 cumulatively over 10 years. Counseling sessions, telephone contacts, and mail handling would be expected to decrease correspondingly.

- Impact to Veterans: Lump sum payment to veterans is greater than Scenario One because the average life expectancy among veterans exceeds 10 years. Even applying the discount factor, the benefit amount is higher. As indicated in Scenario One, this benefit could be applied to various purposes. No specific return could be guaranteed, however.

(The complete analysis and methodological details of Scenario Two are contained in Appendix P).

- **Scenario Three. Universal 10 Percent Lump Sum: Lump sum payment to *all veterans on the rolls* at the 10 percent rate, as well as to new accessions.**

Assumptions:

1. *Applies to **all recipients** currently on the rolls at the 10 percent (combined) disabled level **and to new accessions**.*

2. *Lump sum payment is equal to the product of the average life expectancy,[208] in months, and the prevailing 10 percent benefit payment rate.*

3. *As in Scenario Two, the lump sum is discounted to reflect the time value of money, with a discount rate of 7.5 percent compounded annually.*

4. *Lump sum payments for awards made in future years would incorporate all intervening COLAs.*

5. *Other VA benefits, including eligibility for medical care, would not change. [As implemented, provision could be made for claimants to reopen a claim if disability worsens seriously; however, this illustration assumes no subsequent claims from veterans who have received lump sum payments.]*

6. *Each veteran would be eligible for only one lump sum payment, which would be based on a combined 10 percent evaluation.*

- Lump Sum Benefit: $12,772 (subject to increase by COLAs in future years). Because the scenario uses an average life expectancy for all veterans, the lump sum benefit, as in Scenario One, would be the same for all beneficiaries.

- Cost/Savings: Expected first year net program cost under this scenario would be about $8.7 billion. This amount is derived from the expected total lump sum payments of $9.7 billion less the amount that would have been paid by traditional monthly benefit payments ($1 billion) except for substitution of the lump sum settlement. Cumulative net program savings under a Universal 10 Percent Lump Sum payment scenario would be expected to occur in the 12th year. At that point, accumulated monthly benefit obligations under the traditional payment structure would be expected to exceed the total paid out in lump sum. First year costs for this scenario are high because lump sum settlements would be paid to *all* veterans on the rolls at 10 percent, in addition to the *new accessions* to whom lump sums

[208] Because VA does not maintain life expectancy information on the veteran population, and because compensation beneficiaries are overwhelmingly male, life expectancy for males in the general population was used.

would be paid under Scenarios One and Two. However by the 20th year, a net program savings of $13 billion would be expected.

- Workload Impact: The workload impact would be dramatically greater than under *Scenarios One and Two* because Scenario Three would apply to *all* veterans who are 10 percent disabled. Repeat caseload would be expected to decline by over 88,000 in the first year and by over one million over 10 years. Counseling sessions, telephone contacts and mail handling would be expected to decrease correspondingly.

- Impact to Veterans: Assumptions of lump sum payment to veterans under this scenario are the same as Scenario Two ($12,772). The benefit impact to veterans would be exactly as described under Scenario Two.

(The complete analysis and methodological details of Scenario Three are contained in Appendix Q).

2. Focus Group Discussion.

The Commission conducted a *focus group session* at the Atlanta Regional Office to ask veterans for feedback about the lump sum concept. Initially, most of the focus group veterans wanted more information before they would offer an opinion of the concept. A few expressed support for the concept from the start. By the end of the discussion, however, nearly all said they would be open to the lump sum payment idea provided that: (1) the lump sum was a fair amount, (2) they would maintain VA medical care, (3) there would be counseling and education on how to manage the lump sum, including financial management, and (4) they could return to the system if their condition seriously worsened. (Appendix R contains a detailed analysis of the Focus Group Sessions)

3. Lump Sum Disability Payment Practices in Other Organizations.

A. The Department of Defense (DoD) pays lump sum disability severance benefits to certain disabled servicemembers who are:

- separating from the military with less than 20 years of service; and

- less than 30 percent disabled.

The purpose of the program is to compensate for disabilities "that are not so severe as to seriously impair their civilian earning capacities, in order to assist such personnel in their transitions back to civilian life."[209] The average lump sum paid to this group in 1993 was $10,230. Appendix S contains additional information on DoD Lump Sum.

B. The Department of Labor (DoL) provides lump sum payments to claimants under the Workers Compensation Program on a case-by-case basis. Under DoL policy, a lump sum payment may be made for a schedule award only if it is not replacing lost income.[210] Lump sums will be provided only when it is determined by DoL to be in the best interest of the claimant. All lump sum payments are considered final.

4. Other Endorsements and Findings.

A. In March 1994, the VA Inspector General released a report entitled "Timeliness of Benefits Claims Processing Can Be Improved." While lump sum payments were not the focus of the study, the Inspector General included in the Report that VA should *consider* revising the rating criteria to reflect expected impairment over the veterans lifetime. The Inspector General said, "[e]stablishing rating criteria that reflect impairment over the veteran's lifetime would allow VBA to offer lump sum settlements." While the report did not specify categories of disability, it referenced veterans receiving payments of less than $200 a month.[211] The report noted that as of September 30, 1992, 1.2 million of the 2.2 million veterans receiving disability compensation received payments of less than $200 each month.

B. In 1956, an independent Federal Commission chaired by General Omar Bradley released a report titled "Veterans Benefits in the United States, Findings and Recommendations." The report recommended that lump sum consideration be given to veterans with static conditions rated less than 30 percent.[212]

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[209] Department of Defense, Office of the Secretary, *Military Compensation Background Papers*, Fourth Edition, 1991, Ch III, C.2 p. 521.

[210] 20 Code of Federal Regulations §10.311.

[211] Inspector General Report No. 4R6-B01-155, March 25, 1994.

[212] VA Summary of Reports, Independent Commissions and Other Published Analyses, VA Office of Policy and Planning, November 1991.

III. "Pros" and "Cons" of Lump Sum Payment of Disability Benefits

Public policy questions arise as the inevitable result of policymakers' efforts to develop the most effective, fairest, and most efficient means of achieving a public objective. No single policy is perfect, and none is timeless. This is why policy making is the sensitive, difficult, and sometimes agonizing business that it is. Every policy choice exists in a dynamic environment of multiple issues and concerns, many of which legitimately conflict and each of which is charged with nuance and implications. Making appropriate policy decisions is more than a matter of "doing the math" (although policymakers must surely do the math) and finding the solution. Every policy alternative, and every variation on every alternative, is associated with inherent advantages and disadvantages.

It is with great sensitivity to these realities of policy making that the Commission identifies and discusses the following advantages and disadvantages of a policy to pay compensation by lump sum to veterans with "minimal" disabilities. The Commission is not recommending that such a policy be adopted; however, Commissioners acknowledge that compelling reasons exist for Congress to seriously study adopting such a policy. VA's traditional payment system and structure need not necessarily be applied uniformly to veterans at all levels of disability. The needs of minimally disabled veterans vary markedly from the needs of those who are severely disabled. Accordingly, it is reasonable to consider alternative, perhaps more effective ways of addressing those needs and the potential effect of doing so on the entire veteran population.

"Pros"

The Commission observes that a lump sum disbursement policy for minimally disabled veterans has considerable potential benefits. It would be expected to:

- provide substantial financial advantages at the point of transition to civilian life for veterans evaluated 10 percent disabled;
- give these veterans a clear opportunity to make long-term investments that could greatly exceed uninvested monthly disability payments;
- considerably reduce the volume of repeat claims, allowing concentration of VBA processing efforts on claims from more seriously disabled veterans; and

- over time, potentially save taxpayer dollars by reducing administrative and program costs.

1. Lump Sum Payments Would Concentrate Disability Benefits at the Point of Transition to Civilian Life.

- In some important ways, newly separated military veterans are placed at a competitive disadvantage among their non-veteran peers in the civilian labor market. While in the military, veterans generally do not earn college degrees, gain specific civilian job experience, build seniority in a civilian occupation, nor learn civilian employment skills, as their nonmilitary counterparts may. Consequently, they are likely to have fewer employment and financial options. In addition to these drawbacks, minimally disabled veterans are still learning to adjust to their disabilities. Over time, the experiential and academic gaps tend to narrow. The financial gap, however, is more difficult to make up, since the time value of money favors those who invest early.

- A lump sum disability benefit would narrow the financial gap between minimally disabled veterans and their non-veteran civilian contemporaries at the very time when that gap is most critical to future financial success. Lump sum benefit payments could help put minimally disabled veterans in competitive balance with their civilian counterparts. Veterans could use lump sum payments to start businesses, invest in larger businesses, invest in financial markets, pay off lingering debts, or supplement their VA education benefits while pursuing post-service educational opportunities.

- These veterans are not considered seriously disabled, and under current policy receive only $91 a month in VA disability payments. Under the circumstances, it is reasonable to believe that nearly all of them eventually will be required to enter the civilian workforce. In today's economy, this monthly amount is virtually inconsequential. By disbursing the benefit in small amounts over an extended time, the government effectively minimizes its value at the crucial period of the veteran's transition to civilian life. Moreover, monthly payments are less conducive to investment either in business or financial markets, so the veteran's opportunity to take advantage of the time value of money is diminished. Because the monthly benefit is minimal, its value as a transition resource is relatively insignificant, and veterans would not be disserved in the short term by choosing to make long-term investments.

2. Entitlement to VA Medical Care Would Continue.

Payment of the disability benefit by lump sum would not change a veteran's entitlement to VA medical care. Although not receiving monthly payments, a veteran would be considered to have a service-connected disability, and all medical care based on service connection would remain available. Should medical problems associated with the disability develop, VA would furnish medical care.

3. Allows Concentration of Operating Resources on Veterans in Most Need.

Seriously disabled veterans who are, by definition, in greater need experience claims processing delays. This is due, in part, to the considerable effort VBA must expend adjudicating repeat claims from veterans evaluated 10 percent disabled and already receiving compensation. These cases constitute a substantial amount of the caseload.[213] A lump sum payment policy would allow VBA to redirect limited resources to improve services to those who need it most, *i.e.*, more severely disabled veterans.

4. Total Repeat Claims Received Would be Expected to Decline.

Payment by lump sum would lead to fewer repeat claims. If a lump sum payment policy were applied only to *new accessions*, repeat claims would be expected to decline by 226,000 over 10 years. If applied to *new accessions and current 10 percent disabled veterans*, workload would be expected to decline by one million cases in that time. In addition, workload in other areas such as counseling, telephone contacts, and mail handling would be expected to decline correspondingly. Reduced workload could mean more timely service and processing for all veterans at all levels.

5. Significant Budgetary Savings in the Future.

Under current budgetary guidelines and laws, Congress and the Administration are required to estimate the federal deficit for the budget year, as well as for five to eight years into the future. As a consequence of this requirement, Congress often appears reluctant to consider proposals involving savings that fall *beyond* the budget period, especially if they increase outlays *during* the budget period.

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[213] 39.6 percent of all veterans receiving disability compensation are rated 10 percent.

If VA were to begin paying 10 percent compensation by lump sum, greater appropriations would be necessary in the early years because a substantial proportion of veterans benefits would be paid "up front." However, significant budgetary savings would be expected in the future, with the cumulative effect of declining monthly payment obligations to veterans with 10 percent disabilities.

Ultimately, the total savings to the government would depend on implementation details. If the lump sum applied to only new accessions at the 10 percent rate, as in *Scenario One*, the federal government could start realizing annual savings in the 11th year ($44 million), with cumulative savings reaching $500 million by the 20th year. If lump sum benefits applied to *all* 10 percent disabled veterans on the rolls (*Scenario Three)*, the Federal government could save over $1.2 billion annually by the 12th year and $13 billion cumulatively over 20 years (Appendix Q contains cost and savings projections). Even though expected savings would occur outside the traditional one- to eight-year horizon for measuring the deficit, the potential for significant long term savings to the government is noteworthy.

6. Increased Incentive to Rehabilitate.

If veterans realize that the lump sum payment represents the only compensation to which they will be entitled (unless, *e.g.*, the disability worsens dramatically), they may be more motivated to fully rehabilitate themselves for competitive employment.

"Cons"

A lump sum disability payment policy could be controversial. Payments would be made in the nature of a "settlement" between the government and the veteran. Consequently, and depending on implementation details, veterans could not generally receive benefits for increased severity of the same condition(s) for which a lump sum was paid. Although exceptions could be written into the policy (*e.g.*, increase would be paid if the disability worsened to the point that the veteran was unemployable), any restriction on reapplication could be regarded as a retraction of a traditional benefit or "right."

The Commission acknowledges that legitimate concerns exist about potential disadvantages of a lump sum payment policy:

- veterans' recourse to increased benefits for disabilities that worsen over time would be restricted;
- veterans may not use lump sum payments wisely;
- program costs would be high in the early years following policy implementation; and
- the lure of a lump sum could lead to more compensation claims, some of which may have little merit.

1. Disability Can Worsen Over Time.

Disabilities are not necessarily static. In some cases, they worsen over time. Under current policy, veterans may reapply for increased benefits at any time if a disability worsens. Under a lump sum payment policy, however, certain reapplication restrictions would apply to veterans who had received lump sum payment. The Commission was most concerned about veterans whose disabilities worsen severely. Currently, no useful information is available regarding the frequency and extent of disability progression among the population of veterans who were initially evaluated 10 percent disabled.[214] A one-time lump sum payment to these veterans may undercompensate them since reevaluation and supplemental benefits would be restricted. Even though the present value of lump sum benefits exceeds the present value of benefits paid monthly over time, there is an inherent financial risk to the veteran. If the lump sum is spent unwisely or is poorly invested, the benefit may be unavailable to compensate for worsened disability.

The Commission believes that any lump sum proposal should provide a "safety net" for those veterans whose conditions worsen severely. These veterans should be allowed to apply for and receive the benefits they would have been entitled to under the current system. However, a policy that contemplates too many exceptions could have the effect of negating many of its advantages.

2. Financial Risk to the Veteran.

As indicated above, a lump sum payment spent irresponsibly or invested poorly is likely to be unavailable to a veteran in the future, irrespective of whether the disability has worsened, improved, or remained the same. While lump sum payments present significant investment potential, the Commission expects that not all veterans will use the money in a manner that best serves their long-term interests. It is equally true that monthly benefits could be spent irresponsibly or invested poorly, but payments, however modest, would remain available to the veteran. Government may be criticized for allowing veterans to make significant spending and investment decisions, particularly should they, as a group, be shown to exercise poor judgment. Accordingly, the Commission would suggest that financial counseling services be made available to recipients of lump sum disability payments.

3. Significant Initial Budgetary Impact.

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[214] The Commission developed a methodology (contained in Appendix T) that could be used to collect useful information about the incidence and magnitude of increased disability among veterans whose initial compensable service-connected evaluation was 10 percent.

Any lump sum proposal would require Congress to provide additional funding in the first year. Additional funding above current law would be subject to "Pay As You Go" (PAYGO) laws passed under the Budget Enforcement Act (BEA) of 1990. PAYGO requires that any increased spending be offset by either savings proposals or increased revenue to ensure the deficit does not increase. While an argument can be made that the two scenarios applying to new accessions only do not have significant initial costs ($403 million and $479 million respectively), any proposal that applies to new accessions as well as 10 percent disabled veterans on the rolls could be considered cost prohibitive ($8.7 billion in first year costs, with full recoupment through savings in 12 years).

However, the Commission does not believe that a lump sum proposal for new accessions should be dismissed strictly based on cost. The first year lump sum cost under *Scenario Two* ($479 million) is only slightly higher than the annual Compensation and Pension COLA, and the $479 million is only about three percent of the total annual Compensation obligations. In addition, in relation to the 1997 federal budget of $1.7 trillion, when rounded in billions, this amount essentially rounds to zero. Nonetheless, the Commission recognizes that any lump sum policy would increase the deficit in its early years and be subject to "PAYGO" offsets.

4. Lump Sum Payments Could be Seen as Windfalls.

Commissioners expressed some concern that the potential availability of a substantial lump sum could tempt veterans who might not otherwise apply for compensation to do so. Offering a one time lump sum benefit significantly larger than current monthly payments *could* increase the number of veterans who file claims for compensation, especially in the initial years. Individuals separating from active duty military service and veterans who have no compensable disabilities would have no apparent disincentive to applying for a lump sum disability payment. By venturing very little (*i.e.*, the effort required to complete an application), they could stand to gain a substantial amount. To the extent that this payment structure would entice claims from veterans who would not otherwise apply, the compensation workload would increase. Program costs to the government could also rise if claims generated for this reason had legitimate merit and were therefore approved. The Commission cannot confidently predict the likelihood that claims volume would increase because of the attractiveness of lump sum payment, nor whether claims so attracted would prove to be generally meritorious.

IV. Implementation Considerations

The Commission understands that any veteran who has received DoD disability severance pay and who later becomes eligible for a VA lump sum disability payment would have to elect to receive one or the other. Under current law, veterans may not receive both VA and DoD disability pay. If they have received severance pay before they establish entitlement to VA disability compensation, monthly benefits are currently withheld until the full severance pay amount has been recovered. In practice, a VA lump sum might be payable only in the amount, if any, by which the VA entitlement exceeds the severance pay.

In evaluating lump sum payments, the Commission recognizes that it has built in assumptions that would require modifications or changes to existing laws pertaining to VA compensation. While the analysis in this chapter does not examine changes in *who would be eligible* for compensation (only a change in *how they would be compensated*), any change of this nature would still require some aspects of the program to be redefined, including secondary conditions, causality, and reapplication for increased benefits by veterans who feel their conditions have worsened. As implemented, provision might be made to allow veterans to reestablish entitlement, under certain circumstances, for the same disability for which a lump sum had previously been paid. However, this analysis does not address these potential costs or workload factors.

As explained in the *Findings* section, *Scenarios One* and *Two* pertain to new accessions to the rolls, while *Scenario Three* applies to all 10 percent disabled veterans receiving compensation, as well as new accessions. However, since many under *Scenario Three* have been receiving compensation for decades, one cannot reasonably argue that a lump sum payment would provide significant transition benefits. While it may take years to adjust to civilian life, a lump sum payment cannot take a veteran who had separated years ago back to the point of discharge.

In addition, to formulate an equitable payment system under *Scenario 3,* where most are already receiving monthly benefits, it may be appropriate to consider the wide range in average age among veterans of the various war periods. It is clear that life expectancy among veterans of different service periods could vary significantly enough to warrant exploration of providing different payments. Current data for 10 percent disabled veterans show that approximately 272,000 during World War II, 246,000 during the Vietnam era, 236,000 during Peacetime, and 66,000 during the Korean Conflict. World War II and Korean War veterans receiving compensation would be expected to be older than veterans newly awarded benefits. However, the purpose of analyzing these scenarios was not to develop final payment systems; instead, it was to assess the potential impact to the current system under certain assumptions.
These analyses of investing lump sum payments do not reflect taxation of the returns on investment. This is an issue that could be addressed by implementation proposals. One option would be to preserve the tax

advantages by legislating that returns on invested VA disability compensation would not be subject to income tax. Finally, the Commission does not intend that lump sum payment of compensation would amount to an irrevocable agreement of disassociation or termination similar to certain practices in private industry. The Commission focused on maintaining VA medical care eligibility for lump sum recipients and supports possible recourse to regular compensation benefits for conditions that worsen severely.

Section 8 – Comparative Analysis:

VA Pension and Supplemental Security Income

Major Findings and Conclusions

VA's current pension program generally pays greater benefits than the SSI program. In isolated instances, however, beneficiaries with a high percentage of earned income may receive greater benefits under SSI.

Entitlement to VA disability pension establishes entitlement to VA health care. SSI recipients may or may not be entitled to Medicaid depending on other entitlement criteria.

There is no evidence to suggest that either organization is clearly superior to the other in terms of the service it provides its customers. The SSA is geographically more accessible than VA, with many more field offices and hearing offices. However, veterans are supported by an extensive network of public and private service organizations that do not have the same working relationships with the SSA that they have with VA. Processing times are currently similar, but SSA is implementing, and VA is considering, process changes designed to achieve significant improvements. SSA's current general service levels may not accurately predict its ability to provide similar service to this subset of claimants.

The Commission can evaluate the efficiency of merging VA pension with SSI under the SSA only conceptually at this time. The SSA, which processes almost 3,000,000 SSI and Disability Insurance claims annually and which has over 6,000,000 recipients on its SSI rolls, would not be overwhelmed by volume. VA pensioners number fewer than 800,000. Currently, the two separate programs maintain separate administrative support structures to provide similar, but distinct, benefits. Merging the programs would reduce some administrative duplication. However, if the pension program retained its most distinctive features, administrative complexities could develop to reduce or negate that advantage. Eliminating distinctive features of the pension program, on the other hand, could be regarded as a violation of the public commitment to veterans.

Major Recommendations

1. ***The VBA and SSA should jointly develop data to determine the overlap of claimants and recipients for all benefit programs. Based on this information, the two agencies should seek opportunities for collaboration to provide better service.***

2. ***The VBA and SSA should collaboratively review the pension and SSI disability criteria to seek ways of reducing dissimilarities between them. The ultimate goal of the review would be to produce sufficiently common criteria that a single determination by either agency would resolve medical entitlement under both programs. If enabling legislation would be needed to achieve this ultimate goal, the two agencies should work together to produce a mutually acceptable proposal to the Congress.***

   By implementing this recommendation, government's policy toward the disabled needy would become more consistent, and duplicative medical examinations and determinations would become unnecessary. If, upon review and analysis, full implementation is considered inadvisable, the two agencies should consider accepting one another's determinations as interim grounds for initiating payment. SSI's existing provision for "presumptive eligibility" is an example of this kind of approach.

3. ***The VBA, VHA, and SSA should actively plan and implement technologies for mutually sharing electronic medical evidence for customers of both VA and the SSA.***

I. Background

VA administers two major monetary benefits programs for disabled veterans:

- Disability compensation is payable to honorably discharged veterans who are disabled by disease or injury related to their military service. Benefits under this program are payable regardless of a veteran's income from other sources (*i.e.*, the program is not "means tested").

- Disability pension is payable to honorably discharged *wartime* veterans who have become unemployable as a result of disabilities *not* related to their military service. This program *is* means tested. To receive benefits, the veteran must show financial need as well as serious long-term disability.

VA's disability pension program serves a group that forms a subset of the general population of needy disabled persons. The distinguishing characteristic of this subset is that its members are military veterans. The general population of needy disabled persons in this country is served by a program, the Social Security Administration's (SSA's) Supplemental Security Income (SSI) program, that was not yet in effect when VA's first comprehensive, nonservice-connected disability pension program was initiated shortly after World War II. The SSI program began in the early 1970s.

Features of VA pension and SSI are similar. SSI provides basic support to needy aged and disabled individuals under a system of nationally uniform eligibility criteria and payment schedules. Given the availability of SSI and the administrative complexity of VA's disability pension program, Commissioners reasoned that a means-tested disability program exclusively for veterans may no longer be the most appropriate way of addressing this type of need. The Commission decided to explore whether future applicants might be better served by SSI.

VA administers pension benefits under one active pension program and two "protected" programs. The active program, which serves veterans, their dependents, and survivors, was created in 1978 under Public Law 95-588. This pension program is commonly called "Improved Pension." Because most pension payments and claims involve Improved Pension, it is used as the basis for comparison with the SSI program. The two protected programs, commonly called "Old Law" and "Section 306" pension, are small compared with Improved Pension, and they are shrinking. Unless otherwise indicated, the word "pension" in this section refers to Improved Pension.

Commissioners asked four key questions to guide the analysis that would inform any recommendations in this area:

- What level of income assistance would the current SSI Program provide to veterans who meet the current eligibility tests for VA pension?

- If benefits under SSI were not equivalent, could they be made so in a systematic way that would preserve the integrity of the SSI Program design?

- Would claimants and recipients receive better service under SSI?

- Would administrative efficiencies and associated savings be expected as a result of administering a single federal needs-based program for the disabled and elderly?

II. Findings

1. The following chart summarizes the key features of the pension and SSI programs.

Summary Comparison of VA Pension and SSI Programs

STANDARD	VA PENSION PROGRAM	SUPPLEMENTAL SECURITY INCOME PROGRAM
Program Purpose:	Income assistance to needy, nonservice-connected disabled wartime veterans and needy survivors of wartime veterans to afford a reasonable measure of security and dignity.	Basic support to the needy aged, blind and disabled based on nationally uniform eligibility standards and payment levels.
Maximum Benefit for 1996:	$687 per month ($8246 per year). (Single veteran with no income.)	$470 per month ($5640 per year). For individuals living independently, 21 states supplement from $1.70 to $368. (Only 3 states exceed $50 supplements)
COLA:	Annual based on the Consumer Price Index (CPI).	Annual based on the CPI.
Tie to Medical Services:	Automatically entitled to VA health care.	Many states: Medicaid eligibility is automatic.
Disability Standard:*	Unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent and total.	Unable to engage in substantial gainful activity by reason of a medically determinable impairment which can be expected to last for a continuous period of at least 12 months or to end in death.
Age 65:	Disability determination required at any age.	Disability determination required only for those under age 65.
Veteran Status/ Wartime Service:	Must meet definitions for veteran status/wartime service.	None.
Assistance Unit:	Veteran plus added amounts for: Surviving spouse and other dependents.	Individual or couple (150% of individual benefit).
Benefit Computation Period:	Annualized income averages depending on type of income.	Monthly retrospective: income in month two months earlier.

Summary Comparison of VA Pension and SSI Programs (continued)		
STANDARD	**VA PENSION PROGRAM**	**SUPPLEMENTAL SECURITY INCOME PROGRAM**
Income Offsets:	$1 for $1.	Disregard first $20 of any income plus first $65 of earnings; any infrequent or irregular income under $10/month; earnings: $1 of $2; unearned income: $1 of $1.
Income Disregards:	In kind support Legislated list Medical expenses Burial expenses	Legislated list Medical expenses (more limited disregard).
Asset Disregards:	Home Auto Household goods Net worth determinations are non-specific	Home Auto with limits Household goods (with limits) $2000 for individual $3000 for couple
Due Process:	Protections for filing claims & changes in benefit status and appeals.	Similar although may be slightly more limited.
Delivery Points:	58 Regional Offices (Note: Veterans can also file claims at any VA medical center or outpatient clinic.) BVA single location plus traveling members. 800 number service.	1,300 field offices. 132 hearing offices plus traveling judges. 800 number service.
* The Commission is aware of past legislative proposals that would have the VBA and the SSA more closely coordinate their disability decision making and possibly adopt each other's determinations. However, detailed analysis of differences in definitions and their application in the adjudicative processes could not be found. Both agencies have taken the position that the number of cases involved is small, and achieving conformity has not been a priority. Proposals to share medical evidence have not been regarded as effective for either program; claims are allegedly filed at different times for each program, and sharing records would require resources to locate files and copy evidence.		

Source: Veterans' Claims Adjudication Commission

2. To illustrate differences in monthly payment rates between the programs, two examples follow. The SSI benefits are computed without state supplemental benefits, which range, as noted above, from $1.70 to $50 in 18 states and up to $368 in 3 states, for individuals living independently.

VA Pension/SSI Example 1 (Unmarried person)		
EFFECTIVE DATE	**MONTHLY PENSION BENEFIT**	**MONTHLY SSI BENEFIT**
First benefit payable: 2/1/95 No other income	$669	$458
3/1/95: Receives income of: Social Security - ongoing benefit of $400 per month and retroactive benefit of $800.	$203	$0
4/95 to 12/95: For SSI, monthly income does not change in 1995	$203 (unchanged)	$78
12/1/95: For VA benefits, COLA increase of 2.6%; Monthly benefit	$210	$78 (unchanged)
1/1/96: For SSI benefits, COLA increase of 2.6%; Monthly benefit	$210 (unchanged)	$80
In February 1996, individual reports unreimbursed medical expenses for period 2/1/95 to 2/1/96 of $650. *(Note: This is individual's income year for VA benefit purposes.)*	$220 underpayment: Benefit recalculated to $223 per month for period 3/1/95 to 12/1/95 and $230 per month for period 12/1/95 to 3/1/96.	No underpayment: $80 (unchanged)
3/1/96: End of VA's 12 month annualization period for $800 retroactive Social Security payment received.	$277	$80 (unchanged)

Source: Veterans' Claims Adjudication Commission and SSA

(Full computations for these examples are available in the Commission's work papers.)

Pension/SSI Example 2		
EFFECTIVE DATE	**MONTHLY PENSION BENEFIT**	**MONTHLY SSI BENEFIT**
First benefit payable: 1/22/96 for SSI 2/1/96 for VA Income: cash: $300 per month Social Security in kind: $500 per month room and board	$387	$33.34

Source: Veterans' Claims Adjudication Commission and SSA

3. In the course of gathering information, the Commission learned that neither VA nor the SSA keeps data that would identify the number of VA pension claimants and recipients who also receive Social Security benefits. Such data would provide useful information regarding these individuals' interactions with the SSA. Also, VA has made no long-range projections concerning applicant/recipient caseloads for Improved Pension by veterans from more recent periods of wartime service. Further, VA does not isolate the cost of administering its pension program from its other administrative expenses.

Appendix U contains several tables developed by the Commission addressing these areas:

- Table 1. Estimated Veteran Population by Latest Period of Wartime Service—1996 – 2015;
- Table 2. Improved Pension—Veteran Recipients by Period of Wartime Service;
- Table 3a. Projections of Future Veteran Improved Pension Recipients by Period of Service—Fiscal Years 1996 – 2002;
- Table 3b. Projections of Future Survivor Improved Pension Recipients by Period of Service—Fiscal Years 1996 – 2002;
- Table 4a. Projections of Future Veteran Pension Recipients by Period of Service—All Pension Programs;
- Table 4b. Projections of Future Survivor Pension Recipients by Period of Service—All Pension Programs;
- Table 5. Number of SSI Recipients Receiving VA Benefits, by Selected Characteristics; and
- Table 6. Number of SSI Recipients Receiving VA Benefits, by Type of Payment and Payment Amount.

4. The Commission reviewed claims processing timeliness as an indicator of service to both VA pension and SSI customers. VBA reported that as of June 30, 1996, its average processing time for initial claims was 87.4 days from the date of receipt to the date of decision. Following the decision, VBA's computer system issues a decision notice and/or an initial benefit check to the claimant. SSA reported an average processing time for initial claims of 90.9 days from date of receipt to date of decision.

SSA is implementing a redesigned disability claims process which has as an objective the processing of all disability claims within 60 days. In 1992, VBA set a goal of processing all original pension claims within 77 days by fiscal year 1998. VBA reports that it plans to review that goal. Under a business process reengineering proposal that has been prepared and endorsed by the VBA, an average processing time of 24.1 days is projected for initial disability pension claims by FY 2002.

III. Conclusions

1. VA's current pension program generally pays greater benefits than the SSI program. In isolated instances, however, beneficiaries with a high percentage of earned income may receive greater benefits under SSI.

2. Entitlement to VA disability pension establishes entitlement to VA health care. SSI recipients may or may not be entitled to Medicaid depending on other entitlement criteria.

3. If VA pension were to be administered by the SSA, SSI benefit schedules could be adjusted by applying a special supplement for veterans. SSI's entitlement criteria could be revised to incorporate a veteran classification, and an appropriate procedural means of determining veteran status could be devised. However, maintaining the current payment structure of VA's pension program would require extensive new rules for treatment of income, assets, and dependency applicable only to this subset of SSI recipients. The policy and administrative implications of partitioning the SSI program in this way are serious. Doing so could damage program integrity and agency performance. Accordingly, considerable risk is associated with transferring administration of the VA pension program to SSA.

4. There is no evidence to suggest that either organization is clearly superior to the other in terms of the service it provides its customers. The SSA is geographically more accessible than VA, with many more field offices and hearing offices. However, veterans are supported by an extensive network of public and private service organizations that do not have the same working relationships with the SSA that they have with VA. Processing times are currently similar, but SSA is implementing, and VA is considering, process changes designed to achieve significant improvements. SSA's current general service levels may not accurately predict its ability to provide similar service to this subset of claimants.

5. The Commission can evaluate the efficiency of merging VA pension with SSI under the SSA only conceptually at this time. The SSA, which processes almost 3,000,000 SSI and Disability Insurance claims annually and which has over 6,000,000 recipients on its SSI rolls, would not be overwhelmed by volume. VA pensioners number fewer than 800,000. Currently, the two separate programs maintain separate administrative support structures to provide similar, but distinct, benefits. Merging the programs would reduce some administrative duplication. However, if the pension program retained its most distinctive features, administrative complexities could develop to reduce or negate that advantage. Eliminating distinctive features of the pension program, on the other hand, could be regarded as a violation of the public commitment to veterans.

6. VA and SSA apply dissimilar disability criteria to determine basic medical entitlement. As a result, a medical determination by one agency is not applicable to the other, and separate determinations are made for one individual applying for benefits from both.

IV. Recommendations

1. The VBA and SSA should jointly develop data to determine the overlap of claimants and recipients for all benefit programs. Based on this information, the two agencies should seek opportunities for collaboration to provide better service.

2. The VBA and SSA should collaboratively review the pension and SSI disability criteria to seek ways of reducing dissimilarities between them. The ultimate goal of the review would be to produce sufficiently common criteria that a single determination by either agency would resolve medical entitlement under both programs. If enabling legislation would be needed to achieve this ultimate goal, the two agencies should work together to produce a mutually acceptable proposal to the Congress.

   By implementing this recommendation, government's policy toward the disabled needy would become more consistent, and duplicative medical examinations and determinations would become unnecessary. If, upon review and analysis, full implementation is considered inadvisable, the two agencies should consider accepting one another's determinations as interim grounds for initiating payment. SSI's existing provision for "presumptive eligibility" is an example of this kind of approach.

3. The VBA, VHA, and SSA should actively plan and implement technologies for mutually sharing electronic medical evidence for customers of both VA and the SSA.

Section 9 – VA Pension Simplification

Major Findings and Conclusions

- ***Historically, the broad purpose of VA's pension program has been to provide income assistance to needy, disabled and elderly wartime veterans, affording them a measure of security and dignity.***
- ***Veterans who have established eligibility for VA disability pension are also eligible for hospital or outpatient treatment at any VA medical facility.***
- ***To qualify for VA disability pension, a veteran must be unable to secure and follow a substantially gainful occupation by reason of total disability which is likely to be permanent.***
- ***The rules for determining countable family income for VA pension purposes are complex. VA's procedures (M21-1, part IV, chapter 16) for computing countable family income and determining net worth cover 120 pages.***
- ***Performing income computations to determine pension entitlement is complex and time consuming.***
- ***Developing and verifying claimed medical expenses, and adjusting pension payments on the basis of those expenses, are very labor intensive activities. VA can verify income reports through the use of computer matching programs; however, there is no similarly automated way to accurately verify medical expenses claimed by VA pension claimants.***
- ***Currently, for every one nonservice-connected pension beneficiary on VA's pension rolls, there are approximately three service-connected compensation recipients.***
- ***In FY 1995, 580 FTEE resources were used to maintain recipient entitlement accounts in the $2.2 billion pension programs. In contrast, only 301 FTEE resources were used to maintain entitlement accounts in the $14.7 billion compensation programs that year.***

Major Recommendations

- ***Congress should amend Title 38, United States Code, to clearly state the purpose of the veterans' pension program. With its purpose explicitly described, considerations about the future role and administration of veterans' pension in the landscape of social programs serving needy disabled persons can be made in an informed and productive manner.***
- ***The Commission embraces in concept pension simplification. The Commission believes that simplifying VA's pension program could reduce confusion and burdensome reporting requirements for veterans. It could also lead to improved administrative efficiency by eliminating or reducing some existing processing requirements.***

I. Background

By all accounts, VA's Improved Pension program is administratively complex. This assessment was reinforced by information developed for the preceding analysis comparing VA pension and the SSA's

Supplemental Security Income program. Recognizing the risks and obstacles associated with trying to transfer the pension program to the SSA, and acknowledging that it could not conclusively recommend doing so, the Commission chose to explore the possibility of simplifying the program.

Our Nation has traditionally acknowledged a special obligation to veterans who served during wartime. Pension programs to assist needy disabled veterans and their survivors represent one way of discharging this obligation. Appendix V describes VA's pension programs, their historical development, and provides noteworthy statistical data. Appendix W describes eligibility determinations for PL 95-588 (Improved) pension.

The Commission based its findings, conclusions, and recommendations in this section on the following:

- program and workload data contained in Appendices V and W;
- the statute and regulations: Title 38, United States Code (38 USC), and Title 38, Code of Federal Regulations (38 CFR);
- relevant sections of VA's procedural manual M21-1;
- discussions with VBA's Compensation and Pension (C&P) Service;
- information from VBA's C&P Business Process Reengineering (BPR) team; and
- discussions with VBA's Adjudication Officer (AO) Advisory Committee.[215]

The C&P BPR team has identified pension simplification as a major component of its process redesign plan.[216] Certain issues mentioned in that group's report are discussed below. The BPR team has published and analysis of the potential costs and benefits associated with its pension simplification proposals.

In addition to being administratively complex, VA's pension program is confusing and burdensome for pension recipients, predominantly elderly veterans or widows. Simplifying the pension program could reduce that confusion and burden, especially with respect to reporting and documenting income, net worth and unreimbursed medical expenses.

II. Findings and Conclusions

1. **Program Purpose.** Historically, the broad purpose of VA's pension program has been to provide income assistance to needy, disabled and elderly wartime veterans, affording them a measure of security and dignity. Features of the various pension programs administered over the years have fluctuated considerably, but since World War II, the program has stabilized and its features have evolved within more focused conceptual boundaries.

   Today, the Improved Pension program provides monetary benefits to needy wartime veterans who are seriously disabled by conditions unrelated to their military service and to needy survivors of wartime veterans. While other social programs have developed to serve the general population of needy

[215] The AO Advisory Committee is composed of Adjudication Officers from seven regional offices. The committee considers issues affecting Adjudication Division activities, including policy, operation, and procedures. Members serve on the committee for three years.

[216] Veterans Benefits Administration, *Reengineering Claims Processing: A Case for Change*, August 1996, Ch. 4, pp. 6-8.

disabled persons, no rationale has been articulated for maintaining a separate such program for veterans, even though their disabilities are considered unrelated to their military service.

2. **Basic Benefit.** Effective December 1, 1995, the basic VA pension benefit is $687 per month for a single veteran with no dependents and no countable income. The basic benefit represents an income "floor" for veteran pensioners. VA pays a monthly benefit equal to the difference between $687 and the veteran's countable income from other sources. The income floor is higher for veterans who:
   - have dependents,
   - are housebound or in need of special medical care, or
   - served during the Mexican Border Period or World War I.
3. **Medical Services.** Veterans who have established eligibility for VA disability pension are also eligible for hospital or outpatient treatment at any VA medical facility.
4. **Disability Standard.** To qualify for VA disability pension, a veteran must be unable to secure and follow a substantially gainful occupation by reason of *total* disability which is likely to be *permanent*. Before October 31, 1990, when Public Law 101-508 eliminated the presumption, veterans age 65 and over were presumed by law to be permanently and totally disabled for VA pension purposes. All claimants, regardless of age,[217] must now meet the disability standard to receive pension.
5. **Basic Eligibility: Veteran Status and Wartime Service.** To establish basic eligibility for VA pension, a claimant must be a veteran, as defined in 38 C.F.R. §3.1(d), and must have served a minimum of 90 consecutive days active duty, at least one day of which was during a period of war.[218]
6. **Need Determination and Income Rules.** VA's current pension program evaluates need on the basis of income and assets available to the claimant's basic family unit. In broad terms, countable family income is "annualized" by extrapolating recurring income over a 12-month period and applying any nonrecurring income for 12 months from the date the claimant received it. Any change in family income requires reannualization for another 12-month period. In principle, each additional dollar of income during the year reduces pension entitlement by one dollar for that year. The statute (38 USC §1503) excludes many forms of income from consideration for pension purposes. Appendix V, paragraph J, discusses income exclusions. Even very small income changes require award adjustments and formal notifications which beneficiaries may appeal. Current law requires VA to notify a beneficiary in advance of any reduction of benefits, unless the information leading to the reduction was received directly from the beneficiary.
7. **Complex Income Issues.** The rules for determining countable family income for VA pension purposes are complex. VA's procedures (contained in M21-1, part IV, chapter 16) for computing countable family income and determining net worth cover 120 pages. Appendix W contains a flow chart describing the many steps involved in determining eligibility.
8. **Income Issues are Time Consuming.** Performing income computations to determine pension entitlement is complex and time consuming. The following are among the most time consuming issues. The C&P BPR team and the AO Advisory Committee are evaluating these issues with regard to their potential for pension simplification.

[217] Unless over age 65 *and* shown to be a patient in a nursing home.

[218] Certain additional combinations of qualifying service are described in 38 USC §1521(j).

- Unreimbursed medical expenses in excess of five percent of the applicable maximum income may be excluded from countable income. Developing and verifying claimed medical expenses, and adjusting pension payments on the basis of those expenses, are very labor intensive activities. VA can verify income reports through the use of computer matching programs; however, there is no similarly automated way to accurately verify medical expenses claimed by VA pension claimants.

  The General Accounting Office (GAO) recommended that VA establish procedures to systematically verify the accuracy of medical expenses claimed by pension beneficiaries.[219] In the past, VA did not routinely verify claimed medical expenses. VA now selects a random sample of beneficiaries each year and requests documentary proof of any claimed medical expense. This is a very time consuming review.

- Under current law and regulation, a veteran's pension (or compensation) may be apportioned by VA to an estranged (but not divorced) spouse. The criteria for making such an apportionment include financial status of both the veteran and the spouse and the extent to which the veteran is shown to be reasonably contributing to the spouse's support. Information received from the two parties often contains discrepancies that require resolution. Gathering and evaluating this kind of information is time consuming.

- The income of a child in the custody of a beneficiary is considered countable family income unless it is not "reasonably available" to meet the expenses of the family unit and counting the child's income would not "work a hardship" on the veteran. These issues, as they are currently administered by VA, are often factually complex.

9. **Eligibility Verification Reports (EVRs).** Until recently, statute has required that VA obtain from each pension recipient an annual income and dependency report to confirm continuing eligibility for benefits.

- Public Law 103-271, enacted in 1994, gave the Secretary discretion in requiring annual EVRs. VBA initiated this legislation because its experience showed that some categories of beneficiaries had predictable incomes. Under the circumstances, sending EVRs to these groups was not cost effective.

- As a result of P.L. 103-271, the VBA eliminated annual EVRs for most beneficiaries who have no income or only Social Security income.

- For several years prior to 1995, the VBA staggered this activity by sending EVRs to a different one-twelfth of the pension population each month. As of the end of 1995, however, the VBA has converted the staggered reporting periods to a calendar year reporting period for all beneficiaries required to file an EVR.

- Beneficiaries not required to file an EVR receive letters from VA each year informing them that they must report any income or dependency changes.

- Beneficiaries who are asked to do so but do not return properly completed EVRs may have their pensions suspended or terminated.

- In 1994, EVRs accounted for more than 15 percent of the C&P workload.

- VBA did not send EVRs during 1995 because it was revising its regulations governing EVRs based on the new authority given the Secretary in P.L. 103-271.

[219] *GAO/HRD-91-94 VA Pension: Unreimbursed Medical Expenses*, July 1991.

- During calendar year 1996 VBA sent letters to approximately 250,000 beneficiaries requesting completion and return of enclosed EVRs.
- As of June 30, 1996, EVRs accounted for nine percent of the completed C&P workload.

10. **Income Matching Programs.** VA regularly receives income information concerning VA pensioners from several Federal agencies, and that information is electronically compared with VA's data. Records in which VA's information contradicts that of the other agency are identified for contact with the recipients to resolve the discrepancies and, if necessary, adjust monthly pension amounts to conform with the new information. VA has six income matching agreements. They are:

- Social Security Verification Match,

- Civil Service Verification Project,

- Railroad Retirement Verification Project,

- Department of Labor Black Lung Verification Project,

- Social Security Administration Black Lung Verification Project, and

- Internal Revenue Service Income Verification Match.

11. **VA Nonservice-Connected Pension Beneficiaries and Pension Workload.** The following subparagraphs highlight statistical data contained in Appendix V.

- Currently, for every *one* nonservice-connected pension beneficiary on VA's pension rolls, there are approximately *three* service-connected compensation recipients.

- During FY 1994, VBA regional office Adjudication personnel completed 3,417,605 measurable compensation and pension work actions. Pension claims and pension-related issues comprised 52 percent of the total.

- In FY 1995, approximately 800,000 fewer pension-related work issues were received because EVRs were not sent that year.

- During FY 1995, VBA regional office Adjudication personnel completed 2,512,858 measurable compensation and pension work actions. Pension claims and other pension-related actions comprised 38 percent of the total.

- During FY 1996, the pension-related workload is expected to increase, because about 250,000 EVRs will be sent to beneficiaries. Pension claims and pension-related actions comprised 46 percent of the measurable compensation and pension work actions completed as of June 30, 1996.

- During FY 1994, Adjudication staffs completed "pension-certain"[220] work actions that supported 1,351 FTEE (see Appendix V, Tables 15 and 18). Based on known work completed, FTEE resources were applied to specific pension issues as follows:

[220] "Pension-certain" means that the work actions described here definitely related to pension issues.

Because of the way VBA work measurements have developed, some work actions (*e.g.*, dependency

- 143 FTEE for original pension claims (live and death);
- 238 FTEE for repeat pension claims;
- 853 FTEE for pension maintenance[221] actions; and
- 117 FTEE for other pension actions.

- With the pension workload down in FY 1995 because EVRs were not sent, Adjudication staffs completed pension-certain work actions that supported 1,000 FTEE (see Appendix V, Tables 16 and 18). Based on known work completed, FTEE resources were applied to specific pension issues as follows:
  - 136 FTEE for original pension claims (live and death);
  - 164 FTEE for repeat pension claims;
  - 580 FTEE for pension maintenance actions; and
  - 120 FTEE for other pension actions.
- Because VA expects to send approximately 250,000 EVRs during FY 1996, FTEE resources needed to complete the pension-related workload are expected to increase over FY 1995 FTEE. However, fewer should be needed than were used in FY 1994 FTEE. As of June 30, 1996, Adjudication staff completed pension-certain work actions that supported 854 FTEE (see Appendix V, Tables 17 and 18). Based on known work completed, FTEE resources were applied to specific pension issues as follows:
  - 92 FTEE for original pension claims (live and death);
  - 103 FTEE for repeat pension claims;
  - 571 FTEE for pension maintenance actions; and
  - 88 FTEE for other pension actions.
- In FY 1995, 580 FTEE resources were used to maintain recipient entitlement accounts in the $2.2 billion pension programs (see Appendix V, Tables 16 and 18). In contrast, only 301 FTEE resources were used to maintain entitlement accounts in the $14.7 billion compensation programs that year.

changes) cannot currently be ascribed with certainty to either compensation or pension, even though they definitely pertain to one or the other.

[221] Generally, the term "maintenance" refers to work required by current law or regulation to confirm a beneficiary's continuing entitlement. These actions are initiated by VA and not by the beneficiary. Pension maintenance typically involves updating income, employment, and/or dependency information, reductions due to hospitalization, other reviews, and due process notifications related to these actions.

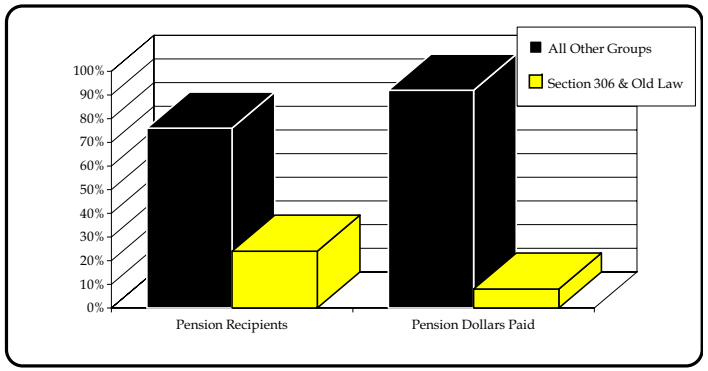
- In FY 1994, 853 FTEE resources were used to maintain pension accounts, and 354 FTEE resources were used to maintain compensation accounts (see Appendix V, Tables 15 and 18).
- As of June 30, 1996, 571 FTEE resources were used to maintain pension accounts, and 199 FTEE resources were used to maintain compensation accounts (see Appendix V, Tables 17 and 18).

12. Section 306 and Old Law Pension. The Section 306 and Old Law pension programs are "protected."[222] The last date a beneficiary could establish entitlement for Old Law pension was June 30, 1960. The last date a beneficiary could establish entitlement for Section 306 pension was December 31, 1978. Unless they elect Improved Pension,[223] pensioners entitled under protected programs continue to receive benefits at the "protected" rate as long as their dependency status does not change and/or incomes do not exceed the adjusted income limitation. The income limitation increases annually based on changes in the Consumer Price Index (CPI).

- In rare instances (*e.g.*, loss of dependent), entitlement changes require that VA reduce or stop a recipient's Section 306 or Old Law pension. However, most current Section 306 pension recipients are widows without children, and most recipients under both laws will continue to receive "protected" rates for life. VA sent approximately 112,000 EVRs to Section 306 and Old Law pension recipients in 1996. Those with income other than Social Security (*e.g.*, interest) must return their EVRs within 60 days to prevent suspension of payments. VA also sent 106,000 letters in 1996 reminding Section 306 and Old Law pension recipients of their obligation to report changes in entitlement factors.
- VA regional office personnel review these Section 306 and Old Law EVRs and take appropriate action. However, the recipients are quite elderly, have received pension benefits since 1978 or earlier, and have fixed incomes, so the majority of EVRs from this group typically do not trigger a rate change. Payments to this group represent only eight percent of the total pension dollars paid, but they are 24 percent of all pension recipients.

[222] Entitlement under these programs is restricted to beneficiaries who have been continuously entitled from the dates the programs were discontinued until the present. Payment amounts are also protected, meaning that beneficiaries continue to receive benefits at the same rate (or lower, in cases of dependency changes, but not higher) as was payable at the time the programs were discontinued.

[223] Although Improved Pension generally provides greater benefits, income and net worth rule variations between the programs can make it advantageous for some beneficiaries to preserve entitlement under one of the protected programs, particularly since an election of Improved Pension is irrevocable. For example, a spouse's earned income is not counted in determining entitlement under Section 306. Veterans whose spouses have substantial earned income are often entitled to a greater monthly payment under the protected Section 306 pension program.



III. Recommendations

1. Congress should amend Title 38, United States Code, to clearly state the purpose of the veterans pension program. With its purpose explicitly described, considerations about the future role and administration of veterans pension in the landscape of social programs serving needy disabled persons can be made in an informed and productive manner. A statutory purpose statement of this nature would be consistent with statements of purpose in other sections, for example, the purpose clauses in the education benefit chapters of Title 38, USC.

2. The Commission embraces in concept pension simplification. The Commission believes that simplifying VA's pension program could reduce confusion and burdensome reporting requirements for veterans. It could also lead to improved administrative efficiency by eliminating or reducing some existing processing requirements. The Commission recognizes that these requirements were set in place to achieve certain program objectives. However, administering them has complicated the process to the point that their net effect may no longer be positive. The Commission recommends Congress and VA consider the following measures to achieve a simpler program.

(a) Reevaluate the program savings against the administrative cost of eliminating the statutory presumption of permanent and total disability for pension purposes at age 65. If a large majority of applicants over age 65 are found eligible after the additional, currently required steps involved in scheduling a VA examination, preparing an examination report, and formally evaluating disability on that basis, those steps may not be cost effective. Moreover, they would, under those circumstances, represent impediments to prompt service for all veterans in the system.

Conceding (or presuming) permanent and total disability at *some* age is probably appropriate. If the cost/savings equation is not favorable for a presumption at age 65, perhaps it is for age 68 or 70. Restoring a presumption of permanent and total disability at age 65 (or some other age) would conserve for other legitimate uses the substantial administrative resources now consumed to screen from the program that population of needy veterans over age 65 who *could* work but choose not to do so. VA and Congress need to know how widespread this kind of abuse is among aged veterans and to determine whether the medical screen is either necessary or effective in light of complementary program tools designed to prevent abuse.

Pension income limitations represent another, perhaps more effective, screen against non-disabled veterans exploiting the program. It seems unlikely that the able-bodied would accept a relatively small VA pension if they could earn more by working. Restoring presumption of permanent and total disability at a certain age would allow VA to process pension from that population without examination or rating action.

(b) As recommended in the VA pension/SSI analysis in the preceding section, the VBA and SSA should collaboratively review the pension and SSI disability criteria to seek ways of reducing dissimilarities between them. The ultimate goal of the review would be to produce sufficiently common criteria that a single determination by either agency would resolve medical entitlement under both programs. If enabling legislation would be needed to achieve the ultimate goal, the two agencies should work together to produce a mutually acceptable proposal to the Congress.

By implementing this recommendation, government's policy toward needy disabled persons would become more consistent, and duplicative medical examinations and determinations would become unnecessary. If, upon review and analysis, full implementation is considered inadvisable, the two agencies should consider accepting one another's determinations as interim grounds for initiating payment. SSI's existing provision for "presumptive eligibility" is an example of this kind of approach.

(c) Evaluate the extent to which bracketing income at, for instance, $100 increments would reduce the incidence of maintenance actions, which currently must be performed to account for every one dollar change in countable family income.

(d) Consider eliminating individualized medical expense deductions other than nursing home care, or permit individualized deductions for medical expenses only for beneficiaries with "catastrophic" medical expenses (*e.g.*, in excess of $6000 per year). Instead, consider building a flat amount for medical expenses into the rate of payment.

Simplifying this aspect of the pension program has implications for recipients as well as for administrative and program costs. Standardizing medical deductions by building a flat amount into the rates could benefit those who pay low medical costs at the expense of those who pay high, but not catastrophic, ones. Currently the distribution of medical expenses among pension recipients is not known. Such information is essential to evaluate this approach to medical expense deductions. Besides helping assess the effects on recipients and the expected program and administrative cost implications, the data could help suggest the most effective policy solution to this labor consuming activity.

(e) Consider amending the statute to provide that a spouse who resides apart from a veteran would not be considered a dependent for pension purposes, unless one or both of the spouses are hospitalized or patients in nursing homes. Providing for the support of the estranged spouse of a veteran is arguably (particularly in today's environment of broad social support networks) an enterprise in which VA has no legitimate role. Moreover, VA currently must carry out a complicated and time consuming process of requesting and evaluating income and support information from both parties. The administrative cost of performing this questionable role is disproportionately high.

(f) Consider eliminating the "child hardship" exclusion in the current pension program and developing a standard rule on availability of children's income.

(g) Consider "grandfathering" Section 306 and Old Law pension recipients so they would receive protected rates of payment for life regardless of entitlement factors. This could result in the following savings:

(1) mailing and production costs associated with sending over 100,000 EVRs to Section 306 and Old Law pension recipients;

(2) at minimum, 12 FTEE that would process these EVRs each year at VA regional offices (assuming one-step EVR processing [end product 050] with no adjudicator review and using 1996 figures for EVRs sent);

(3) mailing and production costs associated with the annual reminder letters which are currently sent to over 100,000 recipients;

(4) costs associated with maintaining four EVR forms (the forms would be eliminated);

(5) cost of responding to numerous benefit related inquiries from Section 306 or Old Law pension recipients would be reduced or eliminated.

There would be some program cost additions assumed to be associated with this approach. These can be expressed as program benefits paid out on those awards that would otherwise have been terminated upon EVR review multiplied by the life expectancy of the recipients whose awards were so terminated. Data on the number of protected pension awards terminated on EVR review is not routinely available and would have to be developed for analysis.

(h) VBA does not require annual EVRs for beneficiaries who have *no income* or only *Social Security income*. VBA should consider revising its regulations to eliminate annual EVRs for beneficiaries who have no income or whose only income consists of any of the following:

- Social Security Benefits;
- Civil Service Annuity;
- Railroad Retirement Benefits;
- Black Lung Benefits; and/or
- any combination of these.

Existing VBA income matching programs with the Federal agencies that administer these programs could be used instead of annual EVRs to verify beneficiaries' incomes.

VII. THE MEDIUM: INFORMATION RESOURCES MANAGEMENT

Major Findings and Conclusions

1. ***The Commission considers VA's planned structure for integrating information technology management activities under the CIO promising, but until the BVA is represented on the Council it is incomplete. Also, the structure has not been in place for a sufficient period of time to have had any substantial effect.***

2. ***There is no formal, joint VBA and BVA strategic and business planning process for identifying specific goals and improvements to be addressed through automation.***

3. ***The VBA and BVA tracking and processing systems are not integrated. Claimants who appeal a VBA decision must deal with two separate organizations, rather than one VA.***

4. ***Major software development that supports claims processing is not expected to occur before 1998.***

5. ***The VBA now recognizes the high risk associated with the required Year 2000 changes and has begun to take steps to address these risks.***

6. ***The BVA has collaborated with VBA regional offices to develop interactive video-teleconferencing technology for BVA hearings on appeals and for training sessions between the VBA, Board members, and regional office adjudication staff.***

7. ***Although the CIO has acted to integrate planning and budget development, the Commission expects the action to have limited effectiveness absent a VA corporate strategic and business planning infrastructure.***

8. ***The Commission anticipates that extending access by VA regional offices to the BVA's Veterans Appeals Control and Locator System (VACOLS) will achieve considerable information advantages for both organizations.***

9. ***The Commission regards the VBA's rewriting of the C&P program software as a critical activity, since it addresses the Year 2000 issue, which must be corrected before 1999. Also, it represents the foundation for future improvements in claims processing as well as all future activities.***

10. ***The "to be" model developed by the BPR team for C&P claims processing, as approved by VBA leadership, will drive strategy development for future software and hardware decisions. This model must be approved and "locked in concrete" as soon as possible with the support of both the Agency and those outside agencies that provide monitoring and oversight activities for the VBA.***

Major Recommendations

1. ***The Secretary of Veterans Affairs should actively support and encourage the efforts of the Department's CIO to execute the CIO responsibilities and authorities. The Board of Veterans'***

Appeals should be a member of the CIO Council because of its key involvement in veterans claims processing.

2. ***The General Accounting Office should apprise Congress quarterly of VA's progress in implementing the new C&P claims processing software that includes the Year 2000 solutions. Accountability for completion of each major milestone should be clearly established. This is necessary because of the complexities and risks involved with this initiative. Since the Department plans to track the implementation monthly, information should be readily available.***

3. ***VA executives should expeditiously finalize a definitive description of the "to be" model so that appropriate planning for future software and hardware decisions can begin. The Board of Veterans' Appeals should be formally and actively included in the VBA business process reengineering efforts because the Board's function is an integral part of the claims process.***

4. ***BVA initiatives regarding VACOLS and teleconferencing with the VBA should be supported and proceeded as quickly as possible.***

I. Background

The significance of information resources management and technology to the administration of veterans' benefits can hardly be overstated. Computers represent the medium in which virtually all claims processing and workload management occurs. They are interwoven into the claims processing system. Human decision makers are responsible for complex judgments—which they record on computer to support automated processing—and computers are relied upon to perform various routine operations, which they do faster and more accurately than people can. Efforts to integrate computer technology into business operations are not unique to VA. Modern, data-intensive work processes are designed (some more effectively than others) to exploit the processing capacity of information technology. However, the universal experience of organizations has been that using computers does *not* improve productivity until, and unless, work processes are redesigned in accordance with strategic and business plans.

The Commission's Preliminary Findings and Conclusions[224] regarding the effect of information technology on the adjudication and appellate processes portrayed a system with limited technological support for the full range of claims processing activities and, in the Veterans Benefits Administration (VBA) setting, unassertive management control. In the Board of Veterans' Appeals (BVA), technology was found to have been successfully deployed to support overall caseload management and individual case control. The Commission found little oversight and integration of IT by the Department. A lack of strategic and business planning made it difficult to even assess what activities were underway to support the C&P programs in the VBA.

This section updates the Preliminary Findings and Conclusions. Information in this section was developed from interviews with VA senior management officials, reference material they provided to the Commission, and the FY 1997 Department of Veterans Affairs Budget Submission.

Since publication of the Preliminary Report in February, the Congress passed and the President enacted the Information Technology Management Reform Act of 1996. An important provision of that Act requires each Federal agency to appoint a Chief Information Officer (CIO). The CIO function was designed to clarify accountability for, and improve coordination of, agency information resources management activities. A key CIO responsibility is to promote effective agency operations by implementing budget-linked planning and performance-based management of information systems.
VA's CIO Designee, the Assistant Secretary for Management, has implemented a Departmental CIO program. The program requires each of the two Administrations[225] to organize its information resources activities under a CIO. At the Department level, a CIO Council[226] is to evaluate capital investments in information technology with the objective of improving corporate business processes, eliminating duplication, and unifying the Department's information management activities.

VA expects the CIO program to provide independent, objective, and authoritative coordination of program (business) and information technology missions. VA has assigned CIOs responsibility for integrating information technology and business activities. Success of these integration efforts is to be evaluated

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[224] The Commission's report, *Preliminary Findings and Conclusions*, was transmitted to the Chairmen, Ranking Members, and Members of the House and Senate Committees on Veterans' Affairs and to the Secretary of Veterans Affairs on February 7, 1996.

[225] The Veterans Benefits Administration and the Veterans Health Administration.

[226] The Council is chaired by the VBA CIO. It is composed of the Departmental CIO, the VHA CIO, and representatives of the National Cemetery System, the Assistant Secretary for Policy and Planning, and the Deputy Assistant Secretary for IRM.

according to outcome-based performance measures. VA has developed an initiative called "Directive 6000," which defines an integrated VA IRM framework for planning, budgeting, acquisition, development, deployment, and review of VA information technology and systems, whether developed in-house or furnished in whole or in part by outside sources. The framework includes requirements for risk assessment, performance measurement, and identification of critical decision points. Directive 6000 is in the internal concurrence stage and is expected to be implemented. Successful implementation of Directive 6000 will depend on VA's success in deploying a meaningful strategic management process.

In addition to establishing the CIO Council, the CIO reestablished the IRM Steering Committee. Previously, this Committee had been composed of the senior information technology officials from each VA organization. It served primarily as a forum for information exchange. The Committee did not meet during the year-long development of the CIO program. During this period, the CIO assessed the Committee's value to VA's information technology activities. The Committee is now chartered as an auxiliary body of the CIO Council. Its purpose is to foster discussions among VA's senior IRM managers and to undertake initiatives assigned by the Council. This new role for the Steering Committee was approved by the CIO Council in late summer 1996. While promising, this activity has proceeded very slowly.

II. Findings

General Management of Information Technology.

1. VA has produced a viable structure for integrating information technology management activities under the CIO, except that the BVA is not on the CIO Council.

2. The Department CIO has acted to coordinate IT planning with the budget cycle.

3. There is no formal, joint VBA and BVA strategic and business planning process for identifying specific goals and improvements to be addressed through automation. Department officials do not currently regard the BVA as a distinct information technology management entity and therefore have no plans to integrate it into the IT planning and steering activity. Instead, officials rely on the VBA to represent the interests of the BVA. BVA officials, however, do not consider this approach effective.

4. VBA and BVA tracking and processing systems are not integrated. Claimants who appeal a VBA decision must deal with two separate organizations, rather than one VA. Preliminary steps have been initiated by the BVA toward providing the VBA access to the BVA's VACOLS[227] system to track appeals. This process has been tested at the St. Petersburg Regional Office and was scheduled to be deployed to four additional sites in October 1996. The VACOLS system will become the framework for the VBA and BVA to establish a unified information system for appeals. A memorandum of understanding for this joint development effort has been drafted, and the system is projected for full implementation in late 1997 or early 1998.

5. VA-wide computer needs comprise an array of systems and applications defined by benefit program and systems architecture requirements. The integration of VA systems is to be achieved through systems interface and the exchange of data between systems. An initial effort to employ this strategy is the Master Veteran Record (MVR) project. MVR will provide gateways to allow the exchange of critical veteran information across systems based in the VHA, VBA, NCS, BVA, and others to ensure current, consistent and accurate information is available. Installation is scheduled for 1998. However, this project has moved very slowly. Also, measurable performance objectives have not been established.

[227] Veterans Appeals Control and Locator System (VACOLS).

6. The VBA began a C&P Business Process Reengineering (BPR) project in October 1995. A BPR project team published a report in August 1996—and released to the Commission in late September—entitled "Reengineering Claims Processing: A Case for Change." This report describes and recommends a fundamental redesign of the way C&P benefits are delivered. As part of the report, the BPR team developed a future claims process "vision." This vision, or "to be" model, is expected to guide all future software development within the VBA. The vision has been approved by VBA leadership. The Secretary endorsed full-scale pursuit of the BPR initiative following a briefing on September 25, 1996. However, the BVA has not yet participated in this effort in any meaningful way.

7. The Commission considers its findings in this reporting area to be validated by GAO reports of December 1993 and September 1995 and by the CNA Corporation's Organizational Assessment of VBA Modernization Activities study dated March 31, 1995.

Hardware and Software.

8. Major software development that supports claims processing is not expected to occur before 1998. The VBA plans to concentrate technological support resources through 1998 on rewriting the C&P program software to provide a more stable processing environment. The VBA has established detailed timetables for this effort, which is to be monitored by the Department CIO through monthly reports to the IRM Oversight organization and quarterly briefings to the CIO. Maintaining current systems service and productivity during this time will also be a priority. The new software is intended to create an "open system"[228] that will allow subsequent improvements to be developed more quickly than in the past. This work will also include accommodation of the Year 2000 processing problem.[229] Apart from this predominant project, the VBA anticipates developing only small applications for stand-alone operation on regional office computers.

9. The VBA now recognizes the high risk associated with the required Year 2000 changes and has begun to take steps to address these risks. The VBA CIO has sent a detailed Year 2000 information package to each regional office. The package included copies of the VBA's Year 2000 project plan, contingency plans, a sample vendor letter, prescribed contract language, and the procedures that must be accomplished at each level of the organization to minimize the risk to the payment systems. A Year 2000 project team has been formed that has been reported to be working closely with the Department project leader. The Hines Benefits Delivery Center (BDC) has started the process of updating all system and program data to accommodate these changes.

10. The VBA planned two software applications for FY 1996, both with performance measures, that could help C&P claims processing. The Control of Veterans Records (COVERS) application, an intra- and inter-Regional Office bar-code tracking system for claims folders and associated mail, was deployed

[228] An "open system" is defined in the VBA's Stage I Modernization Request for Proposal as "a system whose characteristics comply with readily available standards and that therefore can be connected to other systems that comply with these standards. (ANSI, 1988a)."

[229] Many older computer programs supporting large client or other data bases, in both government and private industry, accommodate only two digits to identify the year to which associated information applies (*e.g.,* 1998 would be abbreviated "98"). At the time the code was written, it was considered reasonable to conserve system memory by programming the computer to assign a 19th or 20th century prefix based on context. However, with the approach of the year 2000, two digit dates will return erroneous data with potentially dire consequences. The year 2000 problem is a major project within both VA and the VBA.

nationwide in June 1996. The Claims Processing System (CPS) application, which is designed to automate and standardize VA's means of gathering evidence in support of claims, is now scheduled to be deployed in 1997. CPS was originally viewed as an interim "throw away" system to meet immediate needs prior to the implementation of the modernized C&P payment system; however, this is no longer the case. CPS will continue to operate when the new C&P payment system is deployed. Performance measures have been developed for COVERS[230] and are being developed for CPS. While these are rudimentary and do not address ultimate claims processing outcomes, they are a good first step. Performance measures are planned for all future applications.

11. The VBA has purchased over 1,800 new personal computers (PCs) in FY 1996. Deployment of this equipment began in September 1996. In addition, 4,000 PC upgrades[231] are scheduled for deployment by December 31, 1996. The VBA expects to achieve an equipment to personnel ratio of 1:1 with the installation of the additional hardware, which is also intended to complete VBA's move out of the proprietary Wang environment. This new equipment will also allow all regional office employees to fully use both the recently deployed interim and transitional applications—COVERS, PC Generated Letters (PCGL), and Rating Board Automation (RBA)—and those still under development, such as (CPS). The VBA has not projected measurable productivity improvements associated with these purchases.

12. The BVA has collaborated with VBA regional offices to develop interactive video-teleconferencing technology for BVA hearings on appeals and for training sessions between the VBA, Board members, and regional office adjudication staff. An initial pilot is underway in Iowa to hold two days of video-teleconferencing sessions per month. Line employees from both the BVA and the Des Moines regional office expressed enthusiasm about the project. Additional applications are envisioned by the regional office staff, particularly in terms of working with medical centers. Line employees in Nashville also commented favorably about a pilot there using VHA equipment. The VBA expects a third permanent installation in St. Petersburg, which generates the most appeals nationally, to be in place soon. A cost benefit analysis for future investments was completed in September 1996, providing the basis for installing 12 additional sites by March 1997.

III. Conclusions

1. The Commission considers VA's planned structure for integrating information technology management activities under the CIO promising, but until the BVA is represented on the Council it is incomplete. Also, the structure has not been in place for a sufficient period of time to have had any substantial effect.

2. Although the CIO has acted to integrate planning and budget development, the Commission expects the action to have limited effectiveness absent a VA corporate strategic and business planning infrastructure.

3. The Commission anticipates that extending access by VA regional offices to the BVA's VACOLS system will achieve considerable information advantages for both organizations. This initiative should help to manage the workload between the regional offices and the BVA by providing accurate information to the user faster and at less labor cost; however these advantages have not been quantified at this time.

[230] VBA's proposed performance goals and measures for the COVERS application are contained in Appendix X.

[231] PCs are "upgraded" by installing improved components in units that are already in use.

4. The Department expects the C&P programs to register some increased efficiencies upon implementation of the Master Veteran Record, projected for 1998. The expected benefits include timely notices of change of address and death. However, since this project is under the lead of the CIO, it is disappointing that VA has not quantified the expected improvements.

5. The interactive video-teleconferencing pilot in Iowa appears to conserve travel time and could improve productivity for Board officials, who can do other work between hearings or when claimants fail to appear. It also appears to have significant potential to improve VBA and BVA communications and to reduce remands through improved quality.
6. The VBA's five Transitional Applications,[232] while improving the processing of individual cases, have not directly affected the overall claims process.

7. The Commission regards the VBA's rewriting of the C&P program software as a critical activity, since it addresses the Year 2000 issue, which must be corrected before 1999. Also, it represents the foundation for future improvements in claims processing as well as all future activities.

8. The "to be" model developed by the BPR team for C&P claims processing, as approved by VBA leadership, will drive strategy development for future software and hardware decisions. This model must be approved and "locked in concrete" as soon as possible with the support of both the Agency and those outside agencies that provide monitoring and oversight activities for the VBA.

IV. Recommendations

1. The Secretary of Veterans Affairs should actively support and encourage the efforts of the Department's Chief Information Officer (CIO) to execute the CIO responsibilities and authorities. The Board of Veterans' Appeals should be a member of the CIO Council because of its key involvement in veterans claims processing,

2. The General Accounting Office should apprise Congress quarterly of VA's progress in implementing the new C&P claims processing software that includes the Year 2000 solutions. Accountability for completion of each major milestone should be clearly established. This is necessary because of the complexities and risks involved with this initiative. Since the Department plans to track the implementation monthly, information should be readily available.

3. VA executives should expeditiously finalize a definitive description of the "to be" model so that appropriate planning for future software and hardware decisions can begin. The Board of Veterans' Appeals should be formally and actively included in the VBA business process reengineering efforts because the Board's function is an integral part of the claims process.

4. The BVA initiatives regarding VACOLS and teleconferencing with the VBA should be supported and proceeded as quickly as possible. Performance measures should be established and tracked for these initiatives.

[232] The VBA's five Transitional Applications are: VBC Advisor, Automated Medical Information Exchange (AMIE), Automated Reference Materials System (ARMS), PC Generated Letters (PCGL), and Rating Board Automation (RBA). COVERS is also reported as a transitional application in some management reports.

VIII. Accountability: Effectiveness of Work Performance Standards, and Quality Control and Assurance

Major Findings and Conclusions

1. ***Both the VBA and BVA have improved their planning and performance measurement since the Commission began its review of claims and appellate processing in the spring of 1995. Both will submit their FY 1998 resource requests in the form of business plans that will include goals and objectives with specific performance measures. While encouraged by the progress each has made, the Commission recognizes that this is a long-term effort that may take several budget cycles to complete.***

2. ***The level of performance varies widely among regional offices. Regional offices with goals and objectives that directly support national program goals have been more successful in achieving national goals than other regional offices.***

3. ***The VBA established five-year claims processing timeliness goals in 1993 and implemented numerous initiatives to improve timeliness in claims processing. Interim timeliness goals have been met.***

4. ***The VBA's current Quality Control and Quality Assurance programs, and the BVA's Quality Review program, address accuracy of decisions but do not measure timeliness.***

5. ***No integrated plan between the VBA and BVA exists to measure the quality of claims processing, particularly in the area of appeals. The Commission acknowledges the May 1996 study requested by VA Deputy Secretary Gober and conducted jointly by the BVA and VBA, that examined the rate at which appeals are remanded to VA regional offices by the Board, the reasons for those remands, and the effectiveness of recent efforts to reduce the remand rate.***

Major Recommendations

1. ***During routine analyses of operations, VBA program managers should ensure that regional offices' local goals and objectives are derived directly from, and appropriately support, national goals and objectives. In all cases, analysis should be based on a single set of predetermined performance measures.***

2. ***Regional offices should prepare annual performance plans for review and approval of the Director of the Compensation and Pension Service to ensure that national program goals can be achieved.***

3. ***To enhance accountability, the VBA and BVA should incorporate organizational goals and objectives (Department, Administration, and Board) into individual performance plans.***

4. ***The VBA and BVA should integrate timeliness of processing into their Quality Control and Quality Assurance frameworks.***

5. ***The VBA and BVA Quality Control and Quality Assurance practices should incorporate review of decisions reversed or remanded by the BVA. An integrated plan should be jointly developed by the VBA and BVA to measure the quality of claims processing, particularly in the area of appeals.***

Section 1 – Effectiveness of Work Performance Standards

I. Background

Measuring performance against appropriate, reasonable standards is an effective means for executives and managers to ensure that program purposes are being achieved in the most effective, efficient way possible. During the past decade, several legislative and management initiatives have been implemented with a goal of improving performance, at least in part through use of measurement tools. These initiatives include the total quality management process, the Chief Financial Officers Act of 1990, the National Performance Review, and the Government Performance and Results Act of 1993. Both the VBA and BVA have published performance standards in various documents.

II. Findings

1. The VBA has specific, measurable goals and objectives for timeliness of key end products and quality.

- The VBA measures quality and timeliness of adjudication claims processing and has published standards for these performance indicators in Manual M21-4. The VBA measures productivity using the methodology of the Federal Productivity Measurement System, but it does not have a standard or goal for this performance indicator.

- The Compensation and Pension Service will present its FY 1998 resource request in the form of a business plan that includes program goals and objectives, performance measures, and resource requirements. This plan also identifies a variety of performance measures, such as customer satisfaction, employee development, and unit cost, in addition to quality and timeliness.

2. Regional offices' locally developed goals, objectives, and performance standards may not directly support national program goals.

- Eight regional offices were asked to send to the Commission:
  - adjudication division goals and objectives,
  - position descriptions and performance plans[233] for each position, and
  - the distribution of performance ratings for the past four rating cycles.

- Additional performance information about each office was obtained from the Compensation and Pension Service. Some adjudication divisions have very specific goals and objectives that are directly linked to program standards;[234] others have less specific goals; and some have no unique division goals.

3. Regional offices with goals and objectives that directly support national program goals have been more successful in achieving national goals than other regional offices.

[233] A performance plan is a collection of performance standards that defines successful performance for an individual, a group, or an organization. Each performance standard represents a target level of performance for some specific area.

[234] A program standard is a target level of performance for the organization as a whole.

- Over the past four fiscal years, the performance of the eight regional offices has varied significantly, as measured by timeliness to complete original compensation claims. The regional offices in Detroit, Muskogee, and Wichita have exceeded the national average and improved each year, even during FY 1994 when timeliness deteriorated significantly system-wide. Each of these offices link their division goals and objectives to program standards and have specific local goals. The offices that have not performed as well did not have specific goals and objectives linked directly to program standards. Stations with goals and objectives linked most clearly to national program standards have been most successful at meeting national goals.

- The President's Quality Award Program presented the Muskogee regional office an Achievement Award in June 1996. Two years earlier, in 1994, the same office earned the Carey Award, VA's highest award for quality. The office was cited for dramatically improving customer service and reducing costs through use of employee-managed teams. Reviewers have identified employee ownership and empowerment as key to Muskogee's success. At the Muskogee office, "ownership" means allowing each team to establish its own goals and objectives based on those of the Regional Office and the VBA. "Empowerment" means appreciating that all employees are capable of innovative thinking—not only can they *do* the work, but they can also *plan* the work.

4. Individual performance plans are unique to each regional office for similar positions.

- Generally, the performance standards that make up individual performance plans are not linked to national program goals and may not be linked to division goals. Supervisors' plans are not linked to the plans of subordinates.

- All eight regional offices set standards in individual performance plans locally. There was little consistency among offices. For employees who do claims processing or related work, critical elements usually included timeliness, quality, and productivity, but the standards were often based on office or VBA Area averages. Consequently, it is possible for performance that is inferior by national standards to be regarded as good under local standards. The distribution of employee performance ratings at the eight offices reflected this phenomenon. Performance rated "highly satisfactory" at one regional office, for example, would have been marginal work at another. Achievement of national goals appeared to be positively correlated with linkage of local performance plans to program standards. Absence of linkage with program standards coincided with difficulty in achieving national goals. Frequently, there was no linkage between performance plans of supervisors and their subordinates. In one office, for example, even though each subordinate had very specific timeliness standards, the unit chief was not rated on the timeliness of the unit's work.

- Some regional offices in the sample are moving toward the team-based approach and linking individual performance appraisal to achievement of organizational goals. For example, Detroit has implemented a performance management system that shifts the focus of recognition and awards from individual performance to team achievement of, or progress toward, predetermined organizational goals. The goal structure for the office provides a clear "line of sight"[235] model for each employee and team, focusing efforts at every level toward achievement of organizational goals. In addition to these performance management efforts, the regional office has reorganized

[235] A "line of sight" goal structure means that the goals can be visualized as points along a straight line from the individual to the team, to the division, to the office, and to the national program, so that achievement at each level leads directly to achievement at the next.

into self-contained work teams. In cooperation with other organizations, the office is currently developing a pay demonstration project that will incorporate GPRA measures into the structure.

5. **The Board of Veterans' Appeals has prepared a business plan with performance measures to support its FY 1998 resource request.**

   - The Board has goals to produce a quality service product, to deliver the product on a timely basis, and to deliver all services in an efficient manner. Its resource request will include production, timeliness, quality, and cost measures with specific performance targets to be achieved each year. For example, they have a goal to reduce BVA response time from 763 days during FY 1995 to 404 days during FY 1998. They will use two efficiency measures, appeals decided per FTE and cost per case, with performance goals for each. Further, the Chairman has signed a performance agreement with the Secretary.

III. Conclusions

1. Both the VBA and BVA have improved their planning and performance measurement since the Commission began its review of claims and appellate processing in the spring of 1995. Both will submit their FY 1998 resource requests in the form of business plans that will include goals and objectives with specific performance measures. While encouraged by the progress each has made, the Commission recognizes that this is a long-term effort that may take several budget cycles to complete.

2. Accountability can be enhanced by incorporating organizational goals and objectives into the performance plans of all employees.

IV. Recommendations

1. During routine analyses of operations, VBA program managers should ensure that regional office adjudication divisions adopt appropriate goals and objectives that are derived directly from and support national goals and objectives. In all cases, performance should be based on a single set of predetermined performance measures.

2. Regional offices adjudication divisions should prepare annual performance plans for review and approval of the Director of the Compensation and Pension Service to ensure that national program goals can be achieved.

3. To enhance accountability, the VBA and BVA should incorporate organizational goals and objectives (Department, Administration, and Board) into individual employee performance plans.

Section 2 – Effectiveness of Quality Control and Quality Assurance Practices

I. Background

The word "quality" has been defined in many ways. The most widely accepted current definition is "the extent to which a product or service meets or exceeds a customer's expectations."[236]

VBA

One of the VBA's formal goals, as stated in its published strategic plan dated July 1995, is to improve the timeliness and overall quality of service (benefits) delivery by streamlining claims processing. The VBA's Quality Control/Assurance program consists primarily of a monthly quality improvement review conducted by regional office employees and an annual quality assurance review conducted by the VBA's Compensation and Pension Service. The review protocol focuses almost exclusively on processing accuracy and soundness of judgment.[237] The goal of the annual review is to achieve a 97 percent accuracy rate. Processing timeliness is not reflected in the VBA's assessment of its quality performance. As a result, a high accuracy rate would give the VBA a good quality score even if timeliness performance is unacceptable.

BVA

The BVA's Office of Quality Review (QR) uses a two-tier review of BVA decisions to determine technical accuracy and soundness of judgment. In the first-tier review, attorneys perform a preliminary evaluation of each Board decision and refer the results to the principal quality review assistant. A second-tier review is performed on a random sample of at least 10 percent of all decisions in which the preliminary QR process has identified errors. All decisions responding to a remand by the CVA undergo both tiers of QR. As is the case with the VBA's quality performance program, processing timeliness is not reflected in the BVA's assessment of its decision quality.

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[236] V. A. Zeithaml, A. Parsuram, & L. L. Berry, *Delivering Quality Service*, New York: Free Press, 1990.

[237] Of the protocol's 33 items, one deals directly with an aspect of claims processing timeliness. That item addresses whether a rating examination was requested in a timely manner.

II. Findings

1. **The VBA has local and national quality programs in place with respect to decision-making accuracy. Local programs focus on continuous quality improvement; the national program evaluates overall system quality and monitors regional office quality trends.**

   - Each regional office conducts a Quality Improvement (QI) review on randomly selected cases. The Compensation and Pension Service conducts an annual Quality Assurance (QA) review of each regional office's compensation and pension work. Data from the QA reviews are used to compute Compensation and Pension National Accuracy Rates and evaluate individual adjudication division quality levels. The review conducted in FY 1995 indicated that VBA accuracy rates in claims processing were meeting or exceeding goals of 97 percent accuracy in two of three reviewed areas: "control and development" and "rating and authorization." The "notification" area was below goal. The Commission notes that the Compensation and Pension National Accuracy Rates for FY 1996 were not yet available when the Commission published its report. There is no other external review of quality.

2. **The VBA established five-year claims processing timeliness goals in 1993.**

   - The VBA has met its Interim timeliness goals.

3. **The VBA recognized problems in claims processing timeliness as a result of multiple factors.**

   - These factors include military downsizing, slow access to service medical records located at the National Personnel Records Center, and requirements established as the result of judicial review on appeal.[238]

   - In response, the VBA implemented numerous initiatives to improve timeliness, *e.g.*, overtime, help teams, restructuring of regional offices, and a revised business model.

4. **The BVA's Office of Quality Review (QR) performs a first-tier review on all decisions by Board members.**

   - A second-tier review, randomly selected, is performed on 10 percent of the decisions. All decisions responding to a remand by the CVA undergo both tiers of QR review.

5. **Prior to the enactment of Public Law 103-446 in November 1994, an approved OPM exemption, BVA Members were not subjected to timeliness standards in performance evaluation.**

   - Current law allows the BVA Chairman to develop timeliness standards.

   - The BVA has not established either individual or overall Board timeliness standards for processing appeals or set any formal goals for reducing backlogs.

6. **BVA decisions per FTE constantly decreased from FY 1990 through FY 1994.**

[238] For a representation of all such factors see the Commission's report of *Preliminary Findings and Conclusions*, p. 37.

   - However, decisions per FTE increased from 49.9 during FY 1994 to 67.6 during FY 1996.[239]

III. Conclusions

1. The VBA's current Quality Control and Quality Assurance practices address accuracy of decisions but do not address overall timeliness.

2. Although overall timeliness performance is not reflected in the VBA's quality assessments, claims processing timeliness has shown improvement during the past 30 months. The processing time for original claims declined from 212 days in 1994 to 161 days in 1995, and 149 days through June 1996. Repeat claims timeliness has also shown improvement, from 135 days in 1994 and 1995 to 106 days through June 1996.

3. The VBA's Quality Control and Quality Assurance practices do not include an evaluation of decisions reversed or remanded by the BVA.

4. The VBA's existing Quality Control and Quality Assurance practices are adequate for assessing claims processing accuracy in the context of stated accuracy goals.

5. The BVA's existing Quality Review practices are inadequate with regard to timeliness. No timeliness goals presently exist. Their quality review emphasizes accuracy and does not address timeliness.

6. No integrated plan between the VBA and BVA exists to measure the quality of claims processing, particularly in the area of appeals. The Commission acknowledges the May 1996 study requested by VA Deputy Secretary Gober and conducted jointly by the BVA and VBA, that examined the rate at which appeals are remanded to VA regional offices by the Board, the reasons for those remands, and the effectiveness of recent efforts to reduce the remand rate.

7. An integrated VBA and BVA quality control plan must have as its cornerstone the concept of "doing it right the first time."

IV. Recommendations

1. The VBA and BVA should integrate timeliness of processing into their Quality Control and Quality Assurance frameworks.

2. The VBA and BVA Quality Control and Quality Assurance practices should incorporate review of decisions reversed or remanded by the BVA.

3. The VBA and BVA should develop an integrated plan to measure the quality of claims processing, particularly in the area of appeals.

[239] Board of Veterans' Appeals, *FY 1998 Business Plan (draft)*, August 1996.

IX. Seeking Solutions Within: VA Initiatives

Section 1 – Medical Examination Test

Major Findings and Conclusions

1. ***The joint VA/Department of the Army Military Separation Examination Test officially began on April 1, 1996. Test examinations of service members at Fort Hood were conducted as early as September 1995. At this time, the Commission's findings are limited to the Fort Hood test. Through April 1996, 487 service members have been examined using the military separation examination test protocol, and 40 cases have been adjudicated with the following preliminary results:***
   - ***On average, service connection was granted for 69.3 percent of all medical conditions claimed per application.***
   - ***The average time to complete the rating was 27 days.***
   - ***The average time to process the award after receiving the rating was 7 days.***
   - ***The average time to completely adjudicate the claim and notify the claimant was 34 days.***
2. ***Dependency documentation is readily available from the military and expedites claims processing. If a service member receives an adequate examination prior to discharge or release from service, the claim can be processed in a much shorter period of time.***

Recommendations

1. ***VA and the Department of the Army should complete the military separation examination test, evaluate the findings, and determine which of the three examination methods is most effective.***
2. ***If analysis of the results confirms that the test procedures benefit customers, VA and the Department of Defense should evaluate the feasibility of implementing the program nationwide to all branches of service.***

I. Background

VA and the Department of the Army are testing the feasibility of conducting medical examinations of separating service members at VA and Army medical facilities. The objective is to reengineer the way VA and the Army conduct both military separation examinations and VA compensation examinations. The objectives are:

(1) improved customer service;

(2) complete and comprehensive claims development at the earliest time; and

(3) timely, high quality claims processing.

The Military Separation Examination Test (MSET) is modeling several methods of conducting examinations of separating and retiring service members who intend to claim VA disability compensation:

(1) VA physicians are examining service members from Fort Knox at VAMC Louisville;

(2) Army physicians are conducting examinations at Fort Lewis, Washington, using the VA examination protocol; and

(3) Physicians from VAMC Temple, Texas, are conducting examinations at Fort Hood. Results are to be compared with those from a control group of service members who will be examined by the Army under its standard procedures.

The test design calls for the adjudication division at the Records Management Center (RMC) in St. Louis, Missouri, to evaluate the three prototype methods for conducting separation examinations. Measures are to be developed and the evaluation conducted by the Veterans Health Administration's Management Decision and Research Center (MD&RC). The MD&RC has selected professional staff members from the Birmingham VA Medical Center and the University of Alabama to perform the overall evaluation.

II. Findings

1. Joint planning for the MSET began at the Fort Hood site in February 1995. Although the test officially began on April 1, 1996, test examinations of service members at Fort Hood were conducted as early as September 1995. Since April 1, 1996, fewer than 50 cases have been rated at the RMC in St. Louis. Test data from the RMC are expected to be available after 200 cases have been completed. The test will be concluded when at least 200 examinations for each of the prototype methods have been received and evaluated.

2. At this time, the Commission's findings are limited to the Fort Hood test. VA's Waco, Texas, regional office has maintained information regarding test procedures at Fort Hood since examinations began in September 1995. Most service members are examined some 90 to 120 days prior to separation. Consequently, data are available for only those 40 of the 487 test participants who have been discharged at this time and whose claims have been adjudicated. Preliminary results have been compiled through April 1996.

   The following averages have been assembled from the preliminary results.

   - Issues[240] per claim: 6.3
   - Issues granted per claim: 4.4 (69.3 percent of issues per claim)
   - Days to complete the rating: 27
   - Days to adjudicate the claim and notify the claimant: 34

[240] "Issues" means medical conditions for which the veteran claims service-connected disability compensation.

In FY 1996, through June, the average time to completely adjudicate an original compensation claim through *routine* procedures was 125.6 days for the Waco office and 146.1 days nationally.

3. The test evaluation is expected to be available by mid-March 1997.

III. Conclusions

1. Military separation examinations typically do not provide sufficient medical information for rating purposes. VA requires a complete evaluation by a physician with special examinations for certain disabilities. A disability for VA purposes may not be considered a disability for military purposes if the service member can perform assigned duties without limitations.

2. Dependency documentation pertaining to separating service members is readily available from the military and expedites claims processing.

3. Based on preliminary test results, it appears that if a service member receives an adequate examination prior to discharge or release from service, the claim can be processed in a much shorter period of time.

4. Currently available results from the MSET, while showing considerable promise, are insufficient to allow the Commission to recommend changing the examination process at this time.

IV. Recommendations

1. VA and the Army should complete the MSET, evaluate the findings, and determine which of the three examination methods is most effective.

2. The VBA should review medical examinations from a national sample and compare timeliness and quality with the most effective of the MSET prototypes.

3. If analysis confirms that the test procedures benefit customers, VA and the Department of Defense should promptly evaluate the feasibility[241] of implementing the program nationwide to all branches of service. To the extent feasibility is shown, implementation planning and execution should begin.

[241] The MSET test sites were chosen for their geographical proximity to Army separation points. Conditions nationwide may not be as favorable as demonstrated at those sites. Accordingly, a feasibility study should be conducted to assure that nationwide implementation can be expected to be effective in terms of both cost and service.

Section 2 – The Effectiveness of Pilot Programs

Major Findings and Conclusions

1. ***Some of the initiatives undertaken at the five pilot sites (Muskogee, New York, Jackson, Portland, and Oakland regional offices) contain promising examples of change. However, because the VBA has not planned well for measuring, tracking and costing the pilots, it is nearly impossible to define the benefits or detriments of any pilot initiative.***

2. ***The Commission commends management and staff at the five pilot stations for their innovation and their willingness to improve claims processing service on behalf of veterans and their beneficiaries. The Commission finds that all five stations have made significant improvement in processing timeliness for original and reopened claims since these pilots began.***

3. ***The VBA did not provide technical or conceptual guidance in the development of the five pilot project models. Instead, these models grew out of regional office experimentation. Headquarters management has not effectively coordinated these activities. The nationwide models derived from the pilots are being implemented despite the fact that expectations against which to evaluate the pilots' effectiveness, grounded in either process or organizational change, were not developed.***

4. ***Some of the initiatives undertaken at the pilot sites contain promising examples of change. For example:***
   - ***specialization by program has potential to improve efficiency and conserve resources; and***
   - ***identification and special handling of "fully developed" claims can improve customer service and timeliness.***

5. ***The number and scope of initiatives being tested, and the VBA's willingness to undertake them, suggest that the VBA's organizational culture may be developing more flexibility.***

Recommendations

- ***The VBA should establish specific goals and benchmarks prior to initiating any future pilot projects. This practice will provide bases for evaluating the effectiveness of the pilot.***
- ***Any future pilots, as well as current projects, must be assessed against the BPR redesigned process. Only those projects that support implementation, i.e., provide a test of elements of the redesigned process, should be continued or begun.***

I. Background

To address concerns over a growing backlog and limited resources, VBA management encouraged regional offices to test and implement new ideas and initiatives to improve claims processing. As a result, pilot projects were begun at the Muskogee, New York, Jackson, Portland, and Oakland regional offices. These

offices have been experimenting with team processing, case managers, and other non traditional ways to improve claims processing methods. These pilot projects led to the development of four claims processing models. In a November 29, 1994, letter, the Under Secretary for Benefits required all regional offices to select one of four claims processing models for implementation. The models were based, in some part, on the pilot projects.

II. Findings

1. **No explicit, quantitative goals are evident.**

   - Benchmarks were not established prior to initiating the locally developed pilot projects at the Muskogee, New York, Jackson, Portland, and Oakland offices.

2. **The VBA's current information system does not meet the processing and management needs in the changing environment.**

   - The environment is changing as the result of, among other things, the pilot sites, the four claims processing models with numerous hybrids, workforce reallocation, and new reporting requirements under the Government Performance and Results Act.

3. **The five identified pilots were part of the motivation for developing the four claims processing models.**

   - The VBA accelerated this effort by establishing the Modeling Support Group to oversee implementation of the four claims processing models. On August 23, 1995, the Modeling Support Group provided the Deputy Under Secretary for Benefits with nine recommendations to promote effective transition to the new claims processing models. Recommendations included developing measurement tools and baselines to properly monitor and measure the new models.

4. **The five pilot projects are all being conducted in dynamic—not static—conditions; many variables affect the results.**

5. **The Commission commends management and staff at the five pilot stations for their innovation and their willingness to improve claims processing service on behalf of veterans and their dependents.**

   - The Commission finds that all five stations have improved in processing timeliness for original and reopened compensation claims since these pilots began.[242] Non-pilot stations have generally improved during that period, too, however, so the Commission cannot conclude that the pilots' improvement resulted from the test.

6. **In addition to the five pilot projects, the Commission notes that numerous other initiatives are being tested throughout VBA's other regional offices.**

   - Some regional offices (*e.g.*, Muskogee, Philadelphia, and Phoenix) have institutionalized a method of identifying "fully developed" claims for expedited processing.

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[242] A comparison of COIN DOOR Reports 1015 for the months of September 1994 and June 1996 indicate improvement in the average number of days to complete a reopened claim at all five pilot stations. Improvement ranged from 26 to 71 percent. Additionally, during the same period, four of the pilot stations demonstrated similar improvement in the average number of days to complete an original claim.

III. Conclusions

1. Some of the initiatives undertaken at the pilot sites contain promising examples of change, *e.g.*, specialization by program has potential to improve efficiency and conserve resources; identification and special handling of "fully developed" claims can improve customer service and timeliness.

2. The VBA has not planned well for measuring, tracking, and costing pilot projects to identify success.

3. The VBA did not provide technical or conceptual guidance in the development of the five pilot project models. Instead, these models grew out of regional office experimentation. Headquarters management has not effectively coordinated these activities. The nationwide models derived from the pilots are being implemented despite the fact that expectations against which to evaluate their effectiveness, grounded in either process or organizational change, were not developed.

4. Because of the dynamic nature of the pilot projects, deficient planning for measuring their effect, and many confounding variables, it is nearly impossible to definitively determine, in retrospect, benefits or detriments of the pilot projects on operations at the selected stations.

5. The number and scope of initiatives being tested, and the VBA's willingness to undertake them, suggest that the VBA's organizational culture may be developing more flexibility.

IV. Recommendations

1. The VBA should establish specific goals and benchmarks prior to initiating any future pilot projects. This practice will provide bases for evaluating the effectiveness of the pilot.

2. Any future pilots, as well as current projects, must be assessed against the BPR redesigned process. Only those projects that support implementation, *i.e.*, provide a test of elements of the redesigned process, should be continued or begun.

X. Fine Tuning a Struggling System: Blue Ribbon Panel Implementation and Commission Survey

Section 1 – Blue Ribbon Panel Implementation

Major Findings and Conclusions

This section of the Commission's work was designed to measure extent of implementation of Blue Ribbon Panel recommendations.

1. ***The Commission notes organizational obstacles to smooth implementation. The VBA has made progress toward implementing the action items; however, the progress has been uneven.***
2. ***The implemented recommendations have coincided with declining backlogs and reduced processing times. However, they have also coincided with application of extraordinary resources (i.e., overtime) and declining claims receipts.***
3. ***The VBA lacked a sound plan for measuring, tracking, and costing the effect of Blue Ribbon Panel initiatives to identify success. Primary data were not available to measure the effect of individual items.***
4. ***The Blue Ribbon Panel made 43 recommendations. All recommendations have been acted on, but only 32 are fully implemented.***

Major Recommendations

The Veterans Benefits Administration should:

1. ***Determine and report implementation status of all Blue Ribbon Panel recommendations.***
2. ***Analyze performance indicators in areas affected by recommendations, controlling for concurrent or incidental factors, to determine the effect(s) of each.***
3. ***Implement and track recommendations of the Modeling Support Group.***

I. Background

Section 1 of this chapter primarily addresses the *extent* to which Blue Ribbon Panel recommendations have been implemented. Section 2 reports the results of a Commission survey of VBA field employees system wide. The survey addresses the employees' perceptions of both the *extent* of implementation and the *effect* of the recommendations in their offices.

The Blue Ribbon Panel on Claims Processing was established in June 1993 by the then-Deputy Under Secretary for Benefits. The Panel's stated purpose was to:

- accelerate decisions on disability claims and
- reduce the pending workload, which had reached critical levels.

Authorities on veterans benefits from both VA and veterans service organizations met from July through October 1993 to study the issues and develop recommendations.

The results of the Panel's work is contained in a 34-page report[243] published by the VBA in November 1993. The report contained 43 recommendations to the VBA and a basic action plan. The recommendations were primarily administrative in nature. As a follow-up to the Panel's report, the VBA developed an Implementation Plan assigning responsibility for each Action Item and describing the tasks, approach, and cost of implementing each. The Implementation Plan also identified implementation milestones and target dates.

II. Findings

1. The Blue Ribbon Panel recommendations are sound administrative management initiatives.
2. The Commission notes organizational obstacles to smooth implementation. In some cases, implementation responsibility was delegated to organizations that did not have clear functional authority to allocate resources and/or establish priorities to support implementation activities. In other cases, implementation has been interrupted.
3. The Blue Ribbon Panel made 43 recommendations. The Commission finds the VBA pursued each of these recommendations/action items. The Commission has tracked implementation (see Appendix Y) and as of November 1996 concludes that:
   - at least 32 action items have been fully implemented;
   - five action items have been about 3/4 implemented; and
   - six action items have been about 1/2 implemented.
4. The VBA has made progress toward implementing the action items; however, the progress has been uneven.
5. The effect of the recommendations is difficult to determine, particularly because neither the Panel nor the VBA attempted to identify specific goals; establish baselines; and identify and control for unrelated or incidental factors. Empirical data show that Panel recommendations, to the extent they have been implemented, coincided with declining backlogs and reduced processing times. However, these improvements also coincided with liberal use of overtime and declining claims receipts.

   The pending claims backlog has declined from 570,000 in December 1993 to 350,000 in June 1996. Average days to complete an original disability compensation claim declined from 212 days to 149 during that same period. No primary data are available to support a conclusion that the improvements

[243] The report is titled, "Blue Ribbon Panel on Claims Processing: Proposals to Improve Disability Claims Processing in the Veterans Benefits Administration."

were more likely to have been caused by implementation of Panel recommendations than by other factors. In an effort to gain some insight to the effect of these recommendations, the Commission surveyed VBA point-of-service employees nationwide. Results of the survey are reported in Section 2 of this chapter.

6. One Panel recommendation called for submission to Central Office of locally designed plans for restructured rating activities. In a letter dated November 29, 1994, the Under Secretary requested that each regional office select one of four discretionary organizational models and submit implementation plans and schedules. Fifteen regional offices (26 percent) did not respond within the 60-day time frame specified in that letter. A "Modeling Support Group" created to facilitate implementation reported nine recommendations in August 1995, none of which the Commission has found to be implemented.

7. Fourteen regional offices (24 percent) submitted plans that contained proposed completion dates of calendar year 1999 or later.

8. Management initiatives to reduce processing time for obtaining records from VA medical facilities remain in the trial stages.

9. Management initiatives to improve the quality of VA compensation examinations remain in the trial stages. These initiatives may reduce processing time for claims if implemented fully.

10. The primary long-term management initiative now in place is the centralized Adjudication Academy. This initiative shows promise for reducing processing time, improving decision quality, and increasing decision consistency. However, data to support this hypothesis are not available.

III. Conclusions

1. By some indicators, the VBA's performance has improved during the Blue Ribbon Panel "era." Data sufficient to predict whether improvements can be sustained could not be found or constructed.

2. The VBA lacked a sound plan for measuring, tracking, and costing the *effect* of Blue Ribbon Panel initiatives to identify success. Primary data were not available to measure the effect of individual items.

3. The implemented recommendations have coincided with declining backlogs and reduced processing times. However, they have also coincided with application of extraordinary resources (*i.e.*, overtime) and declining claims receipts.

4. Because of the dynamic nature of the claims processing environment and coincident remedial activities unrelated to the Blue Ribbon Panel, it is difficult to attribute specific effects to Panel recommendations.

5. Blue Ribbon Panel initiatives have not reduced task times. Rather, task times have increased. In the absence of reduced task times, further, or sustained, improvements would require increased resources, reduced claims receipts, or process enhancements.

6. At times, the VBA's organizational authority has been ineffective and unsuitably delegated. In many cases, implementation responsibility was delegated to organizations that did not have clear functional authority to allocate resources and/or establish priorities to support implementation activities.

7. The VBA has not reviewed or evaluated the implementation of Panel recommendations in over a year. While acknowledging that it is difficult to isolate and assess the impact of specific recommendations in

a dynamic claims processing environment, the Commission also perceives that the VBA has not attempted to rigorously assess whether the Panel's recommendations have had *any* impact.

IV. Recommendations

1. Determine and report implementation status of all Blue Ribbon Panel recommendations.

2. Analyze performance indicators in areas affected by recommendations, controlling for concurrent or incidental factors, to determine the effect(s) of each.

3. Implement and track recommendations of the Modeling Support Group.

Section 2 – Commission Survey of 1,465 VA Regional Office Adjudication Employees and 300 Veterans Service Organization Representatives

Major Findings and Conclusions

- ***1,093 (75%) of 1,465 regional office adjudication employees selected, and 163 (54%) of 300 VSO national service officers selected, responded to a Commission survey designed to assess their perceptions of both the extent of implementation and the effect of Blue Ribbon Panel recommendations at their offices. A summary of respondents' opinions follows. The "master" questionnaire, with response percentages for VA employees and VSO representatives, is contained in Appendix Z.***

Claims Preparation:

- ***Survey respondents generally confirmed the Blue Ribbon Panel's conclusion that VA Form 21-526, used to apply for disability compensation and pension, is inadequate.***
- ***According to respondents, forms containing better information about the claims process would probably produce more complete claims.***
- ***Survey respondents see merit to separating the compensation and pension application form into two distinct forms, one for claiming compensation, the other for claiming pension.***

Automated Medical Information Exchange (AMIE):

- ***Employees perceived AMIE as having a fairly positive effect on the claims process, but respondents did not give it overwhelming support. Respondents seem concerned about the adequacy of rating examinations for rating purposes.***

Management Practices:

- ***Respondents expect the implementation of prototype models to have a favorable effect on most aspects of claims processing. However, the majority of respondents were not sure when the models would be implemented.***
- ***Respondents generally believed that Rating Technicians in their offices had not received Central Office directed training. However, the impact of Rating Technicians' on claims processing overall was regarded as positive.***

Recommendation

The Commission analyzed the survey results primarily to assess respondent perceptions of implementation and effect of Blue Ribbon Panel recommendations on their offices. To the extent feasible, the VBA should use the Commission's survey findings as a baseline for future analysis of employee opinions on VBA initiatives. The VBA should also incorporate these survey findings into its policy formulation deliberations, and carry out future surveys to provide VBA decision makers with relevant information to support sound management decisions.

I. Background

As noted in the preceding section, no objective, primary data were available to allow the Commission to rigorously analyze the *effect* of Panel recommendations. However, recognizing that *employees who do the work often have the most and best knowledge in crucial areas of claims and appeals processing*, the Commission developed a survey to learn front-line employees' views regarding implementation and effect of Panel recommendations. This section reports on the survey data.

In addition to Blue Ribbon Panel issues, the Commission used the survey to collect information about other areas of interest to Commissioners. The survey was administered by Schulman, Ronca, and Bucuvalas, Inc. (SRBI), a survey research organization retained by the Commission. SRBI sent questionnaires to 1,465 VBA regional office adjudication employees nationwide.

Each surveyed employee was asked a series of questions consistent with his or her area of expertise, based on job function. Seven different questionnaires, each targeted to a separate employee category,[244] were assembled from a common set of 119 questions. As administered, the questionnaires ranged in length from 50 to 95 questions. No employee was asked all 119 questions. The "master" questionnaire is reprinted in Appendix Z with survey response data. Survey responses from VSO representatives are reported separately from employee responses, which are aggregated in the appendix.

The Commission sent questionnaires to *all* employees in the five smaller job categories. For the two larger job categories, rating specialists and claims examiners, the Commission sent questionnaires to a statistically valid number of randomly selected employees. The data have not been adjusted to weight the responses by employee category to conform with the overall population distribution by employee category in the Adjudication Divisions. However, the Commission has encouraged the NCVAS to analyze the data in depth and make a full report in the near future. The overall response to the survey was sufficient to produce a 95 percent level of confidence with a ±2½-point confidence interval in aggregate.

Confidence levels for the various employee groups varied but were similarly high. For this report, unless otherwise noted, the Commission presents the employee data in aggregate without breaking out the categories.

The Commission met with VA's *Partnership Council* to get their advice and approval to proceed. VA's Deputy Assistant Secretary for Human Resources Management provided names and work addresses of employees from the Personnel Accounting Integrated Data (PAID) system, which is VA's personnel payment system. The Under Secretary for Benefits authorized time during the work day for respondents to complete the questionnaires.

The last page of each questionnaire allowed space for respondents to provide any additional comments or information they believed would help the Commission draw appropriate conclusions and make useful

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[244] The job categories, the number surveyed in each category, and the population of each category at the time of the sample were as follows: Adjudication Officers (57 selected, population 57); Section Chiefs (99 selected, population 99); Unit Chiefs (120, population 120); Rating Specialists (322, population 774); Rating Technicians (170, population 170); Adjudicators (380, population 1,449); and Clerks (317, population 317).

recommendations. Respondents were instructed to place completed questionnaires in postage-paid envelopes addressed to SRBI, which had been enclosed with the questionnaire, and mail them.

The Commission also surveyed representatives of six veterans service organizations.[245] Because of time, resource, and logistical issues, the Commission did not attempt to randomly select VSO respondents or to assure a statistically valid response rate from them. Nevertheless, the Commission wished to meaningfully represent the views of this group. The Commission asked each VSO to help distribute 50 questionnaires to its field representatives. Each VSO either provided mailing labels with the names and work addresses of their representatives or (in one case) mailed the questionnaires to representatives.

Overall participation rates were high. Almost 75 percent of the 1,465 VBA employees responded, and 54 percent of the 300 VSO representatives responded. The Commission was especially impressed by the number of employees who made additional comments regarding work issues important to them. The number of responses to the open-ended question at the end of the survey was overwhelming.

The contractor tallied the results and provided the Commission with a "flat file" containing all 1,256 responses. VA's National Center for Veteran Analysis and Statistics provided statistical and analytical support in compiling the survey results. The Commission is most grateful for the benefit of that group's expertise.

II. Findings

The survey of regional office Adjudication Division employees and VSO representatives addresses both the implementation and the effect of several Blue Ribbon Panel recommendations. Some survey questions relate directly to—although they do not identify either by name or reference—Blue Ribbon Panel recommendations; others address the subject somewhat more obliquely.

1. Preparation and Submission of Claims.

The Blue Ribbon Panel recommended the redesign of VA Form 21-526, Application for Disability Compensation or Pension. The Panel stated that the form was a ". . . disjointed combination of entries to be completed by the claimant." The Commission concludes (in Appendix Y) the Panel's recommendation on this issue has not been fully implemented, and survey results show ambiguity on the use of the form.

Respondents reported on both the clarity of information and questions on the application form. Among employees, about 42 percent thought the *information* was clear; about 40 percent thought it was confusing. The pattern among VSOs was reversed. Among VSOs, about 34 percent thought the information was clear, and about 48 percent thought it was confusing. With regard to the form's *questions*, somewhat more (about 43 percent) of employees thought they were clear than thought they were confusing (about 36 percent). Among VSOs, about 35 percent thought the questions were clear, and about 47 percent thought they were confusing (Questions 1 and 2).

An overwhelming proportion of respondents (almost 79 percent of employees and about 83 percent of VSOs) thought that claimants would submit more complete applications if they had better information about the claims process (Question 3).

[245] The American Legion; American Veterans of W.W.II, Korea and Vietnam (AMVETS); Disabled American Veterans; Paralyzed Veterans of America; The Veterans of Foreign Wars of the United States; and Vietnam Veterans of America, Inc.

While the Blue Ribbon Panel recommended redesign of the combined compensation and pension application form, it did not suggest developing a separate form for compensation and another for pension. In the survey, almost 70 percent of the employees and almost 67 percent of the VSOs thought the two benefits should have separate application forms (Question 5).

2. Automated Medical Information Exchange (AMIE).

The Panel recommended that VA enhance the AMIE examination process. The Commission's survey regarding the use and utility of AMIE included 15 separate questions. "Use" questions were asked only of the employees, and not of the VSOs. Of those surveyed, almost half "almost never" use AMIE, but among clerical staff respondents, about 73 percent use it "almost always or most of the time" in requesting medical information from VA medical centers. (Question 44)

Of respondents who do use AMIE (and, where noted, VSOs):

- about 60 percent of employee respondents believe their AMIE training has helped them do their job better (Question 45);
- over 78 percent of both employees and VSOs agreed that AMIE generates examination requests quicker than "hard copy" requests (Question 47);
- about 72 percent of employees agreed that examination requests are easier with AMIE (Question 48);
- almost 60 percent of employees agreed AMIE access to VA's hospital system is available when needed (Question 49);
- almost 56 percent of both employees and VSOs agree that medical centers return examination reports quicker since implementation of AMIE (Question 51); and
- almost 52 percent of employees agreed that AMIE has eliminated steps within the adjudicative process (Question 52).

While AMIE improvements have been noted by the survey respondents, only about 18 percent believed that AMIE has made it possible to reallocate FTEE (Question 53).

Perceived *quality* of VA medical examinations was also addressed by the Commission's survey. In response to the statement, "The quality of rating examinations from the VA Medical Center has improved since 1993," (Question 55):

- about 28 percent of rating specialists agreed,
- about 30 percent of rating technicians agreed,
- about 31 percent of adjudicators agreed, and
- about 23 percent of VSOs agreed.

In all, about 69 percent of employee respondents and about 77 percent of VSO respondents were *neutral* or *disagreed* that the quality of VA medical center rating examination reports have improved since 1993 (Question 55). Almost 59 percent of employee respondents were *neutral* or *disagreed* that rating examination reports are almost always adequate for rating purposes (Question 56). However, almost 78 percent of VSO respondents were neutral or disagreed.

Respondents appear to regard AMIE as having a favorable effect on claims processing (Question 58):

- almost 88 percent of employees and about 72 percent of VSOs perceived that AMIE positively affected claims processing *timeliness*;
- about 69 percent of employees and about 49 percent of VSOs perceived a favorable impact on claims processing *quality*;
- about 76 percent of employees perceived a favorable impact on *productivity*; and
- about 70 percent perceived a favorable impact on *pending workload.*

3. Rating Board Automation (RBA).

The VBA has implemented RBA which, according to the Blue Ribbon Panel, took "advantage of word processing, workstation, and local area network capabilities of Stage I computer modernization." Almost 98 percent of respondents reported that rating personnel in their offices have full access to RBA (Question 59).

Of respondents who have access to RBA (and, where noted, VSOs):

- about 90 percent report they "almost always" use it when rating cases (Question 62), and
- almost 68 percent reported the overall training received on RBA helps them do their job better (Question 63).

The survey also showed:

- About 64 percent of employee respondents agreed that rating decisions are more consistent since the implementation of RBA, while only 12 percent disagreed. Among VSOs, about 40 percent agreed, and almost 25 percent disagreed (Question 65).
- About 82 percent of employee respondents agreed that the need for clerical support has declined since implementation of RBA (Question 68).

With respect to quality and productivity effects of RBA:

- Almost 42 percent of employee respondents, and almost 23 percent of VSO respondents agreed that RBA has produced higher quality rating decisions. About 58 percent of employees, and about 77 percent of VSOs were either neutral or disagreed that decisions are of higher quality (Question 66).
- almost 23 percent of employees agreed that, since RBA, Rating Specialists are able to produce more ratings per day; about 77 percent were either neutral or disagreed (Question 67).

Most employee respondents thought RBA had had a favorable effect on their offices timeliness, quality, productivity, and pending workload. VSOs, who were asked only about timeliness and quality did not respond as enthusiastically. About 51 percent thought the effect on timeliness had been favorable, and almost 44 percent thought the effect on quality had been favorable (Question 70).

4. Automated Reference Material System (ARMS).

The Blue Ribbon Panel recommended the implementation of an on-line PC access to reference material called the Automated Reference Material System (ARMS). This system provides on-line access to CVA decisions, VBA policies, directives, and adjudication instruction manuals.

- About 84 percent of employee respondents replied that they have access to necessary reference material through ARMS. About another seven percent reported that they have access to at least some necessary reference material through ARMS (Question 71).
- Fewer than 18 percent of employees replied they personally use ARMS more than five times per month, and the majority (about 55 percent) replied they use it "less than once per month" (Question 73).

A clue to the reasons for the low use of ARMS is revealed in response to the Commission's question about whether ARMS is easier to use than written manuals.

- About 17 percent of employee respondents claimed ARMS was easier to use than written manuals, while almost 63 percent disagreed. About 20 percent neither agreed nor disagreed (Question 74).
- About 18 percent of employees agreed ARMS training helped them do a better job (Question 76).
- Almost 93 percent of employees were neutral or disagreed that decisions are more consistent since implementation of ARMS. Among VSO respondents, about 65 percent were neutral or disagreed (Question 81).
- About 93 percent of employee respondents were either neutral or disagreed that quality of decisions was better since ARMS. Among VSOs, about 76 percent were neutral or disagreed (Question 82).

The majority of respondents believe ARMS has had *no effect* at their regional office regarding the following (percents reflect those who replied "no effect"). (Question 84).

- *Timeliness* (VA employees: 79 percent; VSOs: about 54 percent);
- *Quality* (VA employees: 75 percent; VSOs: 57 percent);
- *Productivity* (VA employees: almost 77 percent); and
- *Pending workload* (VA employees: about 79 percent).

The questionnaire invited respondents to furnish any comments they thought would be useful or inportant to the Commission. Many VA employees used this opportunity to express dissatisfaction with ARMS.

5. Preparation of Computer Generated Letters (PCGL).

The Blue Ribbon Panel recommended development, testing, and implementation of a personal computer-based standard, national letter package using input from all customers. PCGL, which was under development when the Panel made its recommendation, has been implemented, and the Commission's survey suggests that the package has been well received.

Of those who use PCGL (and, where noted, VSOs):

- about 69 percent of employee respondents agreed PCGL training helped them do a better job (Question 86);
- about 87 percent of employees and almost 85 percent of VSOs agreed letters are generated quicker (Question 88);
- about 69 percent of employees and almost 51 percent of VSOs agreed letters are more thorough (Question 89); and
- about 67 percent of employees and about 39 percent of VSOs agreed letters are easier for claimants to understand than they used to be (Question 90).

6. Management Practices.

Organizational Models:

The VBA recently developed "prototype models" for claims processing. In November 1994, the Under Secretary for Benefits sent a letter to all regional office directors asking for submission of plans to adopt one of the four organizational prototype models, or some variation thereof.

Implementation of the prototype models was part of the Panel's recommendations. Asked when they believed the models would be implemented, about 56 percent of employee respondents and about 59 percent of VSO respondents said they were "not sure." (Question 95) In anticipation of the offices' new claims processing configuration, respondents were then asked if they *expect* better adjudication results. (Question 96) Their expectations of the prototype models were as follows:

- about 56 percent of employees and about 65 percent of VSOs expected a favorable effect on *timeliness* of claims processing;
- almost 46 percent of employees and about 57 percent of VSOs expected a favorable effect on *quality* of claims processing;
- about 51 percent of employees expected a favorable effect on *productivity* of claims processing; and
- about 53 percent of employees expected a favorable effect on *workload*.

Rating Technicians

According to the Blue Ribbon Panel's recommendation, Rating Technicians were intended to "perform all control and development functions required for a decision by a rating specialist, as well as all action necessary to complete the processing once a decision has been made."

Although extensive centralized training was recommended, about 51 percent of employee respondents said that none of their Rating Technicians had received training through Central Office (Question 100).

Asked about the effect of Rating Technicians on their offices' adjudication claims processing (Question 101):

- about 81 percent of employees and about 63 percent of VSOs perceived a favorable effect on *timeliness*;

- about 64 percent of employees and about 51 percent of VSOs perceived a favorable effect on *quality*;
- about 73 percent of employees perceived a favorable effect on *productivity*; and
- about 78 percent of employees perceived a favorable effect on *pending workload.*

Checklists

The Panel recommended that development checklists be deployed for the processing of adjudication claims. The checklists were intended to be an interim tool while the automated Claims Processing System (CPS) was constructed.

- About 69 percent of employee respondents and about 43 percent of VSOs reported that adjudication checklists were available to at least some degree in their offices (Question 109).
- About 83 percent of the respondents reported that such checklists are used in claims development activity (Question 110).

The effect of these checklists on their offices' performance (Question 111) was represented as follows:

- about 68 percent of employees and about 43 percent of VSOs responded that checklists had a favorable effect on claims processing *timeliness*;
- almost 75 percent of employees and about 43 percent of VSOs responded that checklists had a favorable effect on claims processing *quality*;
- almost 62 percent of employees responded that checklists had a favorable effect on claims processing *productivity;* and
- about 57 percent of employees responded that checklists had a favorable effect on *pending workload.*

7. Physicians' Coordinator.

The Panel recommended establishing a Physicians' Coordinator position at each regional office. The primary purpose of this position was to enhance communication and coordination between the VBA and VHA.

Respondents were asked if their offices had a designated "Physicians' Coordinator" (Question 112).

- About 40 percent of employees and about 30 percent of VSOs replied that one had been designated.
- About 60 percent of employees and about 70 percent of VSOs replied either that no Physicians Coordinator had been designated or they were not sure.

Asked whether the VA medical center that conducts rating exams for their office had identified a physicians' coordinator (Question 113):

- about 27 percent of employees and about 22 percent of VSOs replied "yes;"
- about 18 percent of employees and about 25 percent of VSOs replied "no;" and

- about 55 percent of employees and about 53 percent of VSOs were not sure.

Asked what effect they thought the establishment of a Physicians' Coordinator position had on claims processing in their offices (Question 114), respondents replied as follows:

- almost 57 percent of employees and about 47 percent of VSOs reported a favorable effect on claims processing *timeliness*;
- about 59 percent of employees and about 48 percent of VSOs reported a favorable effect on claims processing *quality*;
- about 47 percent of employees reported a favorable effect on *productivity*;
- about 47 percent of employees reported a favorable effect on *pending workload.*

III. Conclusions

1. Claims Preparation.

(a) Survey respondents generally confirmed the Blue Ribbon Panel's conclusion that VA Form 21-526, used to apply for disability compensation and pension, is inadequate.

(b) According to the survey results, forms containing better information about the claims process would probably produce more complete claims.

(c) Survey respondents see merit to separating the compensation and pension application form into two distinct forms, one for claiming compensation, the other for claiming pension.

2. Automated Medical Information Exchange (AMIE).

Employees perceived AMIE as having a fairly positive effect on the claims process, but respondents did not give it overwhelming support. Respondents seem concerned about the adequacy of rating examinations for rating purposes.

3. Rating Board Automation (RBA).

According to the survey, RBA is widely available to rating personnel, and almost all use it. The majority of those surveyed felt that RBA has a positive influence on consistency of decisions. Fewer respondents reported a similar perception about its effect on quality and productivity.

4. Automated Reference Material System (ARMS).

Based on the survey results, the Commission concludes that ARMS has not been very successful. The Commission is concerned that only 17 percent who use ARMS say it is easier to use than the written manuals it was designed to replace. ARMS appears to add little value in the areas of decision quality, claims processing timeliness, productivity, and pending workload.

5. Management Practices.

(a) *Organizational Models*: Respondents expect the implementation of prototype models to have a beneficial effect on claims processing. However, the majority were "not sure" when the models would be implemented.

(b) *Rating Technicians*: Respondents generally believed that Rating Technicians in their offices had not received Central Office directed training. However, the impact of Rating Technicians' on claims processing overall was regarded as positive.

6. Checklists.

The majority of respondents report that checklists are available in their offices and have a favorable impact on claims processing.

7. Physicians' Coordinators.

Most regional office employees are not aware that their offices have designated physicians' coordinators. The headquarters office, however, maintains a list identifying the physicians' coordinator at each office. Even so, respondents generally felt the establishment of this role had a positive effect on claims processing.

IV. Recommendations

1. The Commission analyzed the survey results primarily to assess respondent perceptions of implementation and effect of Blue Ribbon Panel recommendations on their offices. To the extent feasible, the VBA should use the Commission's survey findings as a baseline for future analysis of employee opinions on VBA initiatives. The VBA should also incorporate these survey findings into its policy formulation deliberations, and carry out future surveys to provide VBA decision makers with relevant information to support sound management decisions.

2. The National Center for Veteran Analysis and Statistics should comprehensively review all aspects of the survey, including material unrelated to the Blue Ribbon Panel, on behalf of the Secretary of Veterans Affairs.

XI. ALTERNATIVE VIEWS OF COMMISSIONERS

Section 1 – Alternative Views of Commissioner Ernest T. Chavez

I concur with the report as submitted with the following exceptions. I am obliged to dissent with certain significant concerns, conclusions, findings, recommendations, or suggestions which, in my opinion, are erroneous and/or are clearly beyond the scope of the mission and authority given to the VCAC under PL 103-446.

The elements with which I strongly disagree bring into question certain benefits and rights which current law provides for veterans and other claimants. I am convinced that this constitutes a departure from the intent of the Congress to help veterans and from the clear language of PL 103-446.

This Commissioner is adamantly opposed to any strategy that would degrade the product to save the process, whether intended by the Commission or not. For example, the concept of *repeat* claims is a creation of the Commission. This concept might be a useful element in a tool to estimate future claims activity, but the Commission's tool—its model for projecting so-called "repeat" claims activity to the year 2015—is incomplete. It should be designed to project *all* claims, not just "repeat" claims. A model to project both original and "repeat" claims could provide sound information that would support truly productive recommendations—the kind that would allow the system to process those claims effectively. The concept as presented in this report, however, is flawed and irrelevant to the problems of claims processing and adjudication under current law.

It is hardly a revelation that a veteran whose 30 percent disability has worsened is likely to file a claim for an increased evaluation. In fact, he or she should file such a claim, because it is the clear purpose of laws enacted by Congress to compensate veterans for increased severity of their service-connected disabilities. Yet by the Commission's definition, the veteran's action is a *repeat* claim, which by implication is a system problem requiring a solution.

Of course—according to this report—claims of all kinds, regardless of percentage share of the caseload, are "clogging" the system. That is because the system, for whatever reason, has failed—which is why the Congress created the Commission. *It is no more reasonable to implicate claims as the cause of system failure than it would be to blame the bearer for bad news!* The "product"—benefits in the form of disability compensation—which Congress has charged the DVA with processing, adjudicating, and delivering is not, and should not be, within this Commission's purview, except to the extent necessary to understand that "product" sufficiently to develop recommendations to improve the system.

The comments concerning *repeat* claims also apply to the extensive discussion and data in this report about zero percent through 30 percent disability ratings. The ratio of these claims to all claims filed bears little, if any, relevance to the timeliness or quality of DVA processing and adjudication of all claims—which is the charge of the Commission. A reader of those portions of this report may reasonably infer that the Commission is at least suggesting that the benefit "product" should be redesigned to reduce the volume of lower disability claims as a means of addressing claims processing problems. Inclusion of such material in this report is regrettable, as it serves only to burden its readers with information which tends, in my opinion, to blur and detract from the truly pertinent and valuable information, findings, conclusions, and recommendations contained in the report.

Other material with which I do not concur is listed and briefly discussed here in the sequence of appearance in the document.

Commenting on:

Executive Summary: II. "Four Major Concerns"

VA Disability Compensation Claims Do Not End. There is no "finality" to the VA disability claims adjudication process.

The Commissioner Responds:

This concern is listed as number one of the four major concerns discussed in the Executive Summary. It is phrased as a conclusion based on fact and it simply is not correct. Current law and regulation already allow final closure when a decision of local jurisdiction is not appealed within one year of notification or when the Board of Veterans' Appeal affirms the decision. That specific issue cannot be reopened except when there is clear error by the VA or when the claimant provides new and material evidence which in effect creates a new claim. These exceptions protect the vital interests of veterans which must not be sacrificed merely for the sake of convenience or neatness.

Perhaps sharper definition of well grounded claim, clear error, new and material evidence, duty to assist, etc., will be useful. Certainly better development by clerks, rating boards, hearing officers, professional representatives, and clients who are better guided and informed will reduce "repeat claims" and appeals. This issue is extremely important as the terms "lack of finality" and "repeat claims" are imbedded as major components in the report document with direct or implied recommendation for legislation to limit veterans' rights to reopen an issue based on clear error, new and material evidence, a related but previously unclaimed condition, progression of a rated disability, and different conditions if the veteran previously filed a claim and/or is already service connected. It appears that all such issues are included in the term "repeat claims" and as causes of "lack of finality." The closing paragraph for this concern asks, "Is this what the Congress intends?" The Congress has consistently and deliberately provided the statutory protections to ensure that veterans will not lose benefits which they have earned. These protections include the current liberal time frames to appeal adverse decisions, to file new claims, to reopen claims, and the right to submit new evidence to reopen claims, and to reopen at any time claims denied due to clear and unmistakable error by VA.

Commenting on:

Executive Summary: II. "Four Major Concerns"

The System for Processing Administrative Appeals

The Commissioner Responds:

This concern leads to the recommendation to restructure the BVA from an administrative *de novo* review body to an appellate review Board which would consider only legal sufficiency of prior decisions. In essence, the BVA would function as a lower court under the Court of Veterans Appeals and the first step in judicial review. No further evidence, however convincing it might be, could be presented or considered. Inevitably, it would be an adversarial procedure with the veterans' adversary also being the judge.

The role of the BVA under judicial review was considered in depth by the Congress when it created the Court of Veterans Appeals. Numerous proposals were reviewed, including some similar to this recommendation, and were rejected in favor of the present structure. I believe that the decision of the Congress was correct and that the interests of claimants and of the Government would not be served by acceptance of this recommendation.

Commenting on:

Executive Summary: III. Adjudication "Product"

"The Commission also believe it is useful to step away from any assumption that the current adjudication "product" is best for future veterans. . . ."

The Commissioner Responds:

The term "product" refers to the benefits which are now provided by statute for veterans and their families. That "product" is created by the Congress and not by VA. When the United Parcel Service (UPS) locates an address and delivers a lamp, the lamp is not a UPS product, the delivery service is the UPS product. The point is that the Congress has charged the Commission with a thorough review of the processing and adjudication of claims for benefits and not of the benefits themselves. Analysis of benefits as they exist has been essential for the work of the Commission. However, the suggestion, here and in other parts of the document, that benefits should be changed and/or veterans' rights be affected deviates from the task of this Commission and is not appropriate for this report.

Commenting on:

I. The Veteran. VA's Customer: Who Claims Benefits and Why? Section 4. Concept Paper on Repeat Disability Claims

The Commissioner Responds:

The Commission projects the amount of compensation an "average" veteran with a 10-percent disability will receive over a lifetime. In my view, references to such dollar amounts are not germane to the Commission's analysis of adjudication process and procedures.

The Commission observes the following: "In combination with the long-term perspective of the compensation product, the incremental nature of the disability rating schedule appears to provide an incentive for veterans with lower disability ratings to reapply for increased benefits."

I disagree. If a veteran has a disability—and believes it has worsened—the law says the person is entitled to reopen the claim.

Commenting on:

V. Process Design: Claims Adjudication and Appeals

IV. Recommendation 3-II-A. Eliminate NOD and SOC; Allow 60 Days to Appeal.

The Commissioner Responds:

I do not concur with the reduction of the appeals period from one year to 60 days.. This would result in a significant reduction of claimants' options with little or no measurable impact on the processing or appeals workload.

Commenting on:

VI. Product Issues: Driving the System? Section 3. VA Disability Compensation and Private Disability Insurance

II. Conclusion 3.

Absence of a time limit to file an original claim.

The Commissioner Responds:

This is a right which protects veterans' vital interests. I see no evidence of large numbers of such claims to justify any delimiting periods. TAP and DTAP counseling will over time reduce such claims. Conformity with other private or government programs may satisfy aesthetically, but offers no discernible benefit otherwise. There is no demonstrated need to reduce or remove unlimited time for filing original claims.

Commenting on:

VI. Product Issues: Driving the System? Section 7. Lump Sum Payments at Lower Disability Levels: Pros and Cons

The Commissioner Responds:

This proposal and the scenarios presented make certain assumptions which may not be valid. However, although a specific recommendation is not made to the Congress, the idea is worthy of serious discussion.

The very optimistic investment projections are at best conjecture. There is no evidence that lump sum recipients would invest such payments as a group. It is true that the military services (DoD) make lump sum payments to certain categories of members released for medical reasons (see Appendix S). However, the Commission has no data which indicates to what extent, if any, such recipients use the lump sum payments for long term investment.

Commissioner Mansanares, who is associated with Workers' Compensation, provided history and other information of that agency's experience with lump sum payments to disabled workers. In that program, a lump sum payment may be made for a schedule award only after a claims examiner determines it is in the best interest of the claimant, but not when the compensation payment is a substitute for lost wages. This Commissioner knows of no studies or other information sources which reveal how Workers' Compensation recipients of lump sum payments used or invested the funds.

The scenarios for the proposal considered by the Commission assume that all veterans in the 10 percent class would receive lump sum payments. Total participation of the class would, of course, require that they would have no other choice.

It is further assumed that the relatively low amount of monthly compensation is not a significant help for basic needs. In the real world of many veterans, that money is a means of survival.

Also, if such a proposal were adopted, a veteran whose 10 percent disability progressed to 90 percent would simply be out of luck.

It appears that the calculated costs and projected savings have not included the very real costs to the Government of money used to pay lump sums, especially in the early years.

For example, in scenario I, the first year adjusted cost would be $402,948,000 in lump sum payments alone (See Appendix O, Scenario One: Cost/Savings Impact). If borrowing costs to the Government are added, it is doubtful if there would be any benefit to the veteran or to the Government.

Perhaps a limited and optional program would be workable with proper safeguards for recipients and this Commissioner recommends that the Congress consider establishment of a pilot program for that purpose.

Section 2 – Alternative Views of Commissioner Harvey L. McCormick

Commenting on:

III. Interaction: The Veteran Meets the System

Major Findings and Conclusions

The Commission concluded that, "The benefit of maintaining the system for compensating attorneys from past-due benefits in its current form appears to be outweighed by the cost of operating it, particularly in an environment of scarce resources."

Major Recommendations

Based on that conclusion, the Commission recommended:

"**5. Eliminate the Provision for Paying Attorney Fees from Past-Due VA Benefits**

"The Commission supports the availability of representation of veterans by attorneys as currently provided by law. However, attorney representation does not logically require VA involvement in the payment of fees to an attorney representative. Attorney representation became a practical alternative in 1988, when Congress lifted the archaic fee restrictions applicable to attorney representatives of VA claimants. The accompanying provision that allows payment by VA of attorney fees from past-due benefits, however, is costly, administratively cumbersome, distorts the role of government, and does not directly benefit veterans. Attorney representatives and veterans should be expected to transact fee payments between themselves. VA should not be involved in these transactions.

'The provision for VA to compensate attorneys from awards of past-due benefits thrusts VA into a business that is excessively far from its central purpose. VA is not well suited to perform this function, and the requirement that it do so represents a considerable opportunity cost. The resources used for this purpose would be better spent in activities of more direct benefit to veterans. The Commission regards the experience during the last seven years in this area as strong evidence that participation of attorneys as claim advocates in the system is not so significant, in terms of either frequency or results, that the administrative expense of payment of attorney fees *by VA* can be justified. Eliminating this provision is consistent with the National Performance Review's admonition to rethink "what government *should* do, and *how*."'

In the Findings section of Chapter III, the Commission reported the following.

"II. Findings

"The Effect of Attorneys, Veterans Service Organizations, and Other Advocates

"Payment of Attorney Fees from Awards of Past-Due Benefits

"The Veterans' Judicial Review Act of 1988 established administrative VA payment of attorney fees to claimant representatives in some cases. Payment *by* VA of attorney fees is not required. In most cases involving attorney representation, the fee payment is transacted between the veteran and the attorney.

Although payment of attorney fees by VA is not common, it consumes considerable administrative resources. To make a single attorney payment from past-due VA benefits that have been awarded to an appellant:

- three administrative activities are involved at the regional office, all of these on more than one occasion in a single payment case;
- a procedural activity is involved in Central Office; and
- an administrative activity and an appeals board are involved at the BVA.

"In its study of this issue, the Commission learned that the cases involving VA payment of fees represent a small percentage of all cases, but are disproportionately costly because of the cumbersome authorization and processing steps needed to implement the law. Agents who represent veterans are entitled to payment for the services they provide. However, the Commission believes that payment should be made routinely by the veterans directly to their agents.

"As indicated above, paying attorney fees from past-due benefits involves a complicated administrative process which includes the BVA. A 55-page circular is dedicated to the activity, as well as periodic telephone conferences with regional office personnel."

The Commissioner Responds:

General Proposition

A veteran, claimant, or any U. S. citizen has a right under the 1st Amendment to the Constitution to be represented by counsel. Brotherhood of Railroad Trainmen v. Virginia Bar, 377 U. S. 1, 84 S. Ct. 1113, 12 L.Ed.2d 89 (1964) reh. Den. 377 U. S. 960, 84 S. Ct. 1625, 12 L.Ed.2d 505, on remand 207 Va. 182, 149 S.E.2d 265, cert.den. 385 U. S. 1027, 87 S.Ct. 754, 17 L.Ed.2d 675; United Mine Workers v. Illinois State Bar Association, 289 U. S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967).

In order to make this constitutional protection meaningful, some arrangements will have to be allowed to pay a veteran's representative, unless such fees are waived. The $10.00 fee limitation was enacted during the Civil War and signed by President Lincoln. It was sustained from a facial assault in Walters v. National Ass'n of Radiation Survivors, 473 U. S. 305 (1985). The result of this case was so bad that it led to the enactment of the Veterans' Judicial Review Act of 1988 (VJRA) Pub. L. 100-687, 102 Stat. 4105 (1988). For the first time since the era of the Civil War, veterans and their dependents seeking benefits from the Department of Veterans Affairs (VA) are able to hire attorneys and "agents" to represent them.

General Statement of Liens and the U. S. Government's Immunity and Exemption for Garnishment, Attachment etc.

Common Law or Statutory Liens

A common-law charging lien is recognized in some states, but in many states it rests entirely on statutes, the constitutionality of which has been upheld. Such a statute, being remedial in character, is liberally construed. Even where the attorney's common-law lien is recognized it is frequently the subject of express statutory regulation, which must, of course, be complied with. The scope of the lien has been greatly enlarged by statute in many states. Where the legislature has enlarged and defined a common- law lien, its definition supersedes that of the courts. Statutory provisions which prescribe the conditions under which, or the mode by which an attorney may secure a charging lien, are said to prevent the attaching of liens of this class except where the statutory conditions exist and the statutory mode is pursued.

Charging Liens (Generally Granted to Attorneys)

An attorney has a special or charging lien for his services to secure compensation for obtaining a judgment, decree, or award for his client. This lien is not dependent upon possession, as in the case of a general or retaining lien, but is founded on the equity of an attorney to be paid his fees and disbursements out of the judgment he has obtained. The Lien as recognized by the common-law, gives an attorney the right to recover his taxable costs, or his fees and money expended on behalf of his client, from a fund recovered by his aid, and the right to have the court interfere to prevent payment by the judgment debtor to the creditor in fraud of the attorney's right to it, and to prevent or set aside assignments or settlements made in fraud of his right. It entitles the attorney to apply to the court for a disbursement of the proceeds realized by the enforcement of the judgment.

Although, a special or charging lien is upheld on the theory that his service and skill produced the judgment, it has been held necessary to the existence of the lien that there be a valid contract for fees, either express or implied, entered into between the attorney and his client.

IN SOCIAL SECURITY PRACTICE, THE U. S. GOVERNMENT DOES NOT RECOGNIZE AN ATTORNEY'S LIEN. In short, the attorney fees due an attorney after he or she has obtained an award are not protected except through the withholding wherein its repeal has been suggested.

Current Social Security Attorney Fee Provisions

Currently, in regular Social Security cases, the Administration is required by law to withhold one-quarter of the past-due benefits to pay the attorney either by the Petition method or the new Agreement method.

No attorney fees are withheld in Title XVI (SSI) cases. Consequently, many claimants receive their award and simply refuse to pay the attorney. The failure to withhold attorney fees in Title II cases would create a more serious problem since there are far more Title II cases litigated. The failure to withhold attorney fees resulting in attorneys not being paid, simply would cause many claimants to be unable to secure counsel.

Sovereign Immunity Problem

It is well settled that the U.S. Government has many immunities, and generally cannot be sued in any form without its consent. Thus, an award coming from the U. S. Government could not be subjected to any sort of legal lien allegedly held by an attorney. In that connection, 42. U.S.C. §407 provides in pertinent parts as follows:

"42 U.S.C. §407. Assignment

(a) Inalienability of right to future payments.

The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. . . ”

Essentially the same prohibitions apply to SSI awards, see 42 U.S.C.A. §1383(d)(1), 20 CFR §416.533. In a United States Supreme Court decision, it was held that the Social Security Act [§207, 42 U.S.C.A. §407], which prohibits subjecting federal disability insurance benefits and other benefits to any legal process, bars a state from recovering such benefits retroactively paid to a beneficiary, and, in this case, no exception can be implied on the grounds that, if the federal payments had been made monthly, there would have been a corresponding reduction in the state payments. Doris Philpott and Wm. Wilkes v. Essex County Welfare Board, 409 U.S. 413, 93 S.Ct. 590, 34 L.Ed.2d 608 (1973).

38 USC §5301. Nonassignability and Exempt Status of Benefits

38 U.S.C. §5301 provides in pertinent parts as follows:

“(a) Payment of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. . . .”

Other Governmental Agencies and Operations Protecting Attorney Fees

Most, if not all, the state Workers’ Compensation programs protect attorney fees. The United States Government itself protects attorney fees such as in the Federal Tort Claims Act. More recently, the United States Government passed a law in 1988 protecting attorney fees in VA awards. This was done in the Veterans’ Judicial Review Act (VJRA).

Pub. L. 100-687, Tit. I §104(a), 102 Stat. 4108 (Nov. 18, 1988) (creating 38 U.S.C. §3404(d) (Recodified in 1991 as 38 U.S.C. §5904(d).

Under only one circumstance does the VJRA provide for a precise limitation on the amount of fees that may be paid to an attorney—when the fee is to be paid directly to the attorney by VA out of past-due benefits contingent on the success of the claim. In such an arrangement, “. . . [T]he total fee payable to the attorney may not exceed 20 percent of the total amount of any past-due benefits awarded on the basis of the claim.” (38 USC §5904(d)(1))

Under this provision, a successful claim is one in which “all or part of the relief sought is granted.” Moreover, the VA is required to pay the attorney under this procedure, regardless of the level at which the claimant wins, whether before the VARO, BVA, or CVA. A further limitation is that the fee paid by VA may come only from the amount of the past due award and not from any amount that includes the award of benefits to be received in the future. That is, benefits paid based on any period after the award of past-due benefits cannot be included in the 20 percent amount the VA will pay directly to the attorney.

Successful State-Operated Attorney Fee Plan

An example of a well-run and cost effective attorney fee program may be the Wisconsin Worker’s Compensation program. This program, administered for over 70 years, has a relatively simple law on attorney fees and provides in pertinent part for a maximum attorney fee of 20 percent of the amount in

dispute. Statute places upon the Wisconsin program the responsibilities for fixing the fee and providing for the direct payment of the fee. The claimant is asked verbally during the course of the administrative proceeding if he or she agrees that 20 percent of the award can be deducted and paid directly to the attorney. If they agree, an award order is entered and sent to the interested parties including the employer and/or insurance company. The party responsible for disbursing the funds simply drafts a check to the attorney for the agreed 20 percent, with the balance to the claimant.

The undersigned does not agree that the administration of the representative fee provision in the VA law is an administrative burden, especially if the law is slightly amended to provide for payment of representative fees at any stage of the proceedings, and that the representative would to the greatest degree possible be compelled to operate under a contingency fee. There is no evidence that this was a costly burden on the state of Wisconsin, and their procedural system is far short of some 53 pages as alleged by the Veterans Benefits Administration. The remedy would be to amend the law to provide that representatives fees should (based on the fee agreement) be awarded to the representative at whatever level the award was made.

I have no objection to the role of VSOs in VA proceedings. However, this should not exclude a representative duly selected by the veteran. I do not agree with the conclusion that the VJRA Act of 1988 entails a cumbersome costly administrative burden on the Department over and above the administration of any other complicated law.

Congress Declined to Alter the Attorney Fee Withholding in Social Security Cases

For about 30 years the Social Security Act, §206 (42 U.S.C. §406) has provided for the withholding of attorney fees.

In December 1995, the House passed a bill (H.R. 2684 which included a provision to eliminate the attorney fees withholding program. The bill passed by the Senate Finance Committee in December 1995, S. 1470, which did not include a provision to change the attorney fees provision, has not yet been brought to the floor of the Senate for a vote.

The bill eventually agreed to by both houses of Congress and signed by the President in 1996, did not delete the withholding of attorney fees from the existing Social Security Act. The net result is that the Social Security Administration still withholds attorney fees in winning cases.

THE COST FACTOR WAS CONSIDERED BY CONGRESS WHEN THE VETERANS’ JUDICIAL REVIEW ACT WAS PASSED IN 1988.

The Legislative History of House History, Page 5824, provides in pertinent parts as follows:

“Inflationary Impact Statement
The reported bill would have no inflationary impact.”

Leading up to the enactment of the VJRA, the then Veterans Administration opposed the new law basically on philosophical grounds, *i.e.*, they did not like attorneys representing veterans in VA litigation proceedings. The VA at that time did not make a specific point about cost to the U. S. Government caused by the withholding and payment of representative fees. For example, on Pages 5830 and 5831 of said Legislative History Report, the VA made the following statement:

“With regard to attorney fees, our primary concerns are that increased participation compensated counsel at the Agency level many have a deleterious effect on the nonadversarial administrative claims system. Furthermore, the Agency should not be interjected into the essentially private relationship between clients and attorneys through monitoring, collecting, or awarding fees for professional services.

The presence of attorneys may result in an adversarial process to the detriment of all claimants. It has been observed:

"Lawyers as a class are imbued with a will to win. The formal adversary system allows, if not encourages, a win-at-all-costs attitude, all or none, putting lawyers as paladins in combat. Unfortunately, open combat is not always in the best interest of clients or of the justice system.

"With increased attorney participation, those who retain counsel will obviously bear greater expense, and those who do not feel the effects of the burdens and delays brought about by attorneys. . . ."[246]

For the reasons stated in his presentation, Harvey L. McCormick, Commissioner, strongly disagrees with the conclusion that the costs of the administration of the representative fee provisions is outweighed by the costs of the operation. He also asserts that the law as amended in 1988 after almost 100 years of aggravation should not be changed.

[246] Burns, Arnold I., Deputy Attorney General, U.S. Department of Justice, "A View from the Department of Justice: A Colloquium on Improving Dispute Resolution: Options for the Federal Government," 1Admin. L.J. 441, 441 (1987).

Section 3 – Alternative Views of Commissioner William E. Leach, Jr.

Commenting on:

Executive Summary: II. "Four Major Concerns"

(1) VA Disability Claims Do Not End

The Commissioner Responds:

The Department of Veterans Affairs has existed, in a working state, over many years covering periods of major wars and multiple armed conflicts involving our troops. The serviceman was required to undergo rigorous training in preparation for battle engagement. These combined circumstances created many disabled veterans. As VA cared for these disabled, certain patterns of need were observed and VA adjusted to serve these needs.

Through these years Congress was called upon to pass enabling legislation necessary to facilitate the disabled veterans rehabilitation and return to civilian life. The ever changing programs instituted in favor of the disabled veteran were produced at a time when the disabled veterans had favored status. The veteran's devotion to the nation and the personal sacrifices made in behalf of the country during time of need was recognized and rewarded.

The benefits that came to exist through this enabling legislation were administrated by VA over these many years. VA disability claims system is long term, tested and serving many.

Service-connected disability is not a one-time incident but rather involves chronic condition that is likely to exist over a lifetime. In many instances it is progressive in nature rather than static. It is subject to acute exacerbations that may require hospital care, surgical intervention and during such periods may produce temporary total incapacity.

In the event that a service-connected disability worsens or a secondary condition develops on a proximate result basis, then such change calls for review with reevaluation of disabling symptoms and the resultant degree of impairment. Such changes may occur many years after service to adversely affect the disabled veterans social and industrial adaptability. The onset of such complication presents greater incapacity to cause current disability evaluation to perhaps be inadequate.

If the service connected condition deteriorates to render the affected individual unable to procure or follow a gainful occupation, then claim for total rating based on individual unemployability is in order under the terms of the Rating Schedule. Such circumstance may come to exist many years after service.

The law provides that service connection may be granted for disability coming to exist as a result of VA rehabilitation training; service connection may be granted for conditions attributable to medical treatment for service-connected conditions.

Paired extremities and paired organs are given special consideration under terms of the law and if such added circumstance develops a new claim is proper.

Changes in the law affecting service connection came to exist based on continued study of the experienced effects of in-service exposure to certain conditions. These would include many presumptions for

disabilities of ex-prisoners-of-war; would include development of post traumatic stress syndrome; would include presumptions of disease associated with herbicide exposure; to include presumption for radiation exposure residuals; recent documentation of mustard gas exposure; development of new symptom complex affecting troops that were in Persian Gulf Theater. To file a claim in such event would be proper. Whether the veterans affected by these law changes are current compensation recipients is of no consequence.

Under the law, a veteran who is rated 30 percent or more disabled is entitled to added compensation for dependents, to include spouse, children, and dependent parents. Dependency circumstances change over the disabled veteran's life span and such changes necessarily require the execution of an amended VA claim to properly adjust monthly rate of compensation.

These cited factors make up the reason to pursue a claim many years after service discharge. The lifetime problems related to chronic service-connected disablement cannot be realistically expected to cease until the problems associated with chronic disablement ends as veteran expires.

As to the finality of adjudication decision, as it may contribute to repeat claims, attention is called to the finality rule that is in place. A VA claims determination, based on evidence of record, becomes final if not appealed within one year from date of decision.
The only manner in which a finally decided issue may be again considered is if the claimant can prove that the prior decision involved error, or if the claimant submits new evidence not previously considered and material to the issue, provided that such evidence can change the outcome of prior rating.

Under such circumstance the claim is, in fact, a new claim based on new evidence. It is not a repeat claim based on previously denied issues. In the reconsideration of the claim, it is understood that the study must encompass the complete record as it applies to the presented claim.

In the event of an allowed claim, the effective date of award is the date of receipt of the new evidence that was basis for grant.

It is asked that these cited factors of consideration be given credence when determination is made as to Congressional intention as to providing continuing needed service to the disabled veteran.

Commenting on:

V. Process Design: Claims Adjudication and Appeals

IV. Recommendation 1. Review and Reaffirmation of Major Policies Needed.

The Commissioner Responds:

The Court of Veterans Appeals specific decisions that purportedly redefine: "Burden of Proof;" "Well Grounded Claim;" Duty to Assist" are not cited in this study.

The Court of Veterans Appeals decisions do give credence to the intent of Congress at the time such legislation was enacted. Congressional intent at time of law passage is essential to establish need and meaning.

A study should be undertaken of the background information that was the basis for legislative change that effected these adjudicative concepts. The findings of such study should be documented.

If the documentation shows that the Court is in error in their interpretation of intent, than their holding that is adverse to Veterans Administration function should be challenged by the Veterans Administration in higher court.
Otherwise, the Veterans Administration should accept the precedent nature of the Court holdings and write the necessary rules and regulations to embrace the holding as nationwide policy.

Commenting on:

V. Process Design: Claims Adjudication and Appeals

IV. Recommendation 3-B-1. Eliminate NOD and SOC; Allow 60 Days to Appeal.

The Commissioner Responds:

There has not been established any substantial data or documentation to justify this drastic reduction in the veterans' claims privilege.

The one year period, now in effect, for filing an appeal permits the claimant time to further study and better understand the principles applied in the decision of question.

The one year period affords the claimant an opportunity to research and develop support for the appeal. This one year time frame enhances an ability to properly prepare an appeal document of substance.

The one year rule has been in effect for many years, is understood and accepted by veteran claimants.

The one year time limit has not been specifically identified or documented as a cause of hardship or undue delay in appeal response time. No VA action can be taken in the matter until the formal appeal is received, within 60 days or within a year.

Need for change from one year to a limit of 60 days to file an appeal would be at the expense of the veteran and need for such change has not been justified.

Commenting on:

V. Process Design: Claims Adjudication and Appeals

IV. Recommendation 3-B-2. Expand Hearing Officer Position

The Commissioner Responds:

The current popular role of the hearing officer, with record of positive results, is recognized at all levels. To enlarge upon this timely, favorable aspect of the appeal process is a desirable undertaking. The resultant emphasis on local exposure to the appeal process provides better service to the veteran. However, certain proposed changes may well blunt the effectiveness of the current hearing officer's role.

If all appeals require scheduled hearing, the current hearing officer force is wholly inadequate to meet such demand. Lack of personnel and space would adversely impact upon regional offices. Addition to present staff would require time necessary for selection, for training, for adaptation.

The appearance before the hearing officer may well be to the advantage of claimant in presentation of appeal. However, many veteran claimants live a considerable distance from a regional office and would

have to consider time, travel and lodging as a matter to be weighed before entering an appeal. This would be of greater significance if hearing is obligatory to appeal. This may pose a barrier.

If the hearing officer decisions are to be based on *de novo* review, this will require study of all possible issues to incorporate into the decision rather than limit to issues as set out in appeal as matter of timely expedience.

The Appeals Board, as presently constituted, have considerable support staff, to include many well qualified attorneys. Yet they have experienced difficulty in timely accomplishing *de novo* review as they incorporate all possibilities in their decision. The essentials of *de novo* review materially contribute to the delayed response and the present backlog in rendering appeal decisions.

To totally switch their obligation to the hearing officer, who lacks support staff, will impede the hearing officer's ability to offer immediate response and relief. The *de novo* review decision must be thorough, complete, and legally sufficient to stand as the final decision. Creation of an appeals officer position to support the process could be beneficial.

The claimant upon receipt of this decision will not be permitted to submit added evidence as the case is considered closed, to be reviewed by the Appeals Board only to correct clear error and insure the legal sufficiency of the hearing officer decision. The Appeals Board role becomes pure appellate and the review is not *de novo*. The non *de novo* review body is charged with oversight of the de nova review decision. This change as to submittal of evidence is adverse to the veteran and takes away an established right. To heighten the role of the hearing officer and lessen the role of the Appeals Board would present drastic change to require many accommodations that may be complex and difficult. The change may present legal ramifications.

It is not believed that this untested change may be undertaken with any hope of keeping up with appeal production during period of adjustment.

It would be well to test this in a piecemeal manner with pilot study to weigh the advantages as well as learning any attendant problems. If feasible, then a perfected model would be considered for nationwide adoption.

Protection of the current value of the role of hearing officer is essential.

Commenting on:

VI. Product Issues: Driving the System?
Section 6. Delimiting Period: Pros and Cons

The Commissioner Responds:

Factors to be added to "Cons"

- The five year delimiting period to restrict claim filing could negate a new claim for increased disablement of an established service-connected condition occurring beyond five years.

- The five year delimiting date could negate validity of a new claim based on the subsequent development of a condition secondary to established service-connected condition on a proximate result basis if coming to exist beyond five year delimiting date.

- The five year delimiting period could negate claim entitlement to service connection for conditions developed as a result of rehabilitation training more than five years after service; similarly for conditions directly attributable to VA treatment for service-connected condition occurring more than five years after service.

- The five year delimiting period, if effected, could limit the option of ex-servicemen receiving military disability retirement pay to switch to VA compensation as a greater benefit if the advantage came to exist more than five years after active duty.

- The five year delimiting period would be in direct conflict with provisions of the rating schedule that permits claims for temporary total rating for periods of hospital care and surgical intervention required in treatment of service-connected condition. This event may well be beyond the five year delimiting period.

- The five year delimiting date would be in conflict with the provisions of the Rating Schedule that provides for a claim for total rating based on individual unemployability if service-connected conditions are producing symptoms that render the veteran unable to procure or follow a gainful occupation. This even may occur beyond the five year period.

- The disabled veteran who has a service-connected single extremity and/or service-connected single organ that is paired and may subsequently suffer disease or trauma to the nonservice-connected paired extremity or organ would not be permitted to file claim for service connection under the law if the trauma or disease occurred beyond the five year delimiting date.

- The five year period would deny a veteran's right to enter a claim for service connection based on witness testimony if the witness was not found until after the five year period; or failure to locate a doctor or secure medical records that would prove entitlement to one year presumptive service connection based on disabling manifestation until after five years.

- The five year delimiting period may deny service-connected disabled veterans the benefit of medical discovery as to the relationship of certain disease to service exposure if the medical findings would be published beyond the five year period.

- Changes in law affecting service connection come to exist based on continued study of the experienced effects of in-service exposure to certain conditions. These would include many presumptions for disabilities of ex-prisoners-of-war; would include presumption of service connection for those who suffer life threatening event that results in the development of post-traumatic stress; would include presumption of disease associated with herbicide exposure; to include presumption for radiation exposure residuals; documentation of Mustard Gas exposure; development of new symptoms complex affecting troops that were in Persian Gulf Theater. If these happenings occurred more than five years from date of discharge, they would not be basis for claim.

The experience of current veterans must be taken into account in projecting benefits into the future. Establishment of a five year delimiting date will reduce the number of claims and provide reduction of work for adjudication division but it is obvious that it would deprive the veteran of benefits that were or may be promulgated into law after many years of experienced study. This could create hardship for many veterans and their dependents.

It is understood that a safety net for serious disablement is proposed but it is vague and not defined to an extent that it could offer relief in all of these cited instances.

Commenting on:

VI. Product Issues: Driving the System?, Section 7. Lump Sum Payments at Lower Disability Levels: Pros and Cons

The Commissioner Responds:

Add to "Pros"

That any other disabling condition beyond that which was basis for lump sum payment could be pursued for service connection with attendant rights and benefits.

Add to "Cons"

Veterans recourse to reopen claim for new service connection for development of secondary conditions would be restricted; recourse to reopen claim for temporary total disablement due to surgery or hospital care involving service connected condition would be restricted.

Section 4 – Alternative Views of Commissioner Lynn G. Merritt

Commenting on:

VI. Product Issues: Driving the System? Section 7. Lump Sum Payments at Lower Disability Levels: Pros and Cons

The Commissioner Responds:

This Commissioner fully concurs with the full Commission's views that a lump sum payment policy for minimally disabled veterans receive further consideration by the Congress. The Commission's initial analysis shows that the potential benefits are significant enough to now undertake a specific review of the issue. While legitimate concerns exist, and require consideration, the potential benefits to both veterans and the processing system that serves these veterans are too great to be overlooked.

One issue the Commission struggled with throughout its deliberations was: "how to make the current processing system work better for all veterans without compromising their benefits." It appears a properly crafted lump sum payment system for minimally disabled veterans could be the answer to both relieving a processing system heavily burdened with reopened claims and still provide a fair benefit to veterans.

Because this issue potentially changes the way benefits are provided to certain veterans, it is understandable that the Commission, as a whole, was not positioned to make a final recommendation in this report. It is with this acknowledgment that I greatly applaud the recommendation of Commissioner Ernest Chavez in his alternative views. Commissioner Chavez advocates implementing a lump sum test pilot to learn more about the potential impact of such a policy. While further study of the implementation details are necessary, there is no better way to truly learn about the impact of such a policy than to test it on a limited basis. This commissioner wholeheartedly concurs with Commissioner Chavez regarding a test pilot. In developing a lump sum payment system, the Congress should fully consider all aspects of the Commission's cost benefit analysis, and all arguments in the pros and cons section of the Lump Sum Section. By moving in this direction, the VBA will not only be able to concentrate more of its efforts on original claims, but be able to dedicate more of its limited resources toward those who need it most—the more seriously disabled.

Section 5 – Alternative Views of Commissioner Rhoda M. G. Davis

Commenting on:

Executive Summary: II. "Four Major Concerns"

The System of Claims Processing, and

V. Process Design: Claims Adjudication and Appeals

IV. Recommendation 3. Redesign Adjudication and Appeals Process

The Commissioner Responds:

I do not agree with the report's proposal to redesign the adjudication and appeals process. This includes the recommendation highlighted in the Executive Summary to expand the role of the hearing officer and the recommendations in Chapter V, Recommendation 3. While some elements of those recommendations may be appropriate, the Commission's findings and conclusions do not contain sufficient data or analysis to warrant the presentation of such a firm proposal, particularly regarding appeals.

The Commission has been aware of the VBA's Business Process Reengineering effort from its initiation. In the course of providing ongoing information for the development of this report, the VBA was open to the VCAC about its BPR process and the work of the team. The Commission has consistently had two major criticisms of that effort: the absence of BVA from the endeavor and the lack of a communications plan. Those criticisms notwithstanding, the VBA has begun a disciplined, thoughtful approach to redesigning the initial stages of the process and, by the time of the Commission's last meeting, presented a very credible redesign proposal. That proposal is sustained by both a structured analysis and a simulation model that permits at least tentative cost benefit analysis and thus, informed decision making. Further, the VBA now has the endorsement of the Secretary for its redesign, has begun to put in place a business planning process for C&P programs that will use the redesign as its core, and is initiating a wide program to communicate about the plan and to get input and buy-in for implementation.

I believe that the Commission would have served both the VBA and the Congress better to provide an assessment of the strengths and weaknesses of the BPR process, offer recommendations to correct the flaws in that effort, and, most importantly, to encourage and shape an effective plan for the long and difficult implementation ahead.

The ideas contained in the Commission's proposal are all worthy of discussion and some are consistent with the BPR redesign. My preference is to offer them for consideration as the VBA proceeds to flesh out its redesign and to begin implementation. The aspects of the Commission's proposal specific to the appeals process should be dealt with by a second BPR design team that is established jointly by the BVA and VBA to complete the whole process redesign.

XII. Inventory of Studies and Other Resource Documents

Items marked with a star (H) relate primarily to the processing of claims for service-connected disability compensation.

Department of Veterans Affairs Reports or Studies

Department of Veterans Affairs FY 1997 Budget Submission, Summary, Volume 5

Department of Veterans Affairs FY 1997 Budget Submission, Volume 1

Department of Veterans Affairs Guide to Federal Advisory Committee Management

Department of Veterans Affairs Physician's Guide for Disability Evaluation Examinations

Veterans Benefits Administration "White Paper", "Compensation and the Rating Schedule"

Veterans Benefits Administration, Reengineering Claims Processing: A Case for Change, August 1996

Annual Report of the Secretary of Veterans Affairs, Fiscal Year 1995

Department of Veterans Affairs 1995 Accountability Report

Department of Veterans Affairs 1995 Federal Managers' Financial Integrity Act Report, Fiscal Year 1995

January 25, 1996, Memorandum from Chairman, Advisory Committee on Former POWs to Secretary, Department of Veterans Affairs; Subject: Report of Meeting

Veterans' Advisory Committee on Rehabilitation, Annual Report, FY 1994

July 12, 1995, letter from Secretary, Department of Veterans Affairs, to Chair, Veterans' Advisory Committee on Education, and enclosed "Fact Sheet Addressing the Recommendations to the Secretary from the Veterans' Advisory Committee on Education"

Modeling Support Group Report, VBA, August 1995

Claims Processing Focus Group Report, VBA, May 8, 1995

An Organizational Assessment of VBA Modernization Activities (Center for Naval Analysis Report), VBA, March 31, 1995

Putting Veterans First, Understanding the Appeal Process, BVA, March 15, 1995

Department of Veterans Affairs Fiscal Year 1996 Budget Submission, Volume 4, February 1995

COVA Fact-Finding Committee, Investigative Report, VA's Compliance with the Court of Veterans Appeals, February 1995

Business Processing Reengineering Report to the Under Secretary for Benefits, July 1994

H BVA Select Panel on Productivity Improvement, Report and Recommendations of Select Panel on Productivity Improvement for the Board of Veterans' Appeals, June 1994

Department of Veterans Affairs Fiscal Year 1995 Budget Submission, Volume 4, February 1994

Compensation Customer-Based Measures Survey, VBA, January 1994

Annual Report of the Secretary of Veterans Affairs, Fiscal Year, 1994

Report of the Chairman Fiscal Year 1994, BVA

RCS 20–0223 Report, Disability Compensation, Class of Major Disability By Major Degree

COIN PAI 243–102 Report, VBA Full-Time Employment in a Pay Status at Field Stations—Adjudication Division, CP&E

COIN DOOR Report 0068, Station Total Standard Productivity Indexes (FTEE)

COIN DOOR Report 0069, Station Total Local Productivity Indexes (FTEE)

COIN DOOR Report 1001, Adjudication Division, Analysis of Compensation and Pension Workload

COIN DOOR Report 1003, Adjudication Division, Trend of Completed Compensation and Pension End Products

COIN DOOR Report 1015, Adjudication Division, Compensation and Pension Issues Work-In-Progress End Product Code

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H Blue Ribbon Panel: Proposals to Improve Disability Claims Processing in the Veterans Benefits Administration, November 1993

Summary of Reports: Independent Commissions and Other Published Analyses on Veterans' Benefits and Their Administration, Office of Policy and Planning November 1991

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H Summary of Significant Holdings, The United States Court of Veterans Appeals, Third Edition, Veterans Benefits Administration, Compensation and Pension Service, February 1996

VA Inspector General Reports

H Audit of Appeals Processing Impact on Claims for Veterans Benefits, 5D2–B01–013, March 15, 1995

H Review of Impact of Due Process Requirements on Compensation and Pension Benefit Overpayments, 5R1–B01–037, February 8, 1995

Review of Pension Reductions for Beneficiaries Receiving Medicaid Sponsored Nursing Home Care, 5R1–B02–014, December 13, 1994

Report of Audit, Accuracy of Compensation and Benefit Payments to Hospitalized Veterans, 4R1–B01–102, August 2, 1994

Report of Audit, Timeliness of Compensation and Pension Medical Examination Services, 4R1–A02–092, July 11, 1994

H Report of Audit, Timeliness of Benefits Claims Processing Can Be Improved, 4R6–B01–055, March 25, 1994

Follow-up Inspection on Audit of Rejected Records from Social Security Administration, 3PP–B99–181, September 30, 1993

Audit of Veterans Benefits Administration Implementation of the Omnibus Budget Reconciliation Act of 1990, 3AM–B99–035, March 31, 1993

H Follow-up Inspection on GAO's Audit of Improvements Needed to Measure the Extent of Errors on VA Claims Processing, 3PP–B99–083, March 31, 1993

Follow-up Audit of Hospital Adjustments, Department of Veterans Affairs Regional Office New York, New York, 3R1–B99–079, March 30, 1993

Audit of Compensation and Pension Records Matched with Social Security Death File, 2AD–G07–215, September 30, 1992

Audit of Department of Veterans Affairs Income Verification Match, 2AM–B99–031, January 24, 1992

Audit of Hospital Adjustments at VA Regional Office Boston, Massachusetts, 1R1–B99–111, September 24, 1991

Final Report of Audit of VA Pensioners' Marital Status, 1R7–B02–047, March 29, 1991

Audit of Income Reporting by VA Pension/Loan Guaranty Recipients, OAM–B02–087, September 28, 1990

Audit of Rejected Records from Social Security Administration, OAM–B99–089, September 17, 1990

Presidential Commissions

President's Private Sector Survey on Cost Control (Grace Commission): Task Force Report on the VA, President Ronald W. Reagan, May 1983

Report of the President's Committee on the Vietnam Veteran, (Johnson Committee), May 12, 1971
Veterans' Benefits in the United States: Findings and Recommendations, (Bradley Commission), April 1956

Hoover Commission Reports, #9, A Report to the Congress, February 1949

General Accounting Office Reports

H Veterans' Benefits: Effective Interaction Needed Within VA to Address Appeals Backlog GAO/HEHS–95–190, September 1995

H Veterans' Benefits: Better Assessments Needed to Guide Claims Processing Improvements, GAO/HEHS–95–25, January 13, 1995

Veterans' Benefits Lack of Timeliness, Poor Communication Cause Customer Dissatisfaction, GAO/HEHS–94–179, September 20, 1994

Veterans' Benefits: Status of Claims Processing Initiative in VA's New York Regional Office, GAO/HEHS–94–183BR, June 17, 1994

Letter to the Chairman, Committee on Veterans' Affairs: United States Senate Concerning Storage and Retrieval of Veterans Service Medical Records, GAO/HEHS–94–161R, May 4, 1994

Veterans' Benefits: Redirected Modernization Shows Promise, GAO/AIMD–94–26, December 9, 1993

Disabled Veterans Programs: U.S. Eligibility and Benefit Types Compared with Five Other Countries, GAO/HRD–94–6, November 24, 1993

Veterans Disability: Information from Military May Help VA Assess Claims Related to Secret Tests, GAO/NSIAD–93–89, February 18, 1993

Veterans Benefits: Acquisition of Information Resources for Modernization is Premature, GAO/IMTEC–93–6, November 4, 1992

Disability Benefits: Selected Data on Military and VA Recipients, GAO/HRD–92–106, August 13, 1992

Veterans' Benefits: VA Needs to Verify Medical Expenses Claims by Pension Beneficiaries, GAO/HRD–91–94, July 29, 1991

Veterans' Benefits: VA Needs Death Information from Social Security to Avoid Erroneous Payments, GAO/HRD–90–110, July 27, 1990

H Veterans' Compensation: Medical Reports Adequate for Initial Disability Ratings but Need to Be More Timely, GAO/HRD–90–115, May 30, 1990

H Veterans' Benefits: Improved Management Needed to Reduce Waiting Time for Appeal Decisions, GAO/HRD–90–62, May 25, 1990

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H Veterans' Benefits: Improvements Needed in Processing Disability Claims, GAO/HRD–89–24, June 22, 1989

Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule, GAO/HRD–89–28, December 29, 1988

Other Reports/Documents

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It's Closing Time for Base Commission, Washington Post, December 29, 1995

U. S. Court of Veterans Appeals, Third Annual Judicial Conference, 1995

Social Security Administration, The Office of Hearings and Appeals Law Journal, Volume 5/Number 1, 1995

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Putting Veterans First, Some Concerns About How Presumptions for POWs are Interpreted and Adjudicated, Charles A. Stenger, PhD, American Ex-Prisoners of War, March 1995

Putting Veterans First, Then and Now, Charles A. Stenger, PhD, American Ex-Prisoners of War, February 1995

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Companies Face Off Over Future of Disability Insurance, National Underwriter Life & Health-Financial Service Edition, July 17, 1995

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