

DEPARTMENT OF VETERANS AFFAIRS  
ADVISORY COMMITTEE ON DISABILITY COMPENSATION

December 3-4, 2019

MINUTES

Members Present:

Thomas J. Pamperin, Acting Chairman  
Bradley Hazell  
Joyce Johnson  
Evelyn Lewis  
James Lorraine  
Michael Maciosek  
Jean Reaves

Members Not Present:

Jonathan Roberts  
Robert Sprague  
Robert Wunderlich

Staff Present:

Janice Stewart, Management Analyst, Designated Federal Officer (DFO) for Advisory Committee on Disability Compensation (ACDC), Veterans Benefits Administration (VBA)  
Claire Starke, Program Analyst, VBA  
Beth Murphy, Executive Director, VBA\*\*  
Tom Alphonso, Education Service, VBA\*  
Tonita Cannon, Program Analyst, Budget Office, Compensation Service, VBA\*  
Jane Che, Regulations Officer, Compensation Service, VBA\*  
Jody Donovan, Office of Transition and Economic Development (OTED), VBA\*\*  
Kevin Friel, Pension & Fiduciary Service, VBA\*  
Janel Keyes, Chief, Regulations Staff (211D), Compensation Service, VBA\*  
Melanie Kraft, Medical Disability Examination Program Office (MDEPO), VBA\*\*  
Kathleen Lawless, Management Analyst, Contracting Officer Representative, Budget Office, Compensation Service, VBA\*  
David McLenachen, Director, Appeals Management Office (AMO), VBA\*\*  
Glenn Mickle, VBA\*  
Debra Morgan, Education Service, VBA\*\*  
Brianne Ogilvie, Deputy Executive Director, AMO, VBA\*\*  
Astrid Perez, Deputy Director, National Work Queue, VBA\*\*

Gary Reynolds, Medical Officer, Regulations Staff (211D), Compensation Service, VBA (by telephone)\*

Pedro Rivera Batista, Education Service, VBA\*

Chris Smith, MDEPO, VBA\*\*

Nathan Williamson, Deputy Director, OTED, VBA\*\*

Also, Present:

George T. Boston, Veteran\*

David M. Cleland, Officer Candidate School, United States Army

David Forgosh, Government Accountability Office (GAO)

Yolonda C. Harris, Vietnam Veterans of America (VVA)\*\*

Jennifer Kirby, United States Coast Guard (USCG), Judge Advocate General

Priya K. Mehta, VVA\*

Kristy Park, Jefferson Consulting

Marvin Pinckney, Veteran\*

Alex Plowman, Navy Wounded Warrior Program

Will Reese, Office of the Secretary of Defense, Health Services Policy and Oversight (HSP&O)

Jon Retzer, Disabled American Veterans (DAV)\*

Johnathan Rose, Department of the Navy, Manpower and Reserve Affairs

Steve Wolf, DAV\*\*

Mike Yedinak, USCG\*\*

\*December 3 only

\*\*December 4 only

The Advisory Committee on Disability Compensation (ACDC) met in public session on December 3-4, 2019, in the Third Floor Training Room, U.S. Department of Veterans Affairs (VA), 1722 Eye Street, N.W., Washington, D.C. 20006.

**Tuesday, December 3, 2019**

Opening Remarks/Travel Admin

Acting Chairman Pamperin called the Committee to order at 8:35 a.m. He expressed his personal appreciation to former Chairman Joseph Kirk Martin, Jr., and ACDC Member George Fay, who had each resigned. As the senior member on the Committee, Mr. Pamperin would serve as chair for this meeting. He asked members and other attendees to introduce themselves.

In 2020, the Committee will submit its next biennial report to Congress. Acting Chairman Pamperin urged members to begin thinking about topics to address. Ms. Stewart added that members had been provided with a copy of the last report and the current template for framing recommendations.

Ms. Cannon discussed administrative travel matters with the Committee.

## Written Public Comments

The Committee received a letter from Mr. Jay Webber, who suffers from Hailey-Hailey skin disease (HHD). Mr. Webber commented on the mind-body connection which is often dismissed when HHD is being rated, causing rightful benefits to be missed under the Special Monthly Calculator Worksheet. The loss of earned benefits could not simply be made up with a retroactive payment. Attached to Mr. Webber's letter was a study of HHD patients which seemed to document a greater impairment in quality of life than previously reported. Mr. Webber said HHD was a rare disease with no known cure, affecting one in fifty thousand individuals. He asked that it be added to the Veterans Health Administration (VHA) directive or placed on a rare disease VHA directive to ensure "a better golden standard of care."

Acting Chairman Pamperin asked that the letter be referred to dermatology specialists in VHA so they could take appropriate action. Ms. Reaves asked if there was, in fact, a rare disease VHA directive. Acting Chairman Pamperin said he was not aware of one, but the Committee could ask VHA.

Mr. Lorraine noted that one in fifty thousand did not constitute a rare disease. Ms. Reaves suggested that Mr. Webber might have omitted a zero but Acting Chairman Pamperin said the Committee could only rely on what he wrote. Dr. Lewis commented that even if the disease was not rare, it also was not typical, and the average clinician might not be astute enough to recognize and treat it appropriately. Mr. Lorraine observed that HHD was a genetic disease, so it was aggravated by service, not caused by it, and that one solution might be disqualifying those with HHD from service.

Acting Chairman Pamperin allowed that the Committee might want to consider a recommendation on rare diseases. Mr. Hazell said it might be prudent to have VA run a report to see how often HHD was coming up and whether it was being rated correctly. Mr. Lorraine said another question was whether or not the Department of Defense (DoD) assessed for diseases like HHD. Acting Chairman Pamperin said he would take the issue and see what could be done, if anything.

## VA Schedule for Rating Disabilities (VASRD) Update

Ms. Keyes gave the update. VA had undertaken a comprehensive effort to update all 15 body systems, the first complete update since 1945. The respiratory system had been combined with impairment of auditory acuity, so there were now 14 body systems. Revisions to the mental health section are anticipated to be the costliest body system and will potentially be finished last. VBA plans to continue updating the VASRD on a three to five-year cycle.

Dr. Lewis argued that while mental health was costly, delaying its update would not save money. Ms. Keyes replied that VBA was making efforts to expedite that system by several months. Acting Chairman Pamperin noted that at the last VASRD briefing, the Committee was told the musculoskeletal system might take four quarters to implement. Ms. Keyes said musculoskeletal was now further along in the concurrence process.

Each body system review is comprised of three projects: workgroup and analysis, regulatory action, and implementation. 28 of 42 projects had been completed. Workgroup and analysis were complete on all 14 body systems. Seven final rules had been published, and seven had been implemented. Seven regulatory actions and seven implementations still needed to be completed.

VBA established the new VASRD Program Office (PO) in the third quarter of fiscal year (FY) 2019. This office has program oversight and specific responsibility to address all policy and operational aspects that were associated with maintenance and implementation of VASRD and related regulations.

Acting Chairman Pamperin said the Committee had been assured at its August meeting that the PO had been authorized with five dedicated medical officers and a total of 26 employees, along with three Level 3 project managers. Ms. Keyes said she was not sure of the exact numbers, but the project managers were onboard. The medical officer position description was being rewritten. The team was about to extend an offer for a lead position.

Ms. Reaves asked if most of these employees were new to VA. Ms. Keyes said almost everyone had at least some background working in VA and/or with Veterans. Mr. Lorraine asked Ms. Keyes when the VASRD PO would be fully staffed. Ms. Keyes said she was aiming for the second quarter of FY2020.

Mr. Lorraine asked who had instigated the decision to restructure. Ms. Keyes said the catalyst for the restructuring had been a GAO inquiry.

Final rules had been published and implemented for the following: dental and oral; endocrine; gynecological and disorders of the breast; eye; skin; hematologic and lymphatic; and infectious diseases, immune disorders, and nutritional deficiencies. Proposed rules had been published for musculoskeletal, cardiovascular, and genitourinary. Proposed rules were pending concurrence for the following: respiratory/ear, nose, and throat/audio; digestive; mental health; and neurology.

Mr. Hazell asked about significant changes to the genitourinary update. Ms. Keyes said there were five general rating formulas for genitourinary and had proposed two changes. Acting Chairman Pamperin asked about diabetes. Ms. Keyes said VASRD PO would look at that during the second iteration. Acting Chairman Pamperin asked how many comments VBA typically received on a system. Ms. Keyes said it depended on the rule, but infectious diseases had received the most comments so far, with 23.

Mr. Lorraine asked what happened after a rule was published. Ms. Keyes said the Administrative Procedures Act mandated that an insignificant rule wait thirty days after publication before going into effect, and a significant one sixty days. Ms. Reaves asked what happened if a rule change affected a pending claim. Ms. Keyes said those Veterans would be evaluated under both the old and new systems, and given whichever rating was more advantageous.

The Committee recessed from 10:00 a.m. to 10:24 a.m.

## Earnings Loss Studies Update

Dr. Reynolds gave the update. There were three elements to VA's approach to its FY2020 earnings loss study: identifying contractors with experience in conducting economic studies, identifying internal expertise to assist with the project, and using the internal and external resources to create a process for continually updating labor market and income loss information.

A contract was awarded to SAG/Abt in September 2019 to conduct additional earnings loss studies.

VA assembled a multitude of internal components to assist in the endeavor: VBA's Office of Performance, Analytics, & Integrity, VA Central Office's Office of Enterprise Integration (OEI), and VHA's Health Economic Resource Center.

VA will use its current access to Census survey data to analyze all VASRD diagnostic codes. It plans to establish agreements with the Census Bureau, Internal Revenue Service (IRS), and Social Security Administration (SSA).

VA's Census survey data access derives from a research agreement between OEI and the Census Bureau. The agreement is being updated to permit additional analysis required for earnings loss studies.

VA believes there are two main avenues to establish longitudinal earnings data access: primarily through Census, or directly through IRS and/or SSA. There are three approach options: updating the existing Census research agreement, creating a new Census research agreement, and creating a new research agreement with IRS and/or SSA.

With Census, a new office would be handling the project, and the new approval process could take from two to six months. SSA would require a new application process, and approval could take up to two months.

Dr. Maciosek asked what types of longitudinal data VA was seeking. Dr. Reynolds said it was trying to get access to master earnings files. The objective is to go at the individual diagnostic code level. The analysis is tempered by sample size and other comorbidities.

Ms. Reaves asked what VA would do with the data once it was created. Ms. Keyes said the data would be one more source of review for VA to see what needed to be changed or what could be supported by economic data research. Acting Chairman Pamperin commented that, since it sounded like the intent is to compare disabled Veterans to non-disabled Veterans, that the approach seemed a little premature. He said that unless the law had changed, he would be nervous about conducting an internal earnings loss study; he cautioned that VA ran a risk by comparing disabled Veterans to non-disabled Veterans when that was not the test in the statute. The statute says the test is "average loss of earnings capacity" without qualification. Ms. Keyes said they could get an opinion from the Office of General Counsel.

Mr. Hazell asked if there would be anything to prevent comparison among disabled Veterans, non-disabled Veterans, disabled civilians, and non-disabled civilians. Dr.

Reynolds said he could bring that up at his team's biweekly meeting. Dr. Maciosek suggested focusing on percentage loss in earnings rather than absolute loss. Dr. Reynolds said he would take the Committee's remarks under consideration.

At 11:10 a.m., the Committee went into executive session to discuss the scheduling of its meetings in FY2020, and then broke for lunch, reconvening in open session at 12:59 p.m.

### Blue Water Navy (BWN) Overview

Ms. Che gave the overview. Public Law 116-23, the Blue Water Navy Vietnam Veterans Act of 2019, was signed into law on June 25, and would take effect January 1. It stated that Veterans aboard a U.S. military vessel offshore of the Republic of Vietnam (RVN) between January 9, 1962, and May 7, 1975, were presumed to have been exposed to herbicides such as Agent Orange and could be entitled to service connection for conditions related to that exposure. To be eligible for benefits, the Veteran had to have been on a vessel operating not more than 12 nautical miles seaward from the offshore waters of the Republic of Vietnam. Exposure to Agent Orange allowed the Veteran/survivor to establish presumptive service connection for certain diseases on the presumption list. There were still 14 presumptive health conditions for Agent Orange exposure under the current 38 Code of Federal Regulations (CFR) 3.309(e).

VBA estimates there were between 420,000 and 560,000 Vietnam-era Veterans who could be considered Blue Water Navy Veterans. It identified previously denied Veterans and will disseminate targeted outreach campaigns by sending letters to previously deny Veterans, survivors/dependents of deceased Veterans, and Veterans who had never filed for Agent Orange claims who had served during the BWN time period. It published a press release and will conduct social media posts and other media activities to broaden communications. It partnered with Veterans Service Organizations (VSOs) and other external partners to expand outreach.

Effective January 1, funding fees for certain VA-guaranteed loans would temporarily increase by 0.15% to 0.30%. Active duty Purple Heart recipients as well as compensable rated Veterans are exempt from the funding fee. The new law also enhanced Veteran access to the home loan benefit in higher-cost markets, and for Veterans seeking to obtain what were elsewhere commonly referred to as "jumbo loans." It removed the statutorily defined loan limit (\$80,000) for Native American Direct Loans.

VBA was finalizing the revisions to the procedural guidance in the M21-1, Adjudication Procedures Manual, for publication on December 31. It drafted a Standard Operating Procedure (SOP) for field personnel at the centralized designated regional offices (ROs) that will adjudicate BWN claims.

VBA created a SOP for the Records Research Specialist team, the records specialists who will make the ship location determination for service in the offshore waters of RVN. It has updated national training materials for field personnel at the centralized designated ROs. Training for Veterans Service Representatives was delivered on December 2. Delivery of training to Rating Veterans Service Representatives was pending. Training for the Records Research Specialist team was being finalized. It was anticipated that all training would be complete by December 13.

The National Archives Records Administration provided deck logs to VA. VA began scanning the logs on August 27. 11 million out of 28 million deck logs images had been scanned as of November 26.

In late October, VA mailed outreach letters to previously denied Veterans and survivors. It created a Special Issues Hotline for the BWN law. An information press release was expected to launch on December 12; a go-live press release was expected on January 2. Congress mandated two quarterly reports on the status of the regulation's publication update, one on U.S. military installations in Thailand, and one on VA's plan to respond to stakeholder inquiries on the new law.

As of October 3, VA had received 179 BWN calls, 6,218 claims for Veterans, and 521 for survivors. It was currently identifying pending claims for further development action for implementation on January 1. It was hiring as quickly as possible within current budgetary constraints to maximize available onboard resources.

Acting Chairman Pamperin asked how many previously denied claims VA had identified. Ms. Che said it was about 77,000. Ms. Reaves asked about the routing of BWN claims. Ms. Che said VA has National Work Queue (NWQ) routing rules so that a BWN claim would be submitted through NWQ.

Acting Chairman Pamperin asked why there were two program managers. Ms. Che said Nilijah Carter handled operations, policies, and procedures, while Laura O'Shea dealt with communications and miscellaneous matters. Mr. Lorraine asked if a list of ships in RVN territorial waters during the Vietnam War would be posted online. Ms. Che said use of the ship locator tool was restricted. Acting Chairman Pamperin asked whether it was an issue of bandwidth or policy. Ms. Che said it was both.

Dr. Lewis asked who monitored the hotline and who the intended user was. Ms. Che said the intended users were mostly previously denied Veterans. Acting Chairman Pamperin asked if it was VA employees answering the hotline. Ms. Che assured him that it was. Dr. Lewis asked if only someone who had previously submitted a claim could call. Ms. Che said that was true so far.

The Committee recessed from 1:46 p.m. to 1:51 p.m.

#### Pension & Fiduciary (P&F) Overview

Mr. Friel gave the overview. The P&F Service administered VA's needs-based pension program for wartime Veterans and their survivors, a dependency and indemnity compensation (DIC) program for survivors of Veterans who died as a result of service-connected disabilities, a monetary burial benefits program for Veterans, and a fiduciary program, which appointed and oversaw fiduciaries for beneficiaries who were unable to manage their financial affairs.

P&F's responsibilities include developing and enhancing policy and procedures, implementing any changes in regulations and manuals; developing legislative proposals, addressing stakeholder inquiries, and providing technical assistance on legislation;

establishing and maintaining program integrity measures; conducting national accuracy reviews; developing and facilitating training for field personnel; and developing, coordinating, and enhancing business requirements related to VA computer systems and software applications. They did not include supervision of personnel in VBA's Pension Management Centers (PMCs) or fiduciary hubs.

Fiduciary hubs are located in Indianapolis, Indiana; Columbia, South Carolina; Milwaukee, Wisconsin; Lincoln, Nebraska; Louisville, Kentucky; and Salt Lake City, Utah. Current staffing totaled 1,276 employees.

Dr. Johnson asked who paid for the fiduciaries. Mr. Friel said a large majority of fiduciaries were not paid. For those who were, the money came out of the beneficiary's benefit. A recent regulation limited the payment to four percent of the monthly benefit.

In the fiduciary qualification process, P&F completes an investigation of the proposed fiduciary, which may include face-to-face interviews, reviews of credit reports and criminal backgrounds, contacts with character references, requirements to sign fiduciary agreements, and requirements to obtain a bond, if necessary.

Acting Chairman Pamperin asked whether the system tracked people who had been removed as fiduciaries. Mr. Friel assured him that it did; once a fiduciary had been removed, s/he cannot be reappointed.

In the fiduciary appointment process, a field examiner conducts a field examination, meeting with the beneficiary, assessing his/her ability to handle finances, and his/her general well-being. The program policy is to appoint a fiduciary who is the most effective and least restrictive. A beneficiary can express preference as to who will be appointed. If such an expression is made, priority of selection goes to that individual provided that the potential fiduciary is willing and qualified to serve.

In FY2019, the fiduciary program paid benefits to over 176,000 beneficiaries, and completed 96,851 field examinations, with an initial process average time to complete of 69 days. As of November 21, the national pending inventory of overdue follow-up field examinations was 41 percent, and the level of overdue initial appointment field examinations was 11 percent. VA paid over \$3.6 billion in benefits to beneficiaries in the fiduciary program in FY2019. The program experienced a 44 percent increase in the number of beneficiaries from 122,000 in FY2011 to 176,000 in FY2019. The average age of beneficiaries in the fiduciary program is approximately 78 years.

VA published new regulations updated and reorganized fiduciary rules consistent with current law and VA policies. They include beneficiaries' right to appeal fiduciary appointments and other fiduciary decisions affecting the provision of benefits, clear bars to service as VA fiduciaries, limitations on fiduciary fees, limits on accumulation of beneficiary funds, and withdrawing from service as fiduciary. When VA appoints the beneficiary's guardian as fiduciary, VA's regulations apply, not any potential competing state laws. The new regulations became effective July 13, 2018.

VBA is continuing to implement program improvements, as well, including a rewrite of the Fiduciary Program Manual, legislative proposals, the Fiduciary Accounting Submission



Tool, migration of the fiduciary process into the Veterans Benefits Management System, consolidation of fiduciary calls into the National Call Center, revamping and streamlining field examination procedures, and expansion of background check capabilities.

Dr. Johnson asked how often P&F had to collect on a bond. Mr. Friel said it had \$18 million in uncollected bonds, and the surety bond companies are tough to collect on, but P&F's contractor is focused on collecting that money. Acting Chairman Pamperin asked how many misuse determinations VA made each year. Mr. Friel said they represented less than one percent of all cases.

Ms. Reaves asked if a Veteran in an assisted living facility management could have serve as fiduciary. Mr. Friel said that was possible. Dr. Johnson asked how P&F might learn if a family member was abusing the funds. Mr. Friel said it could find out through the accounting process or the reporting of the beneficiary or a family member.

The current pension program was established January 1, 1979. In FY2019, VA paid over \$4.9 billion in pension benefits to more than 434,000 Veterans and survivors. The average annual benefit was \$12,350 for a Veteran and \$8,800 for a survivor. There are additional benefits for dependents and increased pension for housebound and aid & attendance.

Acting Chairman Pamperin noted that according to an earlier slide, the average Veteran's pension paid \$16,947 annually. Mr. Friel explained that most Veterans requiring fiduciaries qualified for additional benefits for increased disability.

PMCs are located in Philadelphia, Milwaukee, and St. Paul. Current staffing included 930 employees. The FY2019 PMC workload encompassed 125,993 rating claims received, and 122,073 rating claims completed.

To be eligible for a pension, a Veteran must be permanently and totally disabled, aged 65 or older or be in receipt of Social Security Benefits; have ninety days active service with one day in a wartime period, or after 1980, 24 months continuous active duty or period called to active duty; received an other than dishonorable discharge; and meet income threshold requirements. For a survivor to receive a pension, the Veteran must have met wartime and character of service requirements; income and net worth requirements applied.

VA recently improved service to pension and survivor benefits claimants. In FY2019, it completed 140,104 burial claims, with an average time to complete of 75 days; 47,337 DIC claims, with an average time to complete of 102 days; 28,598 survivors' pension claims, with an average time to complete of 140 days; and 60,956 initial and reopened claims for Veterans' pension benefits, with an average time to complete of 108 days.

To receive a special monthly pension, the Veteran or surviving spouse must meet the basic eligibility requirement. A claimant qualified for aid and attendance (A&A) when s/he requires assistance of another person to perform activities of daily living or is a patient in a nursing home, bedridden, or blind. A claimant qualifies for housebound when s/he is substantially confined to his/her immediate premises. A&A represented higher maximum annual pension rates (MAPRs) than basic pension. Claimants not entitled to basic pension due to income exceeding the MAPR could be entitled to benefits based on higher MAPR for special

monthly pension benefits. A Veteran or surviving spouse could not receive A&A and housebound benefits at the same time.

As of December 31, 2018, the income limit for a Veteran with no dependents receiving A&A was \$22,577; the income limit for a surviving spouse with no dependents receiving A&A was \$14,509; and the net worth limit for both Veterans and surviving spouses was \$127,061.

Acting Chairman Pamperin asked if the net worth limit was adjusted for cost-of-living increases. Mr. Friel said it was. Ms. Reaves asked if farmland was counted toward the net worth limit. Mr. Friel said P&F excluded the home and the two acres surrounding the primary homestead but did count any income obtained from farming the land.

As of December 31, 2018, Veterans with no dependents housebound income limit was \$16,805, the Veteran with one dependent housebound income limit was \$21,603, the surviving spouse with no dependents housebound income limit was \$11,273, and the net worth limit for both Veterans and surviving spouses was \$129,094.

Claimants apply for special monthly benefits by submitting VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance, completed and signed by a licensed health care professional. If the Veteran or survivor was in a home, s/he would submit VA Form 21-0779, Request for Nursing Home Information in Connection with Claim for Aid and Attendance, completed and signed by a nursing home official. If the Veteran or survivor was not in receipt of benefits, a completed and signed application for pension or DIC benefits also needed to be submitted.

A rule change for pension intended to establish a clear limit for net worth and maintain the integrity of the VA pension, prevent asset transfers, eliminate the need for net worth determinations, and clarify countable medical expenses became effective September 18, 2018.

Ms. Reaves asked what happened if both spouses were Veterans. Mr. Friel said the maximum benefit was split between the two spouses. Dr. Johnson pointed out that if the two Veterans were single, they could each have the maximum net worth. Mr. Friel noted that the program was not designed to maintain wealth.

For wartime Veterans in FY2019, 63,923 claims were received and 60,956 completed. The PMC average time to complete was 108 days, and the average time pending was 72 days. For survivors of wartime Veterans in FY2019, 41,628 claims were received and 28,598 completed. The PMC average time to complete was 140 days, and the average time pending was 113 days.

DIC was a monthly benefit paid to eligible survivors of Veterans who died as the result of one or more service-connected disabilities. The basic annual payment per surviving spouse beneficiary was \$16,061.68.

There were three types of one-time burial allowances: burial and funeral, plot or interment, and transportation. For a service-connected death, VA paid up to two thousand dollars toward burial and funeral expenses, and the cost of transportation to the nearest national

cemetery. For a non-service-connected death, it pays up to three hundred dollars for burial, funeral, and transportation expenses and up to \$762 for a plot allowance. For a death in a VA facility, it pays up to \$762 for burial and funeral expenses plus transportation costs and up to \$762 for a plot allowance. VA pays a \$762 plot allowance to state cemeteries if the Veteran is buried in a state Veterans cemetery.

In FY2019, VA paid over \$7.3 billion in DIC to 429,585 survivors. 46,065 DIC claims were received, and 47,337 were completed. The PMC average time to complete was 102 days, and the average time pending was 106 days. Also, in FY2019, over \$112 million was paid in burial benefits. 162,253 burial claims were received. The average time to complete for all burial claims was 75 days, and the average time pending was ninety days. By comparison, the average time to complete had been 186 days in FY2012.

Pension initiatives included Medicaid nursing home identification and notification, National Pension Call Center consolidation, master death file dependency identification and notification, automation of benefits processed at PMCs, and expanding automation of benefits to surviving spouses.

#### Education Programs/Colmery Act

Mr. Alphonso gave the briefing. The GI Bill expanded opportunities for Veterans and eligible family members to pursue academic goals; enhanced the nation's economic strength with innovative programs that supported employment in high-demand fields; and enriched lives by giving beneficiaries tools they needed to further their education.

Education Service administers six educational benefits programs, processed approximately four million claims each year, and distributed \$12 billion per year to one million beneficiaries.

The Harry W. Colmery Veterans Educational Assistance Act, also known as the "Forever GI Bill," was signed on August 16, 2017. 13 provisions were effective upon enactment; 18 were effective by August 1, 2018; three provisions would be effective by 2022. The 15-year time limit was eliminated for those who left active duty on or after January 1, 2013.

Servicemembers and honorably discharged Veterans awarded a Purple Heart on or after September 11, 2001, were entitled to Post-9/11 benefits at the one-hundred-percent benefit level for up to 36 months. On August 1, 2020, the forty-percent benefit level would be eliminated, and the sixty-percent level expanded under the Post-9/11 GI Bill.

VET TEC is a five-year pilot program for eligible Veterans to help them secure meaningful employment in the tech sector. It paired eligible Veterans with market-leading training providers. Veterans could take classes to earn a certificate in one of five areas. Those with at least one day of unexpired GI Bill entitlement could be eligible for VET TEC. Participation in the program was free and did not count against the GI Bill entitlement. There were 16 approved training providers, six with preference, at more than 28 locations. 166 students were currently attending, 44 had completed the program, and 12 program graduates were employed.

Education Service launched the Edith Nourse Rogers STEM Scholarship program for students training in high-demand science, technology, engineering, and mathematics

(STEM) fields. The scholarship offers up to nine extra months of benefits for GI Bill STEM programs. Veterans who are currently enrolled in a STEM program requiring at least 120 semester or 180 quarter hours and who had completed sixty standard semester, or ninety quarter hours were eligible. Priority is given to those entitled to one hundred percent of Post-9/11 GI Bill benefits and to those who required the most program credit hours. Over eight thousand applications had been received. 750 scholarships were awarded in November 2019.

Effective August 1, 2018, a student's monthly housing allowance was calculated based on the main, branch, or extension campus location where they physically attended the majority of their classes. All previously submitted claims from August 1, 2018 to December 1, 2019 impacted by this change would need to be re-adjudicated.

Dr. Johnson asked what VA did in the case of online programs. Mr. Alphonso said those enrolled solely through distance learning got paid half the national average.

Effective January 1, 2018, for those using the Post-9/11 GI Bill for the first time after that date, students' rates were set to the slightly lower Department of Defense's E-5 with Dependents Basic Allowances Housing (BAH) rate. Students who started their Post-9/11 GI Bill before that date continue receiving monthly housing allowance payments based on the slightly higher VA rate eliminated by this change.

Education Service has developed several tools for students, including the GI Bill Comparison Tool, the GI Bill Feedback System, a website, Facebook account, and the Education Call Center.

#### Opportunity for Public Comments

There were no public comments.

#### Adjournment

The Committee recessed for the day at 3:39 p.m.

### **Wednesday, December 4, 2019**

#### Opening Remarks

Acting Chairman Pamperin reconvened the meeting at 8:52 a.m.

#### Appeals Management Office (AMO)

Mr. McLenachen and Ms. Ogilvie gave the briefing. In 2016, AMO was created, consolidating appeals operations, policy, and oversight. In 2017, the legacy inventory hit a high of 468,000, the Appeals Modernization Act (AMA) was signed into law, and an 18-month implementation period and the Rapid Appeals Modernization Program (RAMP) were begun. In 2018, new Decision Review Operations Centers (DROCs) were created. In 2019, RAMP ended; the total number of appeals employees increased to 2,100; and the focus

was on legacy reduction. In 2020, the emphasis would be on non-remand legacy elimination, remand inventory reduction, and shifting excess appeals resources.

RO Veteran Service Centers (VSCs) handled new process supplemental claims and legacy Board of Veterans Appeals full grants; RO Appeals Teams addressed legacy appeals and legacy Board remands; DROCs in St. Petersburg and Seattle were in charge of AMA higher-level reviews (HLRs), AMA Board remands, AMA Board full grants, and AMA HLR returns; and DROC D.C. handled legacy Board remands.

Dr. Johnson asked how many people were involved in the RO Appeals Teams. Mr. McLenachen estimated the total at 1,100-1,200.

In October 2018, there were 134,846 Board appeals, 20,716 VHA appeals, and 268,993 VBA appeals. By November 2019, there were 94,239 Board appeals, 6,874 VHA appeals, and 219,358 VBA appeals.

Mr. Lorraine asked if VA tracked the age of a claim. Mr. McLenachen assured him that it did. Ms. Ogilvie added that by February 2020, no new Notices of Disagreement (NODs) could be filed under the legacy system. Mr. Lorraine asked what happened if a Veteran filing an appeal passed away. Mr. McLenachen said the appeal was basically resolved by the death. Ms. Reaves asked if any priority was given to a claim continued by a spouse or survivor after the death of a Veteran. Mr. McLenachen said the claim generally went into the queue where it was worked by age, although VA did have some priority categories.

Dr. Johnson asked how the family of a Veteran who died in the middle of an appeal would learn about their next steps. Mr. McLenachen said he was not sure if there was an actual notice. Ms. Ogilvie said VA would send the family a letter saying it was closing out the claim. Acting Chairman Pamperin asked if the letter was from the Board. Ms. Ogilvie said it was from VBA or P&F Service. Mr. Lorraine asked if there was a legal reason why the claim did not continue after a Veteran's death. Mr. McLenachen said a claim ended upon a Veteran's death by law. Ms. Reaves asked if there was a closing paragraph to a letter announcing the closing of a claim giving survivors the option of reopening it. Ms. Ogilvie said she thought there was, but that she would need to check on the VBA letter.

From its peak in April 2016, VBA had reduced its NOD inventory by 142,842 despite 523,606 new NODs being added during that time. From its peak in October 2013, VBA had reduced its Form 9 inventory by 48,828 despite 346,901 new Form 9s being added during that time.

HLRs were taking an average of 41 days to complete, supplemental claims 62 days. VBA's timeliness goal was 125 days. From February through November, VA had received 154,352 supplemental claims, 34,603 HLRs, and 2,875 Statement of the Case or supplemental Statement of the Case opt-ins and had completed 103,438 supplemental claims and 26,984 HLRs.

In November, VBA had an inventory of 95,819 NODs, 12,577 Form 9s, and 76,581 remands. The goal was to have NODs eliminated by May, Form 9s by July, and to maintain a working inventory of fifty thousand remands by December 2020.

Compensation Service and the Office of Field Operations oversee supplemental claims and RO VSC operations. AMO is in charge of HLRs and returns, Board remands and grants, DROC operations and VBA AMA reporting.

Through December 2, of those filing initial appeals, 72.9 percent chose supplemental claims, 14.1 percent HLR, and 13.1 percent an appeal to the Board. Of those filing review requests, 40.7 percent chose an appeal to the Board, 40.4 percent HLR, and 18.9 percent supplemental claims.

VBA higher-level reviewers identify any duty-to-assist errors that occurred at the time of the prior decision and return all impacted issues to the lower level for correction. If a Veterans law judge (VLJ) at the Board identified an error in VA's duty to assist that occurred at the time of the prior VA decision, the VLJ would remand all impacted issues to VBA for correction. If a developmental error was identified prior to finalization, the claim was returned through VBA's deferral process for corrective action and then sent back for finalization of the claim.

Acting Chairman Pamperin asked what happened if an appellant failed to show up for a hearing. Ms. Ogilvie said the Veteran would most likely need to file a motion to reschedule. Otherwise, the hearing request would be considered withdrawn, and the Board would go forward with its decision. Dr. Lewis asked if the Veteran had any say in scheduling the hearing. Ms. Ogilvie said the hearing was typically scheduled without consulting the Veteran in advance, although they could ask for a reschedule.

Dr. Maciosek asked if virtual hearings would require a change in legislation. Ms. Ogilvie said the current legislation allowed for virtual hearings.

AMO finalized a quality review trial period to assess baseline quality of HLRs. VBA's quality target for the HLR process was 96 percent. The cumulative issue-based quality accuracy to date was 96.3 percent. In FY2020, AMO will establish a statistically valid sample size for HLRs and begin monthly reporting of national accuracy rates. It conducts monthly calls with DROCs to discuss identified error trends and policy/procedural guidance.

Acting Chairman Pamperin asked if the Board created a new docket for the new system. Ms. Ogilvie said it now had five dockets: the legacy docket with no hearings, the legacy hearing docket, the direct docket under the AMA, the evidence docket, and the new AMA hearing docket. Acting Chairman Pamperin asked if the Board had made any decisions under the new system. Ms. Ogilvie said it had issued about three thousand, mostly in the direct docket lane.

#### Office of Transition & Economic Development (OTED) Program Overview

Mr. Williamson gave the overview. He distributed copies of the current VA Benefits and Services Briefing Book, Version 3.0, which was launched on October 1. It was shorter and more manageable than previous iterations, while retaining a module-based approach going through all the benefits and services provided by VA. Based on the feedback from Veterans and Servicemembers, OTED had made its website more interactive. In January it would release Version 3.1 of the manual, which would include minor updates regarding program eligibility.

OTED had created a separate benefits and services briefing book for the Reserve and National Guard component. Its benefit advisors had been trained to ask if there were any Guard and/or Reserve members present, and if so, to present them with the book.

VA had re-engaged with DoD's Yellow Ribbon Reintegration Program in an effort to reach Reservists. In the past year, it had developed nine Military Life Cycle (MLC) Modules, 45-60-minute video presentations explaining various VA benefits and services, including a VA 101 briefing.

Ms. Reaves asked whether the modules were also on the website. Mr. Williamson said they were listed there, as well as an information sheet passed out during the briefing. Unlike the mandatory Transition Assistance Program (TAP) briefing, VA did provide booklets for the MLCs. The MLCs were intentionally designed to be interactive.

Changes to the FY2019 National Defense Authorization Act (NDAA) finally codified that VA got one full day to do its briefing during the forty-hour Transition GPS curriculum. In October OTED increased face time by about fifty minutes, adding additional time to discuss Benefits Delivery at Discharge (BDD).

Mr. Williamson said one component of the FY2019 NDAA mandated that Servicemembers must start pre-separation counseling no later than 365 days before their expected date of separation. The act also mandated that a statement of all DoD and VA benefits a Servicemember may be eligible for be issued no later than thirty days before separation.

OTED recently launched a universal outbound call, in which it intended to call every single new Veteran three times in the first year after separation. Dr. Lewis pointed out that people were often reluctant to take phone calls from those they did not know. Mr. Williamson said that in OTED's January update, it would inform separating Servicemembers of a telephone number from which they would receive VA's call. OTED was willing to leave voicemails and make repeat calls up to seven times, as well as govDelivery to send email notifications.

In June, OTED put out its first-ever longitudinal survey on TAP, sending out mailers to 160,000 recently separated Servicemembers inviting them to participate in a 25-minute survey looking at seven domains across their lives. A statistically valid sample responded, and OTED planned to report publicly on the results in early 2020.

Dr. Johnson asked about the survey's response rate. Mr. Williamson said it was around six percent. Initially, the invitations to participate were only issued by mail. The contract had since been modified to allow for digital mailers, and OTED anticipated an uptick. Separating Servicemembers would be able to take the next round of the survey online. Dr. Johnson noted that the survey seemed rather long. She suggested OTED stratify its sample, coming up with equal cohorts and giving them each a small set of questions.

Dr. Johnson asked if there were any recommendations the Committee could make that would help OTED. Mr. Williamson said OTED would like to know if it was, in fact, steering Servicemembers in the right directions. It would also appreciate recommendations on what to do after the first year of separation, as well as advice on how to continue building trust. Acting Chairman Pamperin asked how OTED overlapped with VBA. Mr. Williamson said

OTED was a business line within VBA. Mr. Hazell asked if there was still talk of splitting OTEd off and forming a new administration within VA. Mr. Williamson said he had only heard reports in the press.

### ACDC FY2020 Scheduling

The Committee discussed when and where to hold its 2020 meetings. Acting Chairman Pamperin noted that when the Committee met in St. Petersburg, it had toured the DROC, and that it might be useful to visit the DROC in Seattle to see whether the two centers shared the same perspective.

Ms. Reaves and Dr. Lewis expressed interest in exploring how VA reached out to Veterans in rural areas.

Dr. Johnson asked if there were any areas where certain challenges were particularly acute. She saw the Committee's role as to identify what was not working, and then offer ideas for how to make something work. Dr. Lewis felt it would be useful to interact with rank-and-file VA employees so that the Committee did not just get the official party line. Ms. Reaves suggested holding a town hall.

Mr. Lorraine suggested the Committee discuss Veterans' Group Life Insurance. Ms. Stewart offered to find a representative to brief the Committee at a future meeting. Dr. Johnson stressed the importance of having a discussion, not just a briefing.

Mr. Lorraine asked what, besides VASRD, was directly within the Committee's scope. Acting Chairman Pamperin mentioned total disability individual unemployability (TDIU). Several members said they would like a better core understanding of IU. Mr. Hazell recommended that the Committee block out a good chunk of time at a future meeting to discuss the issue.

The Committee recessed from 11:57 a.m. to 12:32 p.m. for lunch.

### VBA Senior Leadership Briefing

Ms. Murphy gave the briefing. VBA provided a variety of benefits and services to Servicemembers, Veterans, and their families. Major program offices within VBA included Pension & Fiduciary Service, Education Service, Office of Field Operations, Office of Transition and Economic Development, Appeals Management Office, and Compensation Service.

Additional Veteran suicide prevention training has been implemented at VBA symposiums and among National Call Center staff, ensuring VBA staff remained vigilant and aware regarding this crisis.

Acting Chairman Pamperin asked if there was any way for the Office of Information and Technology to speed up the orthopedic revision in VASRD so that it could be built in less than four iterations. Ms. Murphy said it was the third build of four for the musculoskeletal body system. Dr. Johnson asked about the status of the mental health update. Ms. Murphy said it was about halfway through the concurrence process.



A proposed rule amended 38 CFR 3.103 and 3.654, which concerned active service pay. It had taken a long time, but a final rule was expected in January or February.

Pre-discharge and interagency collaboration staff achievements included partnering with DoD to ensure military readiness and lethality and to ensure the Servicemember's successful transition into civilian life through streamlining the Integrated Disability Evaluation System (IDES) process. Within the last year, the program target was reduced from 295 days to 180.

Acting Chairman Pamperin asked if there was any concern over a possible disruption in separation health exams. Ms. Murphy said VBA was proactively working to address the situation.

Mr. Lorraine said Ms. Murphy misunderstood the Committee. Ms. Reaves asked why a Veteran could not use the ship locator. Ms. Murphy said it was because it was so new. Acting Chairman Pamperin said he thought Ms. Murphy was correct. Ms. Murphy said it was all in the relationship. Mr. Lorraine said he understood that. Ms. Murphy said the ship locator was a relatively recent development.

#### National Work Queue

Ms. Perez gave the briefing. NWQ started distributing pension claims in January. AMA-related changes were implemented to NWQ in February. In March, NWQ began grouping the rating workload by cycle. DROC D.C.'s workload was incorporated in June 2019.

NWQ centrally distributes BWN claims starting in January, for specialized processing. Prior assignment routing would provide application enhancement to return cases to staff who previously worked them to drive processing efficiency. In April, unique mission routing will provide stations with unique workload queue numbers to route to specifically designated ROs for processing by trained evaluators.

From October 31, 2018 to November 18, 2019, the appeals inventory had declined 99.95 percent for HLRs and 92.63 percent for Supplemental Claims.

NWQ began routing the pension workload to the PMCs in January 2019. From January 1 to September 1, the pension inventory had increased 2.59 percent. The average pension took 86.60 days to process.

Character of discharge determinations began routing to non-rating resources teams on May 1. From October 31, 2018 to October 31, 2019, the inventory had decreased 38.74 percent. The average determination took 185.7 days to process.

Dependency claims had declined 52.24 percent from October 31, 2018 to October 31, 2019, with an average days to process (ADP) of 66.1 days. Eligibility claims had decreased 3.75 percent with an ADP of 59.1 days. Due process claims had declined 129.24 percent with an ADP of 110.4 days. Message work items were down 86.18 percent with an ADP of 11.1 days.

## Contract Exams

Mr. Smith and Ms. Kraft gave the presentation. MDEPO had contracted with Quality, Timeliness, Customer Service (QTC) to provide medical disability examinations (MDEs) to Servicemembers who were seeking disability benefits from VBA and resided within the continental United States.

All examiners possessed licenses, permits, accreditation, and certificates required by law of the states where they practiced. The examinations were performed using the same Disability Benefits Questionnaires (DBQs) used by the VHA compensation and pension (C&P) examination clinics.

The MDEPO operations staff acts as liaisons with QTC, VHA's Office of Disability and Medical Assessment, NWQ, Office of Field Operations, District Offices, and ROs. The staff coordinates training and developed informational materials for use by the field. The staff also monitored the Contract Examination Inquiries mailbox.

By contract, QTC had a requirement to complete all exams within thirty days of the request. QTC's average time to complete for FY2019 was 33.8 days. A total of 61,576 Servicemembers were seen during FY2019. Those examinations resulted in a total of 599,633 DBQs completed and delivered to VA.

MDEPO completed 1,061,775 exams in FY2019. Seven percent of those exams were pre-discharged, while 93 percent were in Regions 1-4.

Ms. Reaves stressed the importance of communicating to Veterans the difference between evaluation and treatment. Acting Chairman Pamperin said the exam letter already stated that the Servicemember could not get medication at the evaluation. Mr. Hazell said there was specific verbiage added to the appointment letter. Ms. Kraft said Servicemembers did not always read the letter, and that VA was working on a communication plan. Dr. Maciosek argued that something needed to be said during the exam itself.

Acting Chairman Pamperin asked if there was anything Veterans did not like about the contract exam. Mr. Smith said a lot of them did not like having to travel long distances. Ms. Kraft added that there was a bit of a communications barrier with overseas doctors.

Acting Chairman Pamperin asked if Veterans ever had to drive past VA to get a contract exam. Ms. Kraft said there were some regions in which VHA was no longer doing C&P examinations. Mr. Smith said VBA was working collaboratively with VHA to address this issue.

Mr. Lorraine asked how many of those examined were from the Guard and Reserve. Mr. Smith said there had been a 32 percent uptick in the past six months from non-active duty personnel. Acting Chairman Pamperin suggested looking at RO outreach to the Guard and Reserve components. He asked Mr. Smith and Ms. Kraft to present the Committee at a future meeting with numbers for the Guard and Reserve.

The Committee recessed from 2:26 p.m. to 2:53 p.m.

## BDD/IDES

Acting Chairman Pamperin informed members that they would not receive an update on BDD/IDES at this meeting because the would-be presenters were on the Hill briefing Congress.

Mr. Hazell asked if Coast Guard would be incorporated into IDES. Mr. Yedinak said Coast Guard was planning to roll out an IDES proof of concept and was awaiting sign-off from the deputy commandant.

## Opportunity for Public Comments

A member of the audience who did not identify himself said that one of the issues of getting more spaces in DoD was that VHA needed to be more heavily involved, since it was taking over administration of various facilities. He added that many on the Temporary Disability Retired List thought they had received their DoD evaluation when in fact they had not and ended up losing all their benefits. He then asked if the Coast Guard, when it entered IDES, would stick to the old target of 295 days, rather than the new one of 180. Mr. Yedinak said that was correct, noting that unlike DoD, Coast Guard had not had a decade to work out the kinks.

## Adjournment

Acting Chairman Pamperin adjourned the meeting at 3:20 p.m.

Toby Walter  
Neal R. Gross & Company  
Preparer of the Minutes

Janice Stewart, Committee DFO

  
Thomas J. Pamperin  
Acting Committee Chairman