

**STATEMENT OF  
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U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)  
BEFORE THE  
HOUSE COMMITTEE ON VETERANS' AFFAIRS**

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Chairman Miller and Members of the Committee, thank you for the opportunity to review with you the Department of Veterans Affairs' (VA) individual unemployability (IU) benefit. My testimony will provide an overview of the IU benefit and explain VA's processes for quality assurance, training, and verification of earnings and employment information for continued IU eligibility.

**Overview of IU**

The IU benefit fills a critical gap when the disability compensation rating schedule fails to fully address the impact of disability in a specific Veteran's circumstances such as when a Veteran's symptoms do not meet the disability rating criteria for a schedular 100 percent evaluation, but there is sufficient evidence of the Veteran's inability to obtain or maintain gainful employment. IU is the basis on which VA pays service-connected disability compensation at the rate payable for a 100-percent evaluation to qualified Veterans with evaluations that are less than 100 percent under the schedule for rating disabilities. Regional office decision-makers assign IU ratings when Veterans meet minimum combined evaluation criteria of a single disability rated at 60 percent disabling or two or more disabilities with a combined evaluation of 70 percent, one of which is 40 percent or more, and, in the judgment of the decision-maker, are not able to obtain or maintain substantially gainful employment due solely to their service-connected disabilities. In exceptional circumstances, regional offices may refer cases that fail to meet the minimum combined evaluation criteria to the Director of the Compensation Service for consideration of an IU rating on an extraschedular basis.

The number of Veterans rated totally disabled based on IU increased by 12 percent in recent years, from 283,000 Veterans in fiscal year (FY) 2011 to 316,000 Veterans in FY 2014. At the same time, the number of Veterans receiving disability compensation increased by 17 percent, from 3.3 million Veterans to 3.8 million Veterans.

### Authority

Section 1155 of title 38, United States Code, charges the Secretary with responsibility for developing and applying a disability rating schedule that is based, "as far as practicable," upon the average impairments of earning capacity resulting from service-connected disabilities. Recognizing that the intent of the rating schedule is to fairly compensate Veterans for their disabilities to the extent those disabilities impair earning capacity of the average Veteran, the schedule nonetheless cannot always adequately compensate an individual Veteran in his or her particular circumstances. To address the inevitable situations where the schedule does not adequately cover a particular fact pattern, the schedule adopted by the Secretary is supplemented with IU provisions.

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

### Eligibility Criteria

Generally, to be eligible for the IU benefit, a Veteran must have a single service-connected disability rated at 60 percent or more, or two or more service-connected disabilities with a combined rating of 70 percent or more, with at least

one disability evaluated at a minimum of 40 percent disabling. To be eligible for IU, a Veteran also must be unable to secure or maintain substantially gainful employment as a result of service-connected disabilities. VA may not consider age as a factor in evaluating claims for IU.

The application form for IU requires the Veteran to furnish an employment history for the five-year period preceding the date on which the Veteran last worked. As part of the development of claims involving IU, VA contacts these employers and asks them to provide information concerning the Veteran's employment history, including the dates of employment, the type of work performed, and if the Veteran is not currently working, the reasons for termination of employment.

If VA determines a medical examination is necessary to determine whether a Veteran is entitled to a total disability rating based on IU, an appropriate examination or opinion request is submitted to a Veterans Health Administration (VHA) medical facility or a contract examination provider.

Medical examiners follow the appropriate Disability Benefits Questionnaires to perform a complete and adequate examination for rating purposes, answering all questions and providing opinions as requested. The medical examiner is required to describe each service-connected disability's effect on the Veteran's daily activities and level of functional impairment. For IU evaluations, the examiner should also consider the Veteran's occupational history (i.e., type of occupation and employment dates, and detail any time that was lost from work in the past 12-month period).

A regional office may refer to the Director of the Compensation Service, for consideration of an IU rating, a case in which a Veteran is unemployable by reason of service-connected disability but fails to meet the minimum evaluation criteria. The regional office will include a full statement as to the Veteran's service-connected disabilities, employment history, and educational and vocational attainment and note any other pertinent factors.

## **Quality Assurance and Training**

The Veterans Benefits Administration (VBA) requires all Veteran Service Representatives (VSRs) and Rating Veteran Service Representatives (RVSRs) to complete web-based training on IU claims processing following completion of their initial Challenge training. The Challenge program is a national technical training curriculum that provides new Veterans Service Center employees with the skills they need to function effectively as VSRs and RVSRs. Challenge training provides employees with hands-on training with computer applications, policies, and claims processing. Upon successful completion of Challenge, VSRs have 90 days to complete IU training, and RVSRs have 60 days to complete IU training.

The five-hour web-based IU course for VSRs enables the students to:

- Define IU and determine eligibility requirements;
- Determine evidence, including medical evidence, required to process claims involving IU and identify resources available to obtain additional evidence;
- List the steps for processing a claim involving IU;
- Identify any ancillary benefits available to the Veteran's dependents; and
- Understand the employment and income verification requirements for Veterans in receipt of IU benefits.

The RVSR web-based IU course is two hours of training covering the definition of IU, eligibility criteria, evidence requirements, effective dates, and processing the rating decision.

During the first two quarters of FY 2015, VA's national Systematic Technical Accuracy Review found that accuracy for IU claims processing was 94 percent. The most common errors were the failure to properly consider earlier effective dates and the failure to infer IU in appropriate cases where Veterans had filed initial claims for service connection or claims for increased disability ratings.

## **Verifying Earnings and Employment for Continued IU Eligibility**

Once a Veteran is awarded IU benefits, he or she is required, until attaining age 70, to submit an annual unemployment certification. The Veteran must list any and all employment for the preceding 12-month period. VA uses the certification to verify continued entitlement to IU benefits. Failure to return the form will cause VA to send the Veteran a notice of reduction of the monthly benefit payment to the rate justified by the underlying rating.

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

VA is developing an upfront verification process by expanding a data sharing agreement with the Social Security Administration. This process will serve as a more efficient way to receive earned income data in a timely manner and maintain integrity of the IU program.

## **Closing**

The IU benefit fills a critical gap when the rating schedule fails to fully address the impact of disability in a specific Veteran’s circumstances. VA continues to review the IU program for potential improvements, including a current review of the program to explore how to help Veterans return to work through VBA’s Vocational Rehabilitation and Employment program, if possible.

This concludes my testimony, Mr. Chairman. I would be pleased to address any questions you or other Members of the Subcommittee may have.