

Statement

For the Record

VIETNAM VETERANS OF AMERICA



Submitted by

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BEFORE THE

U.S. HOUSE COMMITTEE ON VETERANS' AFFAIRS

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL
AFFAIRS**

REGARDING

**“BEYOND TRANSFORMATION: REVIEWING CURRENT STATUS AND
SECONDARY EFFECTS OF VBA TECHNOLOGY”**

FEBRUARY 5, 2014

Chairman Runyan, Ranking Member Titus, and other members of this distinguished and important committee, Vietnam Veterans of America (VVA) appreciates the opportunity to offer our statement for the record concerning VBA Technology. Please know that VVA appreciates the efforts of this committee for the fine work you are doing on behalf of our nation's veterans and their families. There are 5 issues we would like to bring to your attention.

I. SCANNING VETERANS CLAIMS FOLDERS (CFILES)

VBA has to complete its transformation from paper to electronic files if it is going to make significant progress in improving its timeliness in claims processing. To accomplish this huge undertaking VBA is scanning millions of veterans' claims folders (CFILES). These CFILES are the agency's official record of the veteran's current claim and any past claims and appeals. These CFILES can range from less than 50 pages to literally thousands of pages (enough to fill several filing cabinet drawers).

Inside a CFILE

On the left flap is the accounting and payment history. The middle section should contain, in chronological order, the initial claim form (21-526), reopened claims, private medical records, past rating decisions, other evidence submitted by the veteran or the veterans representative, evidence added by VA (such as printed pages from the Veteran's medical records from VA hospitals), evidence from other agencies (such as the Social Security Administration), and all correspondence sent to the veteran. The right flap contains the veteran's Power of Attorney form (VA Form 21-22), and DD214.

The service treatment records (STRs) including the veterans military medical and dental records are contained in a large envelope, usually attached in the middle section of the CFILE. The STRs contain the veteran's enlistment physical, contains outpatient treatment records, and separation physical. Lab results (usually on sticky notes) are stuck on the outpatient treatment notes. X-rays are also included. Older records are usually hand-written and hard to read. Records from WWII are very delicate and require careful handling.

Once the first CFILE is completely full a second folder is created (Volume II), then a third (Volume III), and so on. Sticky notes are used to help flag key parts in the

file. Highlighting is also used. All the volumes are bound together by large rubber bands.

Unfortunately, Veteran Service Officers all too often find the paper documents in CFILES in complete disarray. For whatever reason, these documents are not in chronological order, but in random order, much like what is left over after playing a game of "52 Pickup." Sometimes documents from other veteran's CFILES get mixed in. I personally have seen a CFILE containing documents from 3 different veterans.

Not all CFILES are scanned

VSOs were promised by VA the CFILES would be scanned and searchable. To date, VA says 82% of the CFILES are scanned. This 82% are initial claims, and do not include over 800,000 reopened claims, appeals, dependency claims, and claims already decided. We understand VA has had to prioritize which CFILES get scanned first, and noticed this massive scanning effort has led to delays in veterans claims at ROs across the country, but we recognize this is a temporary situation.

CFILES are not fully searchable

The VA promised efficiencies would be gained by the electronic CFILES being searchable. In practice, what has happened is after each page is scanned it is grouped together with similar documents and categorized under a specific label. **Only the label, and not the document's contents, are globally searchable in VBMS.** To search within the document you must open it and perform a separate search within that document (if it was scanned using Optical Character Recognition or OCR). What we now have is a pile of paper being replaced with a "Pile of PDFs."

VBA should be appropriated sufficient funding to ensure that each veteran's electronic CFILE is truly searchable without having to open each document separately. Opening each document separately delays adjudication, and may actually prevent some VA attorneys and Veteran Law Judges from seeing important documents if they rely solely on searching the document labels and do not open every single document.

CFILE Pages are Mislabeled

VVA represents veterans at the Board of Veterans Appeals, and our appellate attorneys have noticed a problem with pages in electronic CFILES in VBMS being mislabeled. For example, our attorneys' legal briefs and third party correspondence have frequently been mislabeled as "Board of Veterans Appeals Decisions." Consequently, we are concerned this is a much broader problem given the large scale of scanning that is taking place across VBA. We suggest this mislabeling problem be looked at more closely.

Quality Control Concerns

As mentioned previously, CFILES range in size and content. Also, documents contained in these CFILES may be single or double sided. Many of these pages have staples, paper clips, or sticky notes or flags which have to be removed before being scanned. This is a labor-intensive and mistake prone process. How do we know both sides of each page was scanned? How do we know all the pages were scanned? What if the scanned image is illegible? Once the paper CFILE is destroyed, there is no going back if a quality problem is later discovered with the electronic copy. This potentially creates an electronic "St. Louis Fire" for veterans whose files were either not scanned completely, or have illegible scans.

VBA plans to retire scanned CFILES, but no official decision has been made on what to do with the STRs. They are DOD property, but DOD does not want the STRs back. VA does not want to continue paying to store them. Prior rating decisions contained in the paper CFILE may not be accessible in legacy VBA systems such as Virtual VA.

VVA recommends retiring the entire CFILE to NARA. That way if there is ever a problem with the scanned file the Veteran can go back to the paper file. Otherwise, we will have a situation similar to what is found within the airline industry where the airlines claim 98% of passenger baggage makes it to their destination, but if you are part of the unlucky 2% whose bags didn't make it, you are out of luck. Here, veterans whose CFILES were not completely scanned or have scanning errors may face denials by VA, much like their predecessors whose military records were destroyed by the infamous 1973 St. Louis Fire.

II. VA NATIONAL WORK QUEUE

VBA has Regional Offices in every state, some states (NY, PA, & TX) have 2 ROs, and CA has 3 ROs. VBA is trying to balance its work across its 57 regional offices. VBMS will give VA the opportunity to balance its workload across all these ROs. It may also allow the creation of Centers of Excellence for complex or difficult claim issues such as PTSD, TBI, hearing loss, and vision loss. This could improve the consistency of rating decisions, especially for those conditions that are not adjudicated very often, but are complex. For example, vision loss conditions make up only 1.5% of all service connected conditions (2012 VBA Annual Report), but tend to be very difficult and challenging for RVSRs to adjudicate. Using the National Work Queue vision loss claims from around the country could be channeled to specific RVSRs who are experienced in rating these types of claims. Furthermore, RVSRs at every RO could be incentivized to become Subject Matter Experts in particular claims.

Need for formal process to resolve VSO sign off issues

As a service officer I have signed off rating decisions at the rating table, and in the cases where I found an error in a rating decision I was able to go straight to the RVSR (or the RVSR's Coach) and get the issue immediately resolved, thus saving the RVSR a quality review error, and saves the veteran a lengthy 2-3 year appeal. This is a win/win for the veteran and the VA.

Not every RO allows service officers access to RVSRs. Some ROs only allow the service officer to meet with the RVSR's coach (when the coach can be found. They are very busy and can be hard to locate). VVA proposes "office hours" at each RO so the service officer can get the issue resolved without the RVSR or coach being interrupted throughout the entire work day by service officer inquiries.

Now that VBMS is here, VBA needs to establish a formal process to deal with service officer sign-offs. If a claim is to be signed off by a service officer in VBMS via SEP, how do sign-off issues get resolved if a service officer finds an error in a rating decision? This become a bigger problem if the service officer is not located at the same RO that generated the decision. VVA proposes a "Dispute Queue" be created where the service officer can send the rating decision for review by the RVSR or Coach.

The advantages of a National Work Queue have to be carefully balanced with the disadvantages. The service officer who is on station and has face to face contact with the RVSRs and DROs is a more effective advocate for veterans than those service officers who are not on station or do not have access to adjudicators. If designed correctly, the National Work Queue can help effectively balance workloads within an RO and across multiple ROs, but carefully planning must be taken to ensure the working relationship between service officers and RVSRs is not weakened.

III. ISSUES WITH STAKEHOLDERS ENTERPRISE PORTAL (SEP)

SEP allows VSO many benefits including the ability to accept or reject a veteran's request for representation, submit a claim electronically for a veteran (either take over a claim that was started in eBenefits, or submit a whole new claim in SEP), and check the veteran's claims status. It basically allows the VSO to see what the veteran sees in eBenefits. SEP holds great potential to enable VSOs to better serve veterans, but it does have a few issues that need to be addressed.

Veteran must already have an eBenefits account

In order for a VSO to submit a claim for a veteran via SEP, the veteran must already have already created an eBenefits account. Currently it is not possible to submit a claim for a veteran via SEP if the veteran does not have an eBenefits account. VA is working on a solution.

POA Request Glitch

In response to multiple VSO requests to improve VA policy governing VA Form 21-22 "Appointment of Veterans Service Organization As Claimant's Representative," known as the "POA Form," VA created functionality in eBenefits to allow veterans to select their representative online rather than submitting a paper 21-22 form. VSOs were told the veteran can submit a POA request in eBenefits, and that this request would appear in the VSO's "Service Representation Request" queue in SEP where the VSO can click a button to accept or decline the request. The veteran's eBenefits account would receive an immediate response from SEP once the VSO accepts or declines the POA request.

Unfortunately, due to a programming bug or glitch, there is a communication error between eBenefits and SEP that is preventing the veteran's eBenefits account from updating with the new POA request status after the VSO accepts or rejects the POA request. Thus, the VSO must contact the veteran directly by phone, email, or paper letter to communicate the acceptance or rejection of the veteran's POA request. Imagine a VSO finding 1,000 POA requests to respond to in SEP. That is 1000 phone calls, emails, or paper letters that need to be generated. This creates an unnecessary burden on VSOs, and needs to be corrected by VA as soon as possible.

Out of Date POA Database Impacting eBenefits

A veteran's ability to find an accredited service officer in eBenefits is significantly impacted because the database maintained by the VA Office of General Counsel (OGC) used to feed into eBenefits is woefully out of date.

The VA Office of General Counsel (OGC) only has 4 FTE to monitor approximately 30,000 accreditations (service officers, attorneys, and VA Agents), and these staff are responsible for maintaining the online database that feeds into the POA request feature in eBenefits (see: <http://www.va.gov/ogc/apps/accreditation/>).

The lack of resources at OGC to monitor these accreditations is well documents by the Government Accountability Office in its report "Improvements Needed to Ensure Claimants Receive Appropriate Representation." The GAO recommended the VA OGC, "...take steps to ensure an appropriate level of staff and IT resources are in place to implement the requirements of the accreditation program." GAO-13-643: Published: Aug 1, 2013. Publicly Released: Aug 30, 2013. Available: <http://www.gao.gov/products/gao-13-643>.

Although some short-term fixes are being made to help clean up the database, the long -term solution is for OGC to allocate sufficient FTE to this important OGC function so that the database is up to date.

IV. DIFUSED ACCOUNTABILITY

VBA has to transform its paper-based claims system into a modern, electronic-claims based system, and is making great progress. However, unless structural changes are made to VBA's organizational structure, no amount of technological transformation will fix VBA's underlying and deep-rooted problem: the existing separation of VBA's Operations and Policy Functions.

There are at least two major structural/corporate culture barriers that need to be changed at VBA. First, the bifurcation of separate reporting lines of managers between “operations” and “policy” does not make sense. It only creates too many middle managers and disperses accountability. This needs to be corrected at VBA (and at the Veterans Health Administration (VHA) as well we might add), for the same reasons of reducing managerial slots and affixing clear accountability. The second is the fact that nobody ever got in trouble at Compensation & Pension for saying “No.” The default position needs to change from “No” to “how do we get to yes?”

VVA commends VBA on the progress it is making to become an electronic claims system, but strongly urges VBA's organization structure also undergo transformation.

V. VA PROPOSED RULE RIN 2900--AO81--STANDARD CLAIMS AND APPEALS FORMS

VVA understands the VA's stated intent to improve the quality and timeliness of the processing of veterans' claims for benefits and appeals, and in principle, we do not oppose VA modernizing its claims system and use of standardized forms. However, we find many of these proposed rule changes in RIN 2900—AO81, as currently written, do NOT have the intended effect of increasing efficiency, and are in fact adverse to veterans' interests by formalizing the claims and appeals processes to the point where benefits are unfairly restricted.

Although the title of this proposed rule is, “Standard Claims and Appeals Forms,” the proposed change goes well beyond mandating the use of forms. VA proposes to:

- Eliminate all informal claims, potentially costing veterans millions of dollars in retroactive payments currently allowed under existing law.
- Essentially change a claim from an application of **“formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit”** to **“a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the VA.”** This gives VA the opportunity to raise the bar to an unreasonable level where veterans are denied claims for issues that are not specifically claimed.
- Create the concept of a “complete claim,” and providing VA the opportunity to unfairly deny claims for failing to meet its arbitrary standards of what it deems to be “complete.” Veterans’ claims should be decided on their merits, and not summarily dismissed for failing to dot every “I” and cross every, “t”.

Currently, the claims clock starts when a veteran submits an informal claim, and the veteran has 365 days to follow up with the formal claim and evidence to perfect the claim. VBA policy makers claim this hurts and unfairly skews VA's claims timeliness statistics. There is nothing in Title 38 that prohibits VBA from starting the claims clock from when the formal claim is received. Thus, VA *could* start the claims clock when the formal claim is received rather than eliminating informal claims. This would reduce VBA timeliness statistics by up to 364 days without costing veterans the retroactive awards they are currently entitled to under the existing informal claims process.

VVA has serious concerns that these proposed changes are adverse to many classes of veterans--especially Vietnam Veterans--seeking VA benefits under Title 38, and some of these proposed changes may be in direct violation of existing court rulings. Furthermore, some of these proposed changes may not pass Constitutional muster given they appear to run afoul with the Due Process and Equal Protection

Clauses of the U.S. Constitution. The end result of these proposed changes, if enacted, would be a significant departure from the longstanding, “nonadversarial and pro-claimant” VA system originally intended by Congress.

Although VA is granted authority under 38 U.S.C. 501(a) to make regulatory changes, these proposed regulatory changes appear to be *ultra vires*. Therefore, VVA strongly opposes these proposed changes as currently written and urges that they be withdrawn.

Mr. Chairman, VVA thanks you and this subcommittee for the opportunity to present our views for the records regarding today’s hearing “Beyond Transformation: Reviewing Current Status And Secondary Effects Of VBA Technology”.

VIETNAM VETERANS OF AMERICA
Funding Statement
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The national organization Vietnam Veterans of America (VVA) is a non-profit veterans membership organization registered as a 501(c)(19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the Senate of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

For Further Information, Contact:

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Mr. James Vale is the National Service Director and Senior Attorney for Vietnam Veterans America. He is a licensed attorney from the State of Washington, leads a legal team of 6 appellate attorneys, and oversees accreditation, training, and VBP Program compliance for over 600 accredited service officers. He has been an accredited service officer for 10 years and is accredited by the Associates of Vietnam Veterans, American Legion, Blinded Veterans Association, and Vietnam Veterans of America. He has represented veterans for VA claims at the VA Seattle Regional Office and at the Board of Veterans Appeals.

Mr. Vale is a former Government Relations Intern with the Blinded Veterans Association, and a former David Isbell Summer Law Clerk with the Veteran Pro Bono Consortium. He is a past-presenter at the National Organization of Veterans Advocates (NOVA), has written an article in the National Veterans Legal Services Program (NVLSP), *The Veterans Advocate*, and has a column in VVA's Magazine, *The Veteran*.

Mr. Vale is a disabled Navy Gulf War-era Veteran and is legally blind. He earned his Master of Business Administration (MBA) and Master of Aeronautical Science (MAS) from Embry-Riddle Aeronautical University, and Master of Public Administration (MPA) and Education Specialist Degree (Ed. S.) from the University of Arizona, and Juris Doctorate (JD) from Seattle University School of Law. He is also a graduate of both the VA Blind Rehabilitation Service and the VA Vocational Rehabilitation & Employment Program.

Mr. Vale resides with his wife Rowena and his daughter Gabrielle in the DC metro area.