

**STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON DISABILITY ASSISTANCE
AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
"INVESTIGATING HOW VA IMPROPERLY PAID
MILLIONS TO INCARCERATED VETERANS"
SEPTEMBER 27, 2016**

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss the Office of Inspector General's (OIG) June 2016 report, *Veterans Benefits Administration: Audit of Compensation and Pension Benefit Payments to Incarcerated Veterans*. I am accompanied by Mr. Nick Dahl, Director, OIG's Audits and Evaluations Division in Bedford, Massachusetts.

BACKGROUND

Delivering timely and accurate benefits and services to the millions of veterans who served in our Nation's Armed Forces is central to VA's mission. The Veterans Benefits Administration (VBA) is responsible for administering a range of veterans benefits programs, including compensation, pension, education, home loan guaranty, vocational rehabilitation and employment, and life insurance. These programs are estimated to pay out over \$92 billion in claims to veterans and their beneficiaries in fiscal year (FY) 2016 and comprise approximately half of VA's total budget.

Federal law requires VBA to reduce compensation and pension (C&P) benefits for veterans incarcerated in Federal, state, or local penal institutions longer than 60 days.¹ Effective the 61st day of incarceration, VBA must reduce compensation benefits for veterans convicted of a felony. For veterans whose service-connected disability rating is 20 percent or higher, VBA reduces compensation benefits to the 10 percent disability rate. For veterans whose service-connected disability rating is 10 percent, VBA reduces compensation benefit payments by one-half. In addition, effective on the 61st day of incarceration, VBA must discontinue pension benefits for veterans convicted of a felony or misdemeanor. Once the veteran is released from the penal institution, VBA can restore full C&P benefits.

VA Regional Office (VARO) and Pension Management Center (PMC) employees are responsible for making incarceration adjustments. VBA classifies incarceration adjustments as non-rating claims. Generally, these claims require development, review, and administrative decision or award action. Non-rating claims are different from

¹ Relevant Federal laws are Title 38 United States Code (USC) Section 3113, Title 38 USC Section 5313, and Title 38 USC Section 1505.

disability rating claims because staff can process non-rating claims without a rating decision. VBA's disability claims backlog includes claims that require a rating decision that have been pending for more than 125 days. Since non-rating claims—including incarceration adjustments—do not require a rating decision to complete, they are not considered part of the disability claims backlog.

Within VBA, Compensation Service is responsible for developing policy requirements, disseminating procedures for the administration of compensation benefit programs, and establishing and maintaining computer-matching agreements between VBA and other Government agencies. The Office of Field Operations oversees operations and establishes workload priorities at the VAROs across the Nation that process disability claims and provide services to veterans. Pension and Fiduciary Service has jurisdiction and responsibility over the three PMCs, which are located in Philadelphia, Pennsylvania; Milwaukee, Wisconsin; and St. Paul, Minnesota.

Computer Matching Agreements

VBA has a computer matching agreement with the Federal Bureau of Prisons (BOP) under which VBA receives information on Federal prisoners whose VA benefits may be subject to reduction or termination. Similarly, VBA has an information exchange agreement with the U.S. Social Security Administration (SSA) under which VBA receives information on state and local prisoners whose VA benefits may be subject to reduction or termination. The purpose of these agreements is to identify veterans and beneficiaries who are in receipt of VBA benefits, including C&P benefits, and who are incarcerated for a period exceeding 60 days due to a felony or misdemeanor conviction.

Improper Payments

As we reported in our annual review of VA's compliance with the *Improper Payments Elimination and Recovery Act*, VA estimates that for FY 2015, improper payments for VBA's Compensation program rose by \$648 million to \$1.3 billion.² This increase was primarily due to improvements in VA's estimates of improper payments. While we applaud the more extensive testing VA is performing to help identify improper payments, the large amount of improper payments are still a concern for how VBA manages its financial stewardship. We continue to identify overpayments and to report improper payments as one of VA's Management Challenges.³ Moreover, in November 2015, the Office of Management and Budget designated Compensation programs as high-priority since the program estimated improper payments in excess of OMB's threshold of \$750 million.

Improper payments include payments made in the incorrect amount (payments not reduced timely) and payments made to ineligible recipients (payments not terminated timely). Some forms of improper payments include payments to incarcerated veterans; not reducing temporary 100 percent disability ratings; and any reductions in benefits where the veteran or beneficiary is not entitled, such as payments to ineligible children

² *Review of VA's Compliance With the Improper Payments Elimination and Recovery Act for FY 2015*, May 12, 2016 and VA's *Performance and Accountability Report*, November 16, 2015.

³ Office of Inspector General 2015 Major Management Challenges, November 16, 2015.

of veterans and continued payments to veterans for spouses when they are no longer married.⁴ During our Benefits Inspection reviews, we have reported that VBA's focus on reducing the disability claims backlog leaves little time for staff to process reductions in benefits. We made recommendations to VARO Directors to implement a plan to prioritize actions related to benefits reductions to minimize improper payments to veterans.

INCARCERATION ADJUSTMENT ISSUES

In June 2016, the OIG issued a report on the *Audit of Compensation and Pension Benefit Payments to Incarcerated Veterans*. This audit examined whether VBA was adjusting C&P benefit payments for veterans incarcerated in Federal, state, and local penal institutions in a timely manner and as required by Federal law. We reported that VBA needed to improve its processing of incarceration adjustments. We identified program weaknesses and determined that VBA did not consistently take action to adjust C&P benefits for incarcerated veterans as required by Federal law. VBA's ineffective actions in processing incarceration adjustments resulted in significant improper benefit payments totaling more than \$100 million. If conditions remain the same and improvements are not made, we project that VBA could make additional inaccurate payments (improper payments) of more than \$200 million over a 5-year period from FY 2016 through FY 2020.

Federal Incarceration Adjustments

VBA needs to improve its processing of Federal incarceration adjustments. Based on BOP incarceration data from May 2008 through June 2015, we reviewed a random statistical sample of 132 veterans who had received C&P benefits prior to their incarcerations in Federal prisons. This included past incarcerations, as well as incarcerations that were current at the time of our audit. Based on our statistical sample review, we projected that VBA did not adjust veterans' C&P benefits, as required, for about 1,300 of 2,500 cases (53 percent), which resulted in improper payments totaling nearly \$60 million.

Prior to July 2008, VBA had a computer matching agreement with BOP to receive data on individuals admitted to Federal penal institutions. In July 2008, the agreement with BOP expired. We determined that VBA did not receive data from BOP on Federal incarcerations from July 2008 through May 2015 (a total of 83 months). After the computer matching agreement with BOP expired in July 2008, a new agreement did not go into effect until October 2010. However, prior to the effective date of the new agreement, VA's Office of Information and Technology revised VA policy to require that sensitive data be encrypted when transferred. In order to comply with this requirement, VBA needed to set up a secure connection with BOP. Even though a computer matching agreement was in place, VBA reported that it did not receive data from BOP because VBA did not fully implement a secure connection to receive electronic data until July 2012.

⁴ *Follow-up Audit of VBA's 100 Percent Disability Evaluations*, June 6, 2014. *Audit of VBA's 100 Percent Disability Evaluations*, January 24, 2011.

Once VBA fully implemented the secure connection, BOP did not transfer Federal incarceration data because VBA had allowed the computer matching agreement to expire in April 2012. VBA could have extended the agreement for 1 year if VBA and BOP certified in writing that the matching program complied with the original agreement and would continue without change. However, VBA did not complete this action within 3 months prior to the end of the agreement, as required. Therefore, the agreement was not in place to manage the data exchange needed.

In April 2015, VBA finalized a new agreement with BOP to receive Federal incarceration data. In May 2015, BOP transferred 83 backup files to VBA with almost 7 years of data on veterans incarcerated in Federal penal institutions from May 2008 through March 2015. Once BOP provided the backup files to VBA, it agreed to provide monthly data files to VBA on Federal incarcerations. However, in December 2015, VBA Central Office staff told us that VBA had not yet used the 83 backup files or monthly data from BOP to make appropriate benefits adjustments for incarcerated veterans. We found that VBA did not process Federal incarceration adjustments primarily because they did not place priority on incarceration adjustments, as they do not consider these non-rating claims part of the disability claims backlog.

State and Local Incarceration Adjustments

VBA also needs to improve its processing of state and local incarceration adjustments. Based on SSA incarceration data from March 2013 through June 2015, we reviewed a random statistical sample of 331 state and local incarceration notifications for veterans who had received C&P benefits. Based on this statistical sample review, we projected that VARO and PMC staff did not effectively adjust veterans' C&P benefits for about 3,800 of 21,600 cases (18 percent), which resulted in estimated improper payments totaling nearly \$45 million. For instances where VBA made C&P benefit adjustments, it took an average of about 300 days to process those adjustments.

When VBA receives an incarceration notification from SSA, staff are required to take prompt development action to determine whether the veteran's benefits need to be adjusted. We identified issues and delays with VBA employees initiating development action after receiving incarceration notifications from SSA. We estimated that VARO and PMC staff had failed to initiate development action for about 53 percent of state and local incarceration cases from March 2013 through June 2015. While staff had initiated development action for about 47 percent of the cases, it took an average of about 76 days from receipt of the incarceration notifications to initiate action.

Once VBA staff complete development action, a determination is made whether a veteran's C&P benefits should be adjusted. For cases in which an adjustment is needed, VBA staff send a due process notification to the veteran and allows them 60 days to provide additional evidence showing that his or her benefits should not be adjusted. After 60 days, if VBA has not received additional evidence from the veteran, staff should adjust the veteran's benefits as proposed—retroactively dating back to the veteran's 61st day of incarceration.

We identified delays in VARO and PMC staff making final incarceration adjustments after providing due process notification to veterans. We projected statistically that VBA staff made final incarceration adjustments in about 3,000 cases after sending due process notifications to the veterans. For these claims, it took staff an average of about 110 days to make final benefit adjustments from the date of due process notification. Since VBA should make final benefit adjustments after the 60-day due process period expires, we concluded that significant delays existed. We found that VBA did not process state and local incarceration adjustments timely primarily because they did not place priority on incarceration adjustments, as they do not consider these non-rating claims part of the disability claims backlog.

We made six recommendations to the then Acting Under Secretary for Benefits. These recommendations include:

- Increase the priority of Federal, state, and local incarceration workload by making timely benefit adjustments when appropriate.
- Review BOP data on Federal incarcerations and issue bills of collection to recover improper benefit payments.
- Monitor the terms of its computer matching agreements and take timely action to extend the agreements when appropriate.

The then Acting Under Secretary concurred with all of our recommendations and agreed that VBA's current process for award adjustments due to incarceration needed to be improved. The Acting Under Secretary provided action plans that were responsive to our recommendations. We will monitor VBA's progress and follow up until all proposed actions are completed.

CONCLUSION

The OIG determined that because it was not a priority, VBA did not take consistent and timely action to make incarceration adjustments when appropriate. Incarceration adjustments are non-rating claims work and VBA has focused on eliminating the disability claims backlog as it relates to claims that require a rating decision. VBA needs to prioritize this workload, make improvements to ensure sound financial stewardship over benefits earned through entitlements, and take timely actions that reduce improper benefit payments.

Mr. Chairman, this concludes my statement. Mr. Dahl and I would be happy to answer any questions you or members of the Subcommittee may have.