

**STATEMENT OF
BETH MURPHY, DIRECTOR OF COMPENSATION SERVICE,
VETERANS BENEFITS ADMINISTRATION (VBA),
DEPARTMENT OF VETERANS AFFAIRS (VA)
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
DISABILITY AND MEMORIAL AFFAIRS SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES**

SEPTEMBER 27, 2016

Good afternoon, Chairman Abraham, Ranking Member Titus, and Members of the Committee. VBA appreciates the opportunity to respond to concerns raised by the Committee regarding disability compensation and pension (C&P) benefits paid to incarcerated Veterans. Joining me today is Willie Clark, Acting Deputy Under Secretary for Field Operations and Dave McLenachen, Director for the Appeals Management Center.

The VA Office of Inspector General (OIG) conducted an audit of C&P payments made to Veterans incarcerated in Federal institutions between May 2008 and June 2015, and Veterans incarcerated in state and local institutions between March 2013 and August 2014, to determine whether VBA offices were adjusting C&P payments to incarcerated Veterans in a timely manner.

VA reviewed these findings and agreed that the current process for award adjustments due to incarceration needs to be improved. This statement will address OIG's six recommendations, focusing on the Department's responses to those recommendations to improve the program. In short, VBA accepted OIG's six recommendations, which included prioritizing incarceration adjustment workload, recouping overpayments made between May 2008 and June 2015, and renewing the Federal Bureau of Prisons (FBOP) agreement.

OIG's findings estimate that approximately \$59.9 million was improperly paid to Veterans incarcerated in Federal institutions and approximately \$44.2 million was improperly paid to Veterans incarcerated in state and local institutions during the two time periods noted above. Additionally, OIG estimates that if incarceration adjustment issues continue through Fiscal Year (FY) 2020, it could cost VA an additional \$203.8 million.

Current Procedures

Federal law requires VA to reduce disability compensation payments (38 United States Code (U.S.C.) § 5313) to individuals incarcerated for a period in excess of 60 days for conviction of a felony and discontinue pension payments (38 U.S.C. § 1505) to individuals imprisoned for more than 60 days as a result of conviction of a felony or misdemeanor. VA is required to reduce compensation benefits of incarcerated Veterans rated 20 percent or higher to the 10 percent disability compensation rate (currently \$133.17). Incarcerated Veterans rated at 10 percent service-connection are

reduced to one-half (currently \$66.58) of their compensation. Once a Veteran is released from prison, VBA can restore C&P payments upon notice of his or her release.

Veterans receiving C&P payments are responsible for notifying VA of incarceration and dates of release. VBA offices include this important reminder in the notification letter to the Veteran when he or she receives an award of compensation or pension benefits or an increase in benefits. Upon notification of the incarceration, VA is responsible for verifying the incarceration and conviction date; providing the beneficiary with notice of proposed adjustment prior to compensation or pension benefits being reduced or terminated (i.e., 60-day due process period); and providing proper notice after reducing or terminating the award.

Because Veterans do not always notify VA of their incarceration, VA has established data matching agreements with FBOP and the Social Security Administration (SSA). Through these agreements, VBA conducts an electronic data match of all disability C&P benefit recipients to identify Veterans confined in penal institutions at the Federal, state, or local levels.

After verifying a Veteran's incarceration, VA will reduce his or her service-connected disability compensation payments on the 61st day of incarceration following a felony conviction. Veterans in receipt of VA pension will have benefit payments terminated effective the 61st day after imprisonment in a Federal, state, or local penal institution for conviction of a felony or misdemeanor.

Veterans should notify VA immediately upon release from prison. VA may reinstate compensation payments based upon the severity of the service-connected disabilities at that time. The level of severity assigned after release is generally the same as when the Veteran was incarcerated. Payments are not reduced for recipients participating in work release programs, residing in halfway houses (also known as "residential re-entry centers"), or under community control. According to law, VA may resume payments effective the date of release only if VA receives notice within 1 year of release.

Addressing OIG Recommendations

Monitoring Computer Matching Agreements

The OIG report recommended that VBA monitor the terms of the current agreement with FBOP and take timely action to extend the agreement, if appropriate. VBA agrees and has pursued action to expand the type of electronic data currently received from FBOP. This is critical because the current data feed from FBOP does not include the beneficiary's date of conviction, which is required for claim processors to make the necessary adjustments. This requires additional, time-consuming research to determine the date of conviction (e.g., contacting the beneficiary or prison in writing and/or by phone and waiting for response). VBA is working with FBOP to determine the changes needed to improve the efficiency of payment adjustments and also support future automation of the process. VBA will continue to work with FBOP, and SSA, to obtain the needed data and identify additional ways to streamline the process.

Increasing Priority of Processing of Incarceration Adjustments

For the 7th year in a row, VBA completed over a million disability compensation claims. Even as VBA focused on its priority goal to eliminate the disability rating claims

inventory for Veterans who have waited the longest, VBA remained focused on non-rating claims, including incarceration adjustments. As VBA completed record-breaking numbers of disability rating claims in recent years, one result is an associated increase in the volume of non-rating claims and appeals. In FY 2015, VBA completed a record 3.1 million non-rating claims, a 15-percent increase over FY 2014.

OIG recommended that VA increase priority of processing incarceration adjustments. VBA agrees with this recommendation and has issued guidance to all regional offices to ensure prioritization of these claims. This includes retroactively adjusting awards of Veterans who are currently incarcerated, as well as those who were previously, but are no longer, incarcerated. OIG recommended that VA take action on both of these categories of adjustments. OIG also estimated that VA did not effectively adjust accounts for approximately 3,800 Veterans incarcerated in state and local institutions and for approximately 1,300 Veterans incarcerated in Federal penal institutions. VBA conducted its own review of Veterans incarcerated in Federal penal institutions and identified 3,615 cases which required review and possible adjustment. VBA has already completed action on 46 percent of the 3,615 FBOP cases identified since May 5, 2016. In addition, VBA has directed offices to process claims based on the date of incarceration by working the oldest dates first. VBA will continue to balance available resources to maintain a focus on processing incarceration adjustments.

VBA's actions to prioritize incarceration adjustments, as noted above, also address OIG's other recommendations to initiate more timely development of the work product after receiving notification of incarceration from SSA, and to make more timely adjustments after the proper due process notification has been issued. VA Headquarters will continue to monitor the progress of these adjustments.

Debt Management Center

Steps VA is taking to recoup such improper payments

The Debt Management Center (DMC) is an organization within the Office of Management/Office of Finance that provides collection services to VA organizations. Currently, its primary customer is VBA. DMC's role in recouping improper VBA payments is limited to collecting debts that have resulted from those improper payments. DMC is not involved in mitigating and identifying improper payments and establishing associated debts. DMC performs debt collection activities once the debts have been established by VBA. DMC collects all debts in accordance with VA regulations and policies (38 Code of Federal Regulations (C.F.R.)), the Debt Collection Improvement Acts of 1982 and 1996, and the Digital Accountability and Transparency Act of 2014 (DATA Act).

DMC Operations, Guidelines, and Procedures

DMC follows VA procedures and Federal debt collection laws, regulations, and policies to collect debts. In general, the VBA station of jurisdiction establishes the debt and electronically transfers the debt to DMC's Centralized Accounts Receivable System. DMC performs standard debt collection activities, such as sending notification letters of indebtedness; notifying debtors of their rights and obligations; establishing repayment agreements; and referring accounts to credit bureaus, the Department of the

Treasury, and Credit Alert System. DMC also utilizes VA's authority to internally offset monthly benefit payments to satisfy the debt.

Veterans who become indebted as a result of incarceration are notified that they have the right to request a waiver of the overpayment, offer a compromise, or establish a repayment plan to help ease the financial burden, once released. Repayment options include partial withholdings from future benefit payments. Veterans are provided with information on how to contact DMC for assistance in resolving their debts. VBA agreed with the OIG recommendation to initiate recoupment procedures to recover improper payments, where necessary, after the provision of due process notifications.

Committee on Waivers and Compromises (COWC)

Operations, Guidelines, and Procedures

Currently, DMC functions as a liaison between indebted beneficiaries and VBA's COWC. DMC receives all requests for waivers of debts and repayment offers prior to them being sent to VBA's COWC for waiver decisions. DMC reviews the waiver package to determine if the request was received timely (within 180 days of the date of the initial notification of indebtedness) and complete. For those received beyond 180 days, DMC notifies the debtor the waiver is denied for untimeliness and provides available options including establishing a repayment agreement, filing a notice of disagreement, or making a compromise offer. When DMC identifies an incomplete waiver request package, it makes one attempt to obtain the missing information. After 30 days, if DMC does not receive the information, then DMC forwards the waiver request package to VBA's COWC for consideration to avoid delay. In addition, if DMC determines that the waiver request was received within 30 days, debt collection activities are suspended until VBA's COWC has rendered its decision and notified DMC. Upon VBA's notification of its decision, DMC takes the necessary steps based on the status of the debt.

VA believes the existing waiver process prescribed by law (38 U.S.C. § 5302) is the appropriate remedy for beneficiaries who have pending claims adjustments due to their incarceration and may be financially unable to repay their debt. In that regard, each waiver decision considers whether recovery of the debt would be "against equity and good conscience." This includes considering the circumstances surrounding the creation of the debt, to include VA's own actions or inactions, along with the current financial impact to the debtor and other factors.

Waivers are considered on a case-by-case basis. A blanket waiver of overpayment would erode the integrity of C&P programs by enabling VA beneficiaries to accrue personal wealth through receipt of Federal benefits without regard to their financial situation while the Government pays for all costs associated with their incarceration. Furthermore, equitable relief is not an option for these individuals. Equitable relief is a unique legal remedy that authorizes the Secretary to provide relief either (1) when benefits "have not been provided" because of an administrative error, or (2) when a beneficiary "has suffered loss as a consequence of reliance upon a determination by [VA] of eligibility or entitlement to benefits, without knowledge that it was erroneously made." 38 U.S.C. § 503.

In the case of C&P payments made to incarcerated VA beneficiaries, the first equitable relief circumstance is not satisfied because C&P payments were made to the incarcerated beneficiaries. In other words, there is no benefit that “ha[s] not been provided.”

The second circumstance is also not satisfied in cases in which the creation of an overpayment was the result of the beneficiary’s inaction. Moreover, VA does not believe that the creation of an overpayment or debt due to delay in benefit adjustments would itself constitute a “loss” incurred in reliance on VA error for purposes of equitable relief.

VA acknowledges that its delay in adjusting Veterans’ payments in a timely manner based on information received through data matching may have resulted in larger overpayments. However, VA does not believe that the creation of an overpayment or debt due to delay in benefit adjustments would itself constitute a “loss” incurred in reliance on VA error for purposes of equitable relief. A “loss” incurred in reliance on a VA decision ordinarily occurs if the individual took actions to his or her detriment based on the erroneous decision.

Reintegration

Upon release from incarceration, VA is prepared to assist Veterans to reintegrate. The VA Health Care for Re-entry Veterans (HCRV) Program is designed to help incarcerated Veterans successfully reintegrate back into the community after their release. A critical part of HCRV is providing information to Veterans while they are incarcerated, so they can plan for re-entry. A primary goal of the HCRV program is to prevent Veterans from becoming homeless once they are re-integrated back into the community and the program has regional and state HCRV Specialists who are VA points of contact for incarcerated Veterans and their family members.

Conclusion

VBA acknowledges the importance of executing the non-rating workload on behalf of Veterans, their families, and taxpayers. This includes timely processing of C&P payments and award adjustments to incarcerated Veterans and improving the computer matching programs with FBOP and SSA. VA does not take lightly the issues prompted by untimely processing of such work. Our approach will be to ensure the priority of such claims is recognized, and the claims are worked appropriately. VA also will continue to develop and improve electronic systems to enhance these abilities.

Mr. Chairman, this concludes my statement. We would be pleased to respond to questions you or other Members may have.