



# DEPARTMENT OF VETERANS AFFAIRS OFFICE OF INSPECTOR GENERAL

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*BEFORE THE*  
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
*HEARING ON*  
VA COMPENSATION AND PENSION EXAMS DURING  
THE COVID-19 PANDEMIC: A PATH FORWARD  
MARCH 23, 2021

Chairwoman Luria, Ranking Member Nehls, and members of the Subcommittee, thank you for the opportunity to discuss the Office of Inspector General's (OIG) oversight of veterans' compensation and pension exams during the pandemic. My statement focuses on our review of the Veterans Benefits Administration's (VBA) efforts to schedule and conduct disability exams during the COVID-19 pandemic and the impact of those efforts.<sup>1</sup> Before I begin, I want to make clear that the OIG recognizes VBA personnel's dedication and important efforts to continue processing compensation and pension benefit claims even during the cessation of in-person exams to curtail COVID-19 exposures. The OIG is also grateful to Congress for the resources that were swiftly provided to the OIG to ensure appropriate oversight that could continually help VA improve its responses to the pandemic.

VBA has faced significant challenges by limiting in-person exams to keep veterans and personnel safe while minimizing benefit claims-processing delays and ensuring claims are not prematurely denied due to missed or canceled in-person exams. A recent OIG oversight report found that VBA took a number of positive and decisive actions in response to the COVID-19 pandemic. However, VBA needed to enhance its strategies to help reduce mounting disability exam inventory and backlog related to pandemic restrictions and take additional steps to address errors related to exam cancellations.

The mission of the OIG is to serve veterans and the public by conducting meaningful independent oversight of VA. To that end, our report recognizes VBA's critical actions to protect

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<sup>1</sup> VA OIG, [Enhanced Strategies Needed to Reduce Disability Exam Inventory During to the Pandemic and Errors Related to Canceled Exams](#), Report No. 20-02826-07, November 19, 2020.

veterans and staff while advancing claims-processing to the extent possible. It also identifies problems that flowed from VBA strategies to manage disability examinations in a constantly shifting landscape. The OIG review team noted that during the early months of the pandemic, when guidance was being conveyed to VBA regional offices, many veterans' disability claims were prematurely or inappropriately denied due to canceled in-person exams. VBA also identified this issue and has since worked to ensure no claims are improperly denied due to a canceled exam during the pandemic. The review team also determined that VBA needed to develop additional planning and testing strategies to reduce the growing inventory of disability exam requests. These actions are necessary to ensure exam processing continues and VBA is prepared for future pandemic surges or other national emergencies.

## **THE COMPENSATION PROGRAM AND PROCESSES**

VBA's compensation program provides tax-free monthly benefits to veterans who became sick or injured while in the military and to veterans whose service made an existing condition worse. The disability claims process starts with a veteran filing a claim. If the claim requires a medical exam to establish the service-connected disability, a VBA claims processor requests one from a Veterans Health Administration (VHA) examiner or contractor, depending on examiner capacity and availability.<sup>2</sup> VHA or the contractor schedules, conducts, and notifies VBA of the results of the exam. Medical exams have a critical function in supporting veterans' claims for benefits and represent a significant investment by VBA. The results of these medical exams help determine the severity of veterans' service-related illnesses or injuries and assist in determining the amount of monthly disability benefits that eligible veterans receive.

Exams may be done in person or remotely through telehealth or reviews of acceptable clinical evidence (ACE). In-person (face-to-face) medical exams are conducted to screen all body systems and either document normal findings or identify disabilities that are found or suspected. Some exams routinely performed by specialists require in-person contact, such as disabilities associated with injuries to a joint (knee, ankle, shoulder), hearing, vision, and dental exams.

Telehealth exams can sometimes be performed in lieu of an in-person exam to assess veterans under the same standards used for in-person exams.<sup>3</sup> Limitations to telehealth exams occur when an examiner must have physical contact with the patient. Examples of these limitations include when range of motion testing is required to determine the full function of a joint or the spine, when specialized medical equipment is required for objective results, or for dental exams. In March 2020, VBA indicated that all four types of telehealth exams and 29 of 77 disability

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<sup>2</sup> *The Veterans Benefits Improvement Act of 1996*, Pub. L. 104-275 (1996). The law authorized VA to use non-VA medical sources to complete disability exams to increase its capacity and improve timeliness. This was later amended by Section 241 of Pub. L. 113-235, which gave VA the authority to expand the use of contract exams.

<sup>3</sup> VBA refers to telehealth exams for these purposes as tele-Compensation and Pension exams. These are exams of a disability for a functional impairment determination, not for treatment.

benefits questionnaires used for assessing diseases and conditions were reported as suitable for telehealth medical exams.<sup>4</sup>

ACE exams are based on a review of medical records and history without an in-person clinical exam or testing. According to VBA, ACE exams are not acceptable for general medical, traumatic brain injury, or “mental disorder” assessments. Further, ACE exams cannot be conducted when necessary medical records are not available for the examiner to review.

## **VBA TOOK ACTION TO RESPOND TO PANDEMIC RESTRICTIONS**

The OIG report found that VBA took significant actions to limit veterans’ exposure to COVID-19. On April 2, 2020, VHA notified VBA to transfer exams conducted by VHA examiners to VBA disability exam contractors to the greatest extent possible. This shift was necessary to allow VHA facilities to prioritize essential and critically needed healthcare services during the pandemic. VBA then modified procedures and redirected requests to the disability exam contractors it had used prior to the pandemic as part of its routine operations.<sup>5</sup> It notified veterans of changes to the exam process through various means, including websites, social media, and veterans service organizations. These actions were necessary and appropriate but have inevitably resulted in growth to the backlog of disability exams. VBA provided guidance to the field on multiple occasions for when it was appropriate to reschedule canceled exams and to ensure cancellations did not result in claim denials. These efforts, however, sometimes resulted in confusion and a lack of consistent practices. Once clear guidance was issued, VBA took action to review prematurely or improperly denied claims on the basis of a canceled exam. The OIG review found that early in the pandemic unclear guidance led to inappropriately denied disability claims due to canceled in-person exams, and that VBA’s strategies for reducing inventory and the backlog require more attention and testing to ensure personnel are fully prepared for future emergencies that may affect the disability claims process.

## **ENHANCED STRATEGIES ARE NEEDED TO REDUCE DISABILITY EXAM INVENTORY AND BACKLOG RESULTING FROM PROTECTIVE MEASURES**

VBA’s inability to complete exams requiring in-person contact resulted in a burgeoning inventory of pending exams. As the inventory grew, so did VBA’s backlog of disability claims, which VBA defines as claims pending longer than 125 days. A disability claim may include more than one disability; therefore, multiple exams may be needed. In February 2020—prior to the pandemic—there were 111,113 pending exam requests. As of July 31, 2020, the exam

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<sup>4</sup> Office of Disability and Medical Assessment, “Telehealth for Compensation and Pension (C&P) Examinations Fact Sheet.” In September 2013, VBA and VHA signed a memorandum of agreement expanding the use of telehealth technology for exams to document physical disabilities. This agreement listed 16 disability benefits questionnaires approved for use in telehealth exams.

<sup>5</sup> Medical Disability Examination Program vendors were sent an email on April 3, 2020, directing all in-person exams be discontinued immediately.

request inventory had grown to 346,221. As of March 14, 2021, VBA's disability exam inventory is approximately 356,895.

The OIG's discussions with VBA staff during the review raised concerns regarding the number of contractors available to complete the still significant number of exam requests. The executive director of the Compensation Service said VBA did not plan to hire more contractors at that time, noting existing contractors were authorized to use additional subcontractors to increase capacity. However, the chief of the Medical Disability Examination Operations Staff expressed concern regarding the readiness of all contractors to resume operations when restrictions were lifted. The chief noted that, given the contractors' workload, expecting them to assume sole responsibility for reducing the inventory might not be realistic. As of March 2021, VBA has three companies under contract to complete these examinations: Quality. Timeliness. Customer Service (QTC), Logistic Health Inc. (LHI), and Veterans Evaluation Services Inc. (VES).

### **VBA PREMATURELY OR IMPROPERLY DENIED CLAIMS BASED ON CANCELED EXAMS**

In April, VBA began informing veterans through VA websites, fact sheets, and call centers that no final action, including denial of their claims, would be taken when an in-person exam was needed.<sup>6</sup> VBA call center personnel were provided guidance on what responses they should provide callers regarding exam cancellations. However, there is no evidence the call center guidance was also provided to all regional offices at that time, nor did the call centers' prescribed language address the requirement that veterans must request an extension if they were unable to attend an exam.<sup>7</sup> Additionally, it was not until May 14, 2020, that clear guidance was issued, directing claims processors that they should assume that any failure to report for an exam is due to the pandemic, whether or not the veteran provides a reason for not reporting for the exam. That guidance further clarified that a claim should not be denied based on failure to report for an exam.<sup>8</sup>

During an interview with the OIG report team on June 25, 2020, a supervisory program analyst from the Office of Field Operations stated VBA had been informed by congressional members and the media that claims were being denied based on canceled exams. To respond to this concern, VBA initiated an internal review of claims decided from March 1 through June 16, 2020, to determine if they were prematurely or improperly denied based on canceled exams. VBA acknowledged that it had identified approximately 20,000 denied claims with one or more canceled exams, potentially indicating premature or improper denial based on failure to report (or no-show) to an exam. These claims required additional review to ensure that procedures were

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<sup>6</sup> "Coronavirus FAQs, What Veterans need to know," VA website, accessed May 5, 2020, <https://www.va.gov/coronavirus-veteran-frequently-asked-questions>; VBA, Policy Letter 20-02, "Novel Coronavirus (COVID-19) Claims and Appeals Processing Guidance," April 6, 2020; Office of Field Operations, National Call Center, "Novel Coronavirus (COVID-19) General Information," Call Center Script, April 24, 2020.

<sup>7</sup> Office of Field Operations, National Call Center, COVID-19 Call Center Script.

<sup>8</sup> VBA, Policy Letter 20-02.

properly followed. Until all examining facilities have resumed normal operations, VBA planned to follow its guidance and continue reviewing claims with one or more denied disabilities that had an exam cancellation to ensure proper procedures are followed.<sup>9</sup> If a review of the claim indicates that a denial was made inappropriately based on a canceled exam, the memo directs staff to request all necessary exams or confirm that previously requested exams remain in an open status pending exam completion.<sup>10</sup>

The OIG report team examined a statistical sample of 400 of the approximately 20,000 denied claims VBA had flagged for potential problems. The OIG found 291 of the 400 claims were denied prematurely or improperly based on notifications in VBA electronic records showing the veteran did not report for an exam, or the exam was canceled at the veteran's or VA's request. However, the OIG team estimated that the number of claims prematurely or improperly denied based on a canceled exam appeared to decrease after clear guidance was issued, from a high of 84 percent during March and April to 48 percent after VBA disseminated clear guidance on May 14, 2020. The OIG found that while the exam inventory had increased during the review period, the percentage of errors appears to have continued to decrease following the clear guidance.

## **WHAT THE OIG RECOMMENDED**

VBA has taken notable actions to manage exams and develop a strategy for resuming in-person exams. It has provided some clear directives to address exams that were canceled or delayed as a result of the pandemic. However, the OIG recommended that VBA further develop, implement, and test new strategies to ensure the continuation of exam processing using in-person, telehealth, and ACE exams as safety and circumstances permit. This would benefit VBA during mass emergency events and reduce the exam inventory. The OIG also recommended VBA develop and implement a plan to increase the use of telehealth exams even beyond that done to date. Also, VBA should ensure contractors follow the Office of Disability and Medical Assessment telehealth guidance for exams that determine whether a telepresenter or specific medical equipment is required.

### **Status of OIG Recommendations**

VBA concurred with the first OIG recommendation on strategies to reduce exam inventory and stated in their comments to the report that they were executing the strategy outlined in an annex to VA's May 2020 document, "*Charting the Course: Maintaining Continuous Services to Veterans and Resuming Normal, Pre-COVID-19 Operations*."<sup>11</sup> That strategy entails VBA utilizing in-person, tele-Compensation and Pension, and acceptable clinical evidence modalities in a safe and logistically feasible manner to reduce the exam inventory and meet the target

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<sup>9</sup> VBA guidance states VA regional offices should be ensuring proper controls and tracking claims with canceled exams.

<sup>10</sup> VA, Memorandum, "Examination Cancellation Review," June 19, 2020.

<sup>11</sup> VA, "[\*Charting the Course: Maintaining Continuous Services to Veterans and Resuming Normal, Pre-COVID-19 Operations\*](#)," May 7, 2020.

completion date of September 30, 2021, set out in their action plan. VBA stated in their March 16, 2021, status update to the OIG that they were on track for meeting that target date. The OIG will continue to follow up on the status of the recommendation every 90 days to track VBA's progress.

VBA also contended in their response to the OIG report that previous actions satisfied the intent of OIG's second recommendation regarding expanded telehealth and contractor guidance on the use of a telepresenter or specific medical equipment during a telehealth visit. The OIG did not concur with closing the recommendation at that time. VBA's recent status update showed that they have made progress and have worked to expand the pool of eligible providers who can administer telehealth disability exams and to clarify guidance regarding when a telepresenter is necessary. VBA's March 16, 2021, status update did not request closure of the recommendation, as their actions are still in progress. The OIG will continue to review VBA's actions and any documentation provided to assess their progress in satisfying the requirements of the recommendation.

## **CONCLUSION**

VBA has made significant strides and demonstrated flexibility and determination in continuing to process benefits, despite limitations imposed by the pandemic on in-person exams. Because of these necessary protections, additional stresses have been placed on expanding telehealth and ACE exams when possible. The impact has been an inevitable increase in the exam inventory that VBA must address until all examining facilities have resumed pre-pandemic operations. VBA assured veterans that no final action would be taken on their claims when an in-person exam was needed. Consequently, they must continue to review claims denied during the pandemic to ensure no veterans were inappropriately denied benefits due to a canceled exam.

The OIG has determined that VBA must further develop and test its strategy to reduce the growing inventory and manage incoming exam requests. The plan must incorporate lessons from COVID-19 to ensure continuation of exam processing and prepare for any remaining surges in infections and other national emergencies. A clear lesson learned is that improper denials fell when clear guidance was disseminated to claims processors. A detailed and tested strategy that draws on all its partners and resources will help VBA reduce the risk of further delaying claims or improperly denying veterans the benefits they are due.

Chairwoman Luria, Ranking Member Nehls, and members of the Subcommittee, this concludes my statement. I would be happy to answer any questions you may have.