EXPLORING VA'S ADMINISTRATION OF INDIVIDUAL UNEMPLOYABILITY BENEFITS

HEARING

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

WEDNESDAY, JULY 15, 2015

Serial No. 114–32

Printed for the use of the Committee on Veterans' Affairs

Available via the World Wide Web: http://www.fdsys.gov

U.S. GOVERNMENT PUBLISHING OFFICE

98–687 WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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EXPLORING VA'S ADMINISTRATION OF INDIVIDUAL UNEMPLOYABILITY BENEFITS

Wednesday, July 15, 2015

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 11:30 a.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [chairman of the committee] presiding.

Present: Representatives Miller, Roe, Coffman, Wenstrup, Costello, Brown, Takano, Brownley, Ruiz, O'Rourke, and McNerney.

OPENING STATEMENT OF CHAIRMAN JEFF MILLER

The CHAIRMAN. I want to welcome our witnesses to the hearing this morning.

The hearing is focused on how VA is administering unemployability benefits. This important benefit compensates disabled veterans at the 100-percent rate even though they are rated at less than 100 percent but, because of their service-connected disabilities, they are unable to find or keep substantially gainful employability.

In June of 2015, GAO released a report that raised concerns about whether VA's procedures for adjudicating IU claims are resulting in consistent and accurate decisions and whether Congress should review how VA applies the criteria used to determine eligibility for individual unemployability benefits.

The cost of the IU benefit is growing at a fast pace. Disability compensation paid to veterans who qualify for IU benefits increased from $8.5 billion in 2009 to $11 billion in fiscal year 2013, which is a 30-percent increase. GAO estimates that in fiscal year 2013 the cost of the IU benefit alone was $5.2 billion more than if the qualifying veteran had been paid based on their scheduler evaluation.

Given the growing cost, I was very disappointed to learn that VA has not implemented procedures to ensure that only veterans who are rightfully entitled to the IU benefits are receiving those benefits.

To qualify for the IU benefit, veterans are required to report their income, yet VA stopped verifying veterans' self-reported income in 2012. As my good friend Ms. Brown says in many instances, "Let's be clear." We are not talking about an isolated problem in one or two regional offices. This is a systemic issue based

on a decision by VBA's upper management to stop verifying veterans' self-reported income.

According to GAO, VA's explanation for stopping the verification is that the Department planned to adopt a new electronic data system in fiscal year 2015, which, of course, is the year that we are currently in. The new system has not been implemented and will not be ready until next year, maybe. This begs the question of why did VA discontinue income checks before the new system was in place, and how much more time will lapse before VA resumes income verification.

The GAO report also raises the question of whether VA should consider age as a factor when deciding if a veteran is eligible to receive IU benefits. According to the GAO, in fiscal year 2013, 180,043 IU beneficiaries were at least 65 years old, which represents a 73-percent increase from 2009. GAO found that approximately half of all the new IU beneficiaries are age 65 and older. And even more surprising was that, according to GAO, 408 veterans age 90-years-old and older began receiving IU benefits for the first time in fiscal year 2013.

Finally, this hearing will address other systemic problems within VA—the lack of consistency in the adjudication of disability claims.

Although VA's written testimony provides a detailed description of its training program for IU rating specialists, the GAO report found that VA has not issued clear guidance to help rating specialists determine if a veteran is eligible for individual unemployability benefits. GAO also found that VA has neglected to establish a quality review assurance approach that would allow VA to ensure that IU decisions are complete, that they are accurate, and that they are consistent.

I expect VA to explain in detail the steps it is taking to implement GAO's recommendations to improve its training programs and quality review procedures.

Finally, in the recent past, each of our witnesses has praised VA's vocational rehabilitation and employment programs designed to put disabled veterans back to work. So what I don't understand is why an evaluation by that same program is not part of the process for awarding IU benefits.

I look forward to hearing from our witnesses about VA's plans to fix this program and to ensure that taxpayer dollars are used as they were intended, to compensate veterans who are unable to work because of a service-connected disability.

I now yield to my distinguished ranking member, Ms. Brown, for her opening statement.

[THE PREPARED STATEMENT OF JEFF MILLER APPEARS IN THE APPENDIX]

OPENING STATEMENT OF RANKING MEMBER CORRINE BROWN

Ms. BROWN. Thank you, Mr. Chairman, for having this hearing.

We are here today to discuss some of our most disabled veterans who are receiving individual unemployability.

I think it is important that during this hearing we not lose sight of what we are talking about here. We are not talking about costs or numbers, we are talking about people. Men and women who put

everything on the line, were injured greatly, and now receiving additional funds because of an injury that has left them unable to work.

Why have these costs ballooned? As the DAV notes, we have higher numbers of seriously disabled veterans from the wars in Iraq and Afghanistan, VA is completing record numbers of disability claims, VA's intense outreach effort to provide benefits to our veterans, and to the expansion of presumption related to Agent Orange and PTSD.

With that said, there is still work to do. The GAO, in their review of the IU program, identified four areas for improvement. VA concurred with the GAO findings. I look forward to hearing from VA on their progress to complete GAO's recommendations.

Again, these are some of the most vulnerable disabled veterans. Mr. Chairman, I look forward to working with you in a bipartisan spirit of our committee. And I am committed to ensure that our Nation adequately compensates our veterans for their loss in defense of this great Nation.

I want to add a little special note here. I know every member of Congress experience it. I met a veteran with five stars, and that veteran was 10 percent. When I spoke with that veteran VA had been working on his particular case for over 6 years. The veteran, couldn't get adequate information from the Department of Defense. Six years! I worked on his case for 2 months, and this veteran was able to get 70 percent. That is a life-changing event going from 10 percent to 70 percent.

Each Member of Congress Office receives all kind of casework and staff work on it, and it is most satisfying when Members of Congress and their staff are able to help a veteran receive the benefit that they deserve.

With that, Mr. Chairman, I yield back the balance of my time.

Dr. ROE [presiding]. I thank the gentlelady for yielding.

I ask that all members waive their opening remarks, as per this committee's custom.

Joining us on our first and only panel this morning are: Mr. Daniel Bertoni, Director of Education, Workforce, and Income Security for the U.S. Government Accountability Office, GAO; Mr. Bradley Flohr, the Senior Advisor, Compensation Service, for the Veterans Benefits Administration; Mr. Paul Varela, the assistant national legislative director for the Disabled American Veterans; and Mr. Ian de Planque, the legislative director for the American Legion.

Your complete written testimonies will be entered into the hearing record.

Mr. Bertoni, you are recognized for 5 minutes.

STATEMENT OF DANIEL BERTONI

Mr. BERTONI. Mr. Chairman, Ranking Member Brown, members of the committee, good morning. I am pleased to discuss our work on the Department of Veterans Affairs individual unemployability benefit, which is a supplemental benefit that allows veterans to be deemed totally disabled even if they don't meet the criteria for a 100-percent rating.

In fiscal year 2013, over 330,000 of 3.7 million veterans VA-compensated for service-connected disabilities received individual

unemployability, or IU, benefits. Moreover, over the last several years, the beneficiary population and program costs have increased steadily, especially among older veterans. And, in fiscal year 2013, disability payments to IU recipients totaled $11 billion.

My testimony discusses age-related trends in the beneficiary population, VA's procedures for benefit decisionmaking, and various options that have been proposed for revising this benefit.

In summary, the number of veterans receiving individual unemployability benefits is increasing and now comprises nearly half of all veterans whose disabilities are rated at 100 percent. Moreover, the number of older beneficiaries, age 65 or older, has also steadily increased and by fiscal year 2013 comprised over half of the beneficiary population, a 73-percent increase over fiscal year 2009 levels. Further, of these older veterans, 57,000 were 75 and older and 11,000 were 90 and older.

The increase in older veterans is mostly driven by new beneficiaries receiving the benefit for the very first time, including over 13,000 veterans age 65 to 90-plus years entering in fiscal year 2013. For that year, we estimate that VA paid $5.2 billion above what veterans would have received in the absence of such a benefit.

We also found that VA's decisional guidance, quality assurance checks, and income verification procedures do not ensure individual employability decisions are well-supported. Specifically, VA's guidance for assessing employability falls short in ensuring consistency, and VA rating specialists we interviewed frequently disagreed on key factors to consider, weighed the same factors differently, and had difficulty separating allowable from nonallowable factors in deciding IU claims. Such challenges create a risk that two raters could examine the same claim and the same evidence and reach opposite decisions to award or deny the claim.

Also, as designed and implemented, VA's quality assurance framework primarily focuses on processing errors and does not ensure a comprehensive assessment of whether award or denial decisions are accurate, complete, and consistent.

In addition, VA does not independently verify self-reported earnings information supplied by applicants and current beneficiaries although the agency has ready access to IRS wage data for this purpose. As a result, the agency risks paying taxpayer dollars to those who may be working in excess of current program earnings limits and are thus ineligible for these benefits.

In our June 2015 report, we identified a number of options proposed by others for revising the IU eligibility requirements and the benefits structure. More specifically, several options proposed changes such as imposing age limits, lowering the disability rating requirement, or increasing income thresholds, while another option would lower but not immediately eliminate benefit payments as beneficiaries earn more income beyond program limits.

Based on our discussions with various experts and stakeholders, we identified a range of strengths and challenges associated with each, such as improved beneficiary targeting and reduced benefit outlays in some instances and potential additional administrative costs and beneficiary equity concerns for others.

VA is currently at a juncture where it is revising its complex, multifaceted disability compensation programs. Concurrent with this effort, VA has the opportunity during its deliberations to benefit from the attention that the IU benefit has received from various experts. Accordingly, these proposed options and the potential strengths and challenges they present warrant thoughtful consideration in any broader benefit refinement analyses and efforts to improve IU benefit design and eligibility criteria going forward.

Mr. Chairman, this concludes my statement. I am happy to answer any questions that you or other members of the committee may have. Thank you.

[THE PREPARED STATEMENT OF DANIEL BERTONI APPEARS IN THE APPENDIX]

Dr. ROE. Thank you, Mr. Bertoni.

Mr. Flohr, you are now recognized for 5 minutes.

STATEMENT OF BRADLEY FLOHR

Mr. FLOHR. Mr. Chairman, Ranking Member Brown, and members of the committee, thank you for the opportunity to review with you the issue of individual unemployability.

I will discuss with you what IU is, the criteria and standards used to determine eligibility, VA's quality assurance and training programs, and VA's process to verify earnings and employment information.

IU is the regulatory basis upon which the Department of Veterans Affairs grants entitlement to service-connected disability compensation at the 100-percent rate when a veteran's disabilities do not meet the schedular criteria for a 100-percent rate under VA's schedule for rating disabilities. VA's intent is to ensure that veterans with service-connected disabilities that are not rateable at 100 percent are provided compensation at that rate if it is determined they are precluded from obtaining or maintaining gainful employment as a result of their disabilities.

Authorization for IU was added to the 1933 rating schedule by regulation in 1934. While there is no specific statutory authority for this benefit, there is implicit authority under section 1155 of title 38, U.S.C., which authorizes VA's rating schedule.

The minimum evaluation requirements for consideration of entitlement to IU are a single disability rated at 60 percent or more, and, if there are two or more service-connected disabilities, there must be at least one disability rateable at 40 percent or more and additional disability, resulting in a combined 70-percent evaluation.

Where the rating schedule is found to be inadequate to fairly compensate a veteran for the inability to be gainfully employed, VBA's 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 extrascheduler basis.

VA determines eligibility for this benefit through development for all evidence that may weigh on the decision in a veteran's claim. The application for IU requires the veteran to furnish an employment history for the 5-year period preceding the date on which the veteran last worked. VA contacts these employers and asks them to provide information concerning the veteran's employment, the

reasons for termination of the employment, the type of work performed, and the dates of employment.

VA will also request records from the Social Security Administration if the veteran is under age 65 and there is an indication that he or she is in receipt of Social Security Disability Insurance and from VA's Vocational Rehabilitation and Employment Service if there is an indication that the veteran has applied for or participated in that program. In addition, if the decisionmaker determines current medical information is necessary, a VA examination will be ordered.

VBA requires all veteran service representatives and rating veteran service representatives to complete Web-based training on IU following completion of their initial Challenge training. The Challenge program consists of a national technical training curriculum that provides new veterans service center employees with the skills they need to function effectively as VSRs and RVSRs.

Upon successful completion of Challenge, VSRs have 90 days to complete the training and RVSRs have 60 days to complete the training. The 5-hour Web-based VSR-IU course enables the students to learn about the benefit, the eligibility requirements, and the evidence needed to process a claim. The RVSR Web-based course is 2 hours of training, covering the definition of IU, eligibility criteria, evidence requirements, effective dates, and preparing the rating decision.

Additional IU training was provided to RVSRs in 2014. As a result, during the first two quarters of fiscal year 2015, VA's accuracy rate for IU decisions based on our national Systematic Technical Accuracy Review is 94 percent. The most common errors are the failure to properly consider earlier effective dates and to infer IU in appropriate cases.

Once a veteran is awarded IU benefits, he or she is required to submit an annual employment certification until the age of 70. The veteran must list all employment for the preceding 12-month period. VA uses the certification to verify continued entitlement to IU. Failure to return the form will cause VA to send the veteran a due-process notice of the potential reduction of the monthly benefit payment to the rate for the actual combined disability evaluation.

Currently, Compensation Service is developing a method to review all IU recipients' wage income annually to ensure the integrity of the program. Under the revised post-award audit process, VA will conduct a data match of IU recipients with SSA. Once SSA runs the data file against the records in their system, VA will exclude veterans whose earned income is below the poverty threshold. The poverty threshold is based on the Census Bureau poverty level, currently $11,655 for one person.

The IU benefit fills a critical gap when the ratings schedule fails to fully address the impact of disability in a specific veteran's circumstances. VA is responsible for ensuring that those who served this Nation and have been disabled during that service are fully compensated for their disabilities.

VA continues to review the IU program for potential improvements, including a current review of the program from both the

compensation and vocational rehabilitation and employment perspective.

Thank you for this opportunity to be here today.

[THE PREPARED STATEMENT OF BRADLEY FLOHR APPEARS IN THE APPENDIX]

Dr. ROE. Thank you, Mr. Flohr.

Mr. Varela, you are recognized for 5 minutes.

STATEMENT OF PAUL R. VARELA

Mr. VARELA. Chairman Miller, Ranking Member Brown, and members of the committee, thank you for inviting DAV to testify at today's hearing.

DAV is comprised of 1.3 million wartime service-disabled veterans, and we are dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

For veterans who aren't able to work because of service-connected disabilities but do not meet the requirements for a 100-percent rating, VA has established special provisions for awarding total disability ratings based on individual unemployability, or IU.

The main question at issue in IU claims is whether a veteran can engage in substantially gainful employment due to service-connected disabilities. Any subtle change in a veteran's physical or mental capacity may cause poor performance in a work setting that an employer could find unacceptable, thus leading to loss of employment opportunities.

Some veterans will become unemployable as their disabilities worsen with age. However, age is not a factor in IU determinations, nor should it be. Unlike VA pension benefits and Social Security Disability Insurance benefits, where age is appropriately considered in determining entitlement, consideration of age as a factor in IU claims would be inappropriate.

The idea that Americans do not aspire for greater personal and economic prosperity beyond a certain age can easily be dispelled by the number of people working beyond normal retirement age. Just look in the House and the Senate, where many of your colleagues continue to work productively into their 70s and some into their 80s.

We realize that VA's IU regulations and policies are imperfect but believe the current rules for the most part prescribe consideration of the appropriate factors. VA adjudicators must perform careful examination of the facts and exercise well-informed and well-reasoned judgments.

We believe most veterans would prefer to work if capable to do so, and experience has shown that VA adjudicators are not particularly liberal in awarding IU benefits.

DAV recognizes the growth in IU claims for fiscal years 2009 through 2013 but believes this growth is consistent with the pattern of higher numbers of more seriously disabled veterans returning from the wars in Iraq and Afghanistan, increased claims processing, intense outreach efforts, expansions of presumptive disabilities, and new rules governing claims for post-traumatic stress disorder. Consider that in 2009 VA changed its policy relative to claims processing for PTSD cases and in 2010 VA added three new presumptive disabilities related to Agent Orange exposure.

For these reasons, increasing numbers of veterans receiving IU benefits, as reported by CBO in 2014 and by GAO in 2015, does not, in our view, signal a failure or fault in the administration of this benefit.

In the August 2014 CBO report, it states, "VA reviews the employment history of IU applicants but does not require those veterans to have their employability assessed by the Department's vocational rehabilitation program." This suggests that a determination of IU could be made contingent upon a vocational rehabilitation evaluation and determination. This additional administrative step would add unnecessary delay and undoubtedly place a greater burden upon veterans seeking timely decisions for adequate compensation to maintain a basic standard of living.

In the June 2015 GAO report on IU, several options were noted to revise IU eligibility requirements and restructure the administration of this benefit. These options consisted of discontinuing IU beyond retirement age, a vocational assessment prior to awarding IU, gradually reducing IU payments, increasing earning limits, lowering disability rating criteria, adding new IU criteria, and developing a new patient-centered work disability measure.

DAV would strongly oppose any legislation or recommendation that would restrict IU entitlement on the basis of age, delay processing of IU claims due to increased administrative requirements, or reduce IU payments prior to a veteran demonstrating sustained and gainful employment.

We would strongly oppose any measure that proposes to offset the payment of any other Federal benefit or other earned benefit entitlement by VA compensation payments. Reducing a benefit provided to a veteran in receipt of IU due to receipt of a different benefit offered through a separate benefit program would be viewed as an unjust penalty.

DAV supports lowering the rating criteria for IU for veterans with multiple disabilities to a combined disability rating of 60 percent, rather than the 70 percent, and eliminating the requirement that one of the disabilities have a minimum rating of 40 percent.

In closing, DAV appreciates the opportunity to discuss the merits and our concerns regarding the administration of VA's IU benefit. IU provides payments at the 100-percent rate that affords considerable financial relief for veterans when employment opportunities diminish because of the wounds, injuries, and illnesses sustained as a consequence of active military service.

This concludes my testimony, Mr. Chairman. I am prepared to answer any questions from you or other members of the committee. Thank you.

[THE PREPARED STATEMENT OF PAUL VARELA APPEARS IN THE APPENDIX]

Dr. ROE. Thank you, Mr. Varela.

Mr. de Planque you are recognized for 5 minutes.

STATEMENT OF IAN DE PLANQUE

Mr. de PLANQUE. Good morning, Dr. Roe, Mr. Takano, and members of the committee. Thank you for having me here today to speak on behalf of the American Legion; our national commander, Mike Helm; and the more than 2 million members in over 14,000

posts across the country that make up the backbone of the Nation's largest wartime service organization.

One of the tragic consequences of putting your life on the line to defend this Nation is that the men and women who do so do not always return home whole. There are many ways your service can impact your life in the civilian world. It can happen immediately, as an IED blast forever and irrevocably changes your world. It can happen over time, as the slow and insidious effects of exposure to dioxin and the herbicide Agent Orange destroys the functions of various bodily systems.

Some of these disabilities can result in a 100-percent disability rating. Sometimes the numbers don't add up, but the overall effect of the toll of war on your body leaves you in a state where you can't really go to work like the rest of the world. This is a hard place to be for a veteran.

To account for this, VA has the rating of total disability due to individual unemployability, TDIU. TDIU is available when the veteran doesn't meet the 100-percent criteria but their disabilities prevent them from regular work.

There are ways the TDIU program can be improved, but the American Legion wants to ensure that improvement does not come at the cost of unintended consequences to the veterans who rely on this benefit, particularly some of the very vulnerable veterans who need this to survive.

There is a proposal in the recent GAO report on TDIU that would look at reducing or removing the benefit for veterans over the working age of 65. There are three good reasons the American Legion believes this is a bad idea:

First of all, it is clear in the law age is not to be considered as a factor in these decisions. This law has existed for decades; there has never been a problem with it. You want to be very, very careful when you give serious consideration to changing the United States Code to diminish a benefit intended to serve disabled veterans.

Second, age isn't even reflective of the modern workforce. According to the Bureau of Labor Statistics, Americans over the age of 65 still in the workforce have doubled over the past 30 years. Well more than half of those workers are working full-time. Those workers can collect their work income; they can collect other benefits. Why should veterans be put into a disadvantaged category, especially veterans who have been injured and disabled in service to their country?

Third, most workers build a retirement portfolio of some kind over the course of their lives. For a veteran disabled during the course of their service, often a lengthy career to build retirement is taken away from them. The TDIU benefit they receive may be the most substantial piece of income to support them in their old age. We need to think long and hard about depriving veterans of that benefit.

Which is not to say there isn't room for improvement in the program. One of the areas where delays can occur in the adjudication of TDIU is the verification of income and employment. Indeed, it is absent.

In this area, the American Legion would point VA in the direction of one of their recent moves to improve the pension program.

In 2012, VA announced a more automated process for eligibility verification by forming partnerships with the Social Security Administration and the IRS. There is no reason to believe such partnerships can't be expanded to include this program as well.

Rapid communication between government agencies needs to become an assumed standard. It needs to be the baseline, something the public can take for granted. Until we can reach that point, VA should certainly build on existing partnerships and relationships to help other programs.

TDIU is a difficult benefit to discuss. We don't think about the toll it takes on veterans. We don't think about what it means to be told you can't work anymore. We don't think about how it feels to struggle with finding your place in the world when your injuries leave you unable to be productive. There is a tremendous cost to these veterans.

It is easy to look at veterans benefits in terms of dollars and cents. I know there are concerns about a benefit like TDIU and how it will be driven by how much it costs. That is a question we, as a moral Nation, can't afford to ask.

In the past, we have seen veterans programs slashed when the focus of war disappeared from the front page. In 1933, FDR passed the Economy Act. It gutted a lot of veterans benefits as the country struggled through the Great Depression. Taking from veterans was wrong then. The American Legion wants to make it clear that walking back compensation from those who have been injured in service is always wrong.

There can be savings to be found in the Department of Veterans Affairs, but an earned benefit that a veteran is entitled to is never a waste of money.

We look forward to working with this committee to find ways to improve and strengthen TDIU benefits to make it do what it is supposed to do: to help serve the veterans who paid a great price for their country.

I am happy to answer any questions.

[THE PREPARED STATEMENT OF IAN DE PLANQUE APPEARS IN THE APPENDIX]

Dr. ROE. Thank you, Mr. de Planque.

And I will start the questioning.

Mr. Bertoni, you know, we obviously want to ensure that veterans are compensated for their service-related disabilities and conditions. And that is a given.

The GAO report raised concerns about the growing number of beneficiaries who are beyond traditional retirement age when they first apply for IU benefits. And, just in the last quarter, there were 33,046 65- to 69-year-olds and 97 over-90-year-olds that applied.

Is that an issue or a problem now?

Mr. BERTONI. We didn't present it as a problem. We were asked to look at age-related trends.

But, clearly, that cohort of beneficiaries fall within a group that you would expect, especially at the outer reaches, would not be employable or even seeking employment. We heard some statistics here today, but after 75, the number of folks working falls to about 10 percent, and 90, it is probably pretty much nonexistent.

So that older cohort at the outer edges certainly falls out of most folks who would be seeking employment.

Dr. ROE. Okay.

Well, I guess a question that I would have—and to Mr. de Planque's last point that he made—is, in many of these veterans, certainly the more senior veterans, if you are in your 90s, you certainly have come through a time when your earnings were much less than people today. And that may be a very significant part of their income. It probably is a significant part.

I know from my own family, my mother is 92, will be 93—I have to stop that. I don't want to tell how old my mother is. She was born in 1922. I have to stop saying that.

But I think the point I am making is, should we label it something else? Because I am a little bit toward, if you have a service-connected disability, you were injured in the line of duty, and the raters say that you were, then you are due that compensation. I am kind of leaning in that camp.

I realize that, over 90, probably no one is working at that age. But maybe we should label it something else.

Again, if it is a service-connected disability—and all of these people at the dais were correct. We see in Vietnam—that is my generation that fought in the Vietnam war—long-term issues that show up.

So anyone can comment on this that would like to.

Mr. de PLANQUE. One of the things that I wanted to jump in on that—and I know my colleague from DAV mentioned the addition of the Agent Orange condition. Sometimes newly adjudicated conditions can change a veteran's eligibility and cause that.

I mean, think about it. Somebody who was 20 years old in 1965 serving in Vietnam is 70 years old today. So, you know, that age cohort, we are certainly seeing a large influx of veterans, particularly from the early part of the Vietnam war, who are in that age cohort and who are looking at that.

And so you are running into veterans who are looking at a new period of eligibility and maybe newly eligible for that benefit. And we want to be very careful about dialing back any benefit that you are eligible for, you know, changing the idea and saying, well, no, we are not going to compensate you for that anymore. And that is the one place that we want to be careful.

And I think we can understand that, you know, maybe there is a point about, if you are over 90 years old, you are unlikely to be seeking employment at that point, and look at how, you know, the benefits can exist or how they can be structured for veterans to make sure that they are not having that taken away.

But because it is a changing situation and because there are things, you know, in our understanding of how toxins like Agent Orange can affect people over time, it is important to still recognize that at later ages they may need access to these benefits.

Dr. ROE. Well, Mr. de Planque, let me give you an example. I just had, not 6 weeks ago, one of the best friends I will ever have on this Earth, who was a Vietnam-era veteran, who died of a very rare lymphoma that very well may have been related to Agent Orange. And he was 68 years old and still working full-time. And he hadn't planned to stop working either; he was going to continue.

So I think you are right. And I don't know whether these very senior veterans that are over 90 who are in need—there is no question they are in financial need. We may need to look at some different—call it something else or whatever, at that age.

But, with that, I am going to——

Mr. BERTONI. If I could quickly jump in, I think you make a good point about, what it is called. I mean, with individual unemployability, what is inferred is that the person can't work and we are going to compensate them for the inability to work. And, at the outer reaches of these ages, it strains the credibility of that program.

I think you really need to be concerned when you are looking at these age cohorts, had these people worked in the 10, 12 years prior to coming in? If they had and tried and fell out of the workforce periodically, that shows an intent to work. So that is a factor that could be, you know, built into this process.

With Social Security Administration—if you are out of the workforce for 10 years, so you retire or drop out for whatever reason, if you can't show that you have worked at least 20 quarters in that 10-year period, you don't qualify for benefits.

So the concern amongst many of the folks we interviewed in the field was folks who have been out of the workforce for many years, retired from long careers, no work activity, will come in, apply for the benefit, and there is some discomfort amongst VA staff in having to award those benefits.

Dr. ROE. Certainly, because it is hard to put a straight-face test on that, is what you are saying?

Mr. BERTONI. Yes.

Dr. ROE. Mr. Takano, you are recognized.

Mr. TAKANO. Dr. Roe, I understand your point about the straight-face test. I hadn't been aware of applicants for this benefit. They were—so some of them were in the workforce, they stopped working, and then come in and apply for the benefit.

But I would like to hear a response from Mr. Varela or Mr. de Planque about this, sort of, straight-face test situation. Are there alternative explanations for why people might be doing these sort of things? Applicants.

Yes, go ahead.

Mr. VARELA. Thank you, Congressman Takano.

I have had the benefit of being with DAV nearly 13 years this October, and 10 of those years I spent in regional offices helping a wide range of veterans—younger veterans and older veterans. Whether it was helping an 80-year-old veteran file a claim for the first time for PTSD or a recently discharged servicemember from the wars in Iraq and Afghanistan, age was never an issue. We never took that issue.

If somebody comes into our office to apply for a benefit, the first question that we ask is, how did this disability—in cases of IU—how did this disability or disabilities impact your ability to work? Historically, you know. What kind of limitations did you have over these periods of time?

And I will give you an example. Mr. de Planque mentioned the 70-year-old Vietnam veterans. Well, remember, many of them may not have been eligible up until 2009 and 2010. So they went dec-

ades without receiving any benefits. How did those disabilities impact them over the years?

So, when somebody comes in at age 90, it is not unreasonable for us to say, what limitations did your disabilities, your service-connected disabilities, impose on your ability to work? And would you still be working today? What do you think? Yes, I feel that if I didn't have this diabetes or I didn't have this Parkinson's disease, I could be doing something above the poverty threshold, which is roughly $12,000 today.

So age, for us, is not a factor. It is what did those service-connected disabilities do to that person over time and today.

Mr. FLOHR. If I may add something, Mr. Chairman. It is not a requirement, for us to consider entitlement to IU, that a veteran specifically claim that benefit. The U.S. Court of Appeals for Veterans Claims and the Court of Appeals for the Federal Circuit, in a number of cases and precedent opinions, have held that, when we are reviewing a claim for increase—and that could be from a gentleman that is 75, 85, 90 years old—an increase in their service-connected disabilities, when reviewing that claim, if there is an indication in the claim and in the claims file of the veteran that they cannot work, and it is due to their service-connected disabilities, we are required to consider the issue of entitlement to IU.

As my colleagues in the American Legion and DAV have pointed out and I did in my testimony, age is not a factor. We are prohibited under the rating schedule, section 4.19, from considering age, both in making disability determinations, including unemployability.

And I agree also with the written testimony of my colleagues. It was my own testimony, I believe. We are working longer, as a Nation. We are living longer. We work because we are more healthy, sometimes. But even those who are not and have severe disabilities are working because of the economy over the last 10, 12 years. They can't afford to retire anymore, so they continue to work until they can't work anymore.

And if, at some point, regardless of their age, when they no longer actually can work due to their disabilities, their service-connected disabilities, then we are required to take care of them and provide them with the benefits that they need to survive.

Mr. TAKANO. Thank you very much for offering those comments. It helps me understand other scenarios under which we can justify—or it could be justified, this sort of benefit.

Can you tell me what kind of mental health treatment an individual suffering from severe PTSD and using individual unemployability benefits receives? So they are, sort of, suffering from severe PTSD, but they are also receiving IU benefits. What sort of mental health treatment does that individual receive?

Mr. Varela or anyone on the panel? Or Mr. de Planque?

Mr. VARELA. They are open for the full range of mental health services provided by the VA, regardless of disability. Any service that is provided at VHA for mental health, PTSD, TBI, they can receive that concurrently with IU, or they would receive that concurrently with their disability evaluation. IU is not a determining factor in the level of services.

Mr. TAKANO. Could I ask one more question, sir? Is that possible?

Dr. ROE. Yes.

Mr. TAKANO. Do you still believe there is sufficient motivation to find a positive outcome for their PTSD while receiving IU benefits? So, in other words, they are being successfully treated for PTS, but they are also receiving IU unemployment benefit. Can we justify that situation?

Mr. de PLANQUE. Are you asking in the sense that is there a disincentive to get better——

Mr. TAKANO. Yes.

Mr. de PLANQUE [continuing]. Basically?

I think there is always—you know, this is something from having worked with and spent a lot of time talking to veterans who suffer not just from PTSD, but also keep in mind depression goes hand-in-hand with a lot of these debilitating injuries.

Mr. TAKANO. Yes.

Mr. de PLANQUE. Every single one of them that I have ever talked to would rather feel better than have a large amount of money attached to it. They would rather get better. They would rather not have to deal with the symptoms of the depression or the PTSD.

So I don't think it presents a particular obstacle to that. Those veterans will push towards getting better in treatment, because that is a far better goal than—you know, and to be able to return to the workforce, hopefully, or do something like that. That is where most of them are motivated.

Mr. FLOHR. I would add that that has been a long-time perception, that veterans, once they get 100 percent or get IU at a 100-percent rate, they stop being treated for their PTSD, and that is just not the case. VHA has told us that they continue to be treated. They are treated; they want to get better.

So, many years ago, I went to a 2-day conference where the question was, is disability compensation a disincentive to the treatment of PTSD? As I said, that has been around a long time. And, actually, it is not the case.

If we were to—the 100-percent evaluation for mental disorders is total social and occupational impairment. And if we were to evaluate everyone at 100 percent rather than 70 percent and then give them IU at 100, we would decrease the numbers of people getting IU, but the compensation, the dollars spent, would not change. They would still be getting the same amount of compensation.

Mr. TAKANO. Okay.

I appreciate your generosity, sir.

Dr. ROE. Thank you.

Mr. O'Rourke you are recognized for 5 minutes.

Mr. O'ROURKE. Thank you, Dr. Roe.

Just following this line of questioning, for Mr. Flohr or Mr. Bertoni, if you have these numbers, in terms of the goal of returning veterans who are unemployable to employable status, what kind of numbers do we have on that? What has been the success rate?

Mr. FLOHR. You are referring to veterans who may be going through a vocational rehabilitation?

Mr. O'ROURKE. Yes. What kind of numbers do we have for veterans who have been classified as unemployable who are later classified as employable or find a job?

And I agree with everything that has been said. Nobody, or very few people, don't want to work. I mean, in terms of self-esteem, their ability to provide for themselves and their family, and moving forward in their careers, everyone wants to work.

So what has our success been in helping veterans get back to work?

Mr. FLOHR. I am sorry, but I don't have that information today, but I would be glad to get it.

Mr. O'ROURKE. Has GAO looked at that at all?

Mr. BERTONI. I don't know the actual percentages wise, but we did do some work in VR&E a couple years ago.

The issue we had was the goals that they were using to demonstrate success were very short-term in nature. We felt they had to have, beyond the short term, a more extended goal for actual success. Because people can come in and out, you know, in the short term and in the long term not be successful. But, really, over time you would want to see a broader metric that gauges success.

I don't have the number, but——

Mr. O'ROURKE. Okay. Could you share with me and the other members of the committee what you do have?

Mr. BERTONI. Sure.

Mr. O'ROURKE. I will ask that question for the record and would love to hear back from you.

And then for Mr. Flohr, I am reading the staff summary of the GAO findings. VBA guidance on how to determine a veteran's unemployability is incomplete. Format and delivery of TDIU guidance does not support efficient claims decisionmaking. VBA quality assurance approach does not provide comprehensive assessment of TDIU decisions. And VBA does not verify self-reported income eligibility information.

Do you agree with all of those findings, Mr. Flohr.

Mr. FLOHR. Yes, sir. We have concurred in all the recommendations of GAO.

And I would take this opportunity to personally thank Mr. Bertoni and his staff for doing this report. It will allow us to strengthen our process going forward in the next several months. And so we appreciate it.

Mr. O'ROURKE. Okay.

And for Mr. Varela and Mr. de Planque, beyond those GAO findings—and if you disagree with them, let me know—but, beyond those, do you see a significant problem to be solved within TDIU?

Mr. de PLANQUE. you said there are ways this can be improved, and you talked about partnerships and better communication. But, other than that, do you see any necessary improvements to the program?

Mr. de PLANQUE. Well, there are improvements there, obviously, with the communication between agencies. I think VA is going to win overall if they can get a more consistent adjudication. And I think they would agree on that. That is what I think they want; it is what we all want. And that is not unique to the IU, you know, part of the disability process.

So I think, you know, those are two main areas that could definitely get a lot of focus. And I think if we can get consistent adjudication out of every RO, then that is a win for everyone. So I think those would be two of the largest areas to look at.

Mr. O'ROURKE. Mr. Varela, anything to add?

Mr. VARELA. Yes, Congressman O'Rourke. Thank you. A couple of improvements.

Hopefully, when VBA moves to this electronic income verification process, that they would discontinue requiring veterans to send the 4140 form back to them to verify whether or not they are working.

If you looked at the GAO report, you saw a certain percentage of veterans that no longer qualified for IU because they failed to return the questionnaire.

You know, there are a lot of veterans that receive that questionnaire, they don't know what it is for, they don't return it, their benefits get reduced. Whether or not they come in to have them, you know, reevaluated and their benefits reinstated—it happens, okay, that they are not going to come back to the VA; they think that their benefits have been reduced properly. Then you get some veterans that submit it late, they have been reduced; then you have got to go through a whole other process to get their benefits reinstated.

So, hopefully, when they move to that electronic verification, we can get rid of that. You go online, this person is working; if they are not working, they continue into the program.

In terms of other improvements within IU, we all want quality decisions. Quality is number one. I mean, that is what we are all shooting for. But what I would say is, no matter the case, I have never come across somebody that had an identical IU case. So what I say to that is, I may present a Member of Congress with this body of evidence, this body of information, this work history, but we still may arrive at a different decision.

So the administrative procedures that VA has to perform, infer the IU claims, send the 4140, did you schedule an examination, that is great, but, at the end of the day, we want to make sure that we understand that we are not all going to reach the same conclusion 100 percent of the time.

Mr. O'ROURKE. And just very quickly in 10 seconds, Mr. Flohr, on that point, is the 94-percent accuracy rate that you talked about, is that independently verified or determined, or is that determined within VBA?

Mr. FLOHR. That is determined within VA through our technical accuracy staff that reviews them.

Mr. O'ROURKE. Okay.

And has GAO looked at that to confirm that?

Mr. BERTONI. We have confirmed the percentage. We don't agree that that is likely representative of the quality of the cases.

Mr. O'ROURKE. Okay.

Thank you, Mr. Chair. I yield back.

Dr. ROE. Mr. McNerney, you are recognized for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman.

And thanks for testifying this morning.

Mr. Bertoni, you mentioned the inconsistency in awarding, and that has sort of been echoed. Mr. de Planque said that was one of the big problems.

Are your recommendations aimed at improving the consistency in awarding IU?

Mr. BERTONI. Yes. I mean, it goes back to the guidance. I have been, you know, living with the guidance for a couple days, looking at this, really trying to learn the guidance or to familiarize myself with it. And guidance is very weak in several areas.

I mean, there is information on evidence that they should consider, evidence they could exclude. But there is a middle area of very valuable information, such as whether they are in school, what their work history looks like, other aspects of the veteran's life, that they are silent on. And it claims the examiners are using them, you know, unevenly.

Mr. MCNERNEY. So is it going to be up to the committee to improve the guidance? Or is it going to be up to——

Mr. BERTONI. I think it is up to the agency to take a first crack at, sort of, clarifying what is in, what is out, the hierarchy of evidence.

I mean, an example. In the Social Security Administration, the primary physician's report, that has the most weight. There are no references in the VA guidance around that issue.

So I think the agency can, based on their experience, help staff, sort of, gradate, or gradate for staff, the importance of information. That will help them, I think, make better decisions and more consistent decisions.

Mr. MCNERNEY. So, in terms of abuse, in your opinion, is the abuse unintentional because of poor guidance, or is it due to intentional factors?

Mr. BERTONI. I don't see this as abuse. I believe these veterans, they see this benefit out there. A single veteran at 60 percent is going to get $1,000 a month. If that veteran gets their rate increased to 100 percent, that is a $2,800-a-month benefit. So there is an incentive to go for that, and I understand why they would.

What we are talking about here is having better guidance to make better decisions on that $1,000-versus-$2,800-a-month decision.

Mr. MCNERNEY. Do you agree with that, Mr. de Planque?

Mr. de PLANQUE. That seems relatively consistent, yeah.

Mr. MCNERNEY. So, I mean, then the consensus might be that there is not that much intentional abuse; it is just poorly administered.

Mr. de PLANQUE. I don't think there is really intentional abuse, I mean, to any extent. I think these are veterans who see that there is a benefit and that believe that they are entitled to it and, by law, you know, seem to fit within the entitlement of it, and so they seek the benefit. And that is not an abuse of the system. That is getting a benefit that they are entitled to.

Mr. BERTONI. Yeah. We did not hear, you know, abuse mentioned. People were just concerned that, given what was in front of them in terms of the guidance, it was difficult making, in their view, sometimes, accurate and consistent decisions.

Mr. MCNERNEY. So, then, Mr. Flohr, what is the prognosis in terms of when we are going to see a better guidance implemented?

Mr. FLOHR. As I said, we have concurred with GAO's recommendations. We have already started to implement some of them. We have groups that are working on each of the four recommendations, one of which is to improve the consistency and accuracy.

We have a national program in our 56 regional offices called an in-process review. And that is where the rating veteran service representative completes a one-page summary of the decision they made, what they looked at. And that is reviewed by our quality review teams in our regional offices. If there is any issue as to maybe not looking at all the evidence properly or needing to have a better discussion, that goes back to them.

And we have captured all that data, and we have added to that individual unemployability and we are looking at that.

Mr. MCNERNEY. Well——

Mr. FLOHR. Once we get all that information together, then we will know how to better shape our guidance and our training.

Mr. MCNERNEY. In terms of developing what you might call rules in many Federal agencies, is this a transparent process that will develop these guidance or the rules?

Mr. FLOHR. Transparent in terms of?

Mr. MCNERNEY. Asking for outside inputs, putting proposed rules on the Internet for people to comment on, those kind of things.

Mr. FLOHR. If we have to make changes to our regulations, of course, that is—publication for notice and comment, followed by a final rulemaking. We get input from anyone who wants to comment. Of course, we get the GAO and we get CBO and others who provide us with guidance, as well.

Mr. MCNERNEY. So you mentioned the word "regulation." Are we talking about the guidance becoming regulations?

Mr. FLOHR. Well, if we wanted—for example, if we decided for some reason that we wanted to change or do away with the age issue, we would have to publish that for notice and comment. That is in the regulations. To change that, we would have to go through rulemaking.

Mr. MCNERNEY. So is there a distinction, then, between guidance and regulations?

Mr. FLOHR. Absolutely. Guidance is like internal guidance, just, okay, here is how you process a claim, here is how you develop the claim, you have to get this evidence.

Of course, we are grounded in statute. We have a statutory duty to assist, which tells us that we have to get all the evidence that we are aware of, or at least to try to get all that, before we make a decision, unless at some point we can grant the claim. Once we grant the claim, the duty to assist ends. But, until that point, we have to get all the evidence that we are aware of. That is evidence from the veteran, from private physicians perhaps, from VHA if we need an exam, whatever is necessary.

Mr. MCNERNEY. So the guidance, are those publicly available, what the guidance criteria are?

Mr. FLOHR. I don't know. I would have to—if our procedures manual, the M21-1—I think it is available. Yes.

Mr. MCNERNEY. Okay. All right.

Thank you, Mr. Chairman.

Mr. FLOHR. And the rating schedule, as well. Yes.

Dr. ROE. I thank the gentleman for yielding.

I am going to do just a brief second round right quick. And if any of you all want to stick around for this, that will be fine.

But, Mr. Flohr, according to the VA testimony, once a veteran is awarded an IU benefit, he or she is required to submit an annual unemployment certification until attaining the age of 70.

Why does the VA stop asking for this information after a veteran who is age 70 or older when you don't ask the question—it doesn't matter the other direction, if you are getting the IU benefit?

So that is question number one.

Mr. FLOHR. That is a very good point. And I hadn't thought about it until I started preparing for this hearing.

I think that is an old—it comes from way back, a long time ago, before we were working longer and living longer, and 70 seemed like a good point in which not to require the employment questionnaire anymore. I think, as we grant more and more benefits to more elderly veterans, that we may have to look at that.

Dr. ROE. Yes. Thank you, Mr. Flohr.

And the veterans must meet certain income restrictions in order to receive IU benefits, of course. However, 3 years ago, in 2012, the VBA suspended income verification matches, and, according to the GAO, this decision may have resulted in ineligible veterans receiving IU benefits.

One, explain why the VBA decided to suspend income verifications in 2012.

Mr. FLOHR. Sir, we suspended that when we started developing a new process, the secure encrypted portal with SSA and IRS, with which we could get income information rather than going through our old process, which was a paper-based process.

At the same time, we were going through converting to VBMS and electronic claims processing. And I am amazed to say that, right now, we are 95-percent electronic in claims processing. I never thought I would see that in my tenure at VA, but we have gone about that quickly.

Part of that is working with the IT, both on VA's side and on SSA's side, and getting it to communicate. And it has been a long time. I understand that it has not been perfected yet, but hopefully by January next year it will be.

Dr. ROE. Let me point out something obvious. The new IT system—this is 2012. The new IT system is not scheduled to be operational until 2015, and it is still not operational. Why didn't you continue just to use the old system until the new system came up in place and had its scrub-down?

Mr. FLOHR. I don't know the answer to that, to be quite honest, sir.

Dr. ROE. I think I know the answer. I think the answer was they thought—and I will just answer this for you—that that system would be up and running very quickly. It turned out it was a little harder to implement. That would be my guess.

Mr. FLOHR. That is quite possible.

Dr. ROE. According to the GAO, the VBA has not provided a plan or a timeline for implementing the new verification system. Did you just say January of 2016?

Mr. FLOHR. Yes, sir.

Dr. ROE. So that is when it will be implemented?

Mr. FLOHR. That is what we expect, yes.

Dr. ROE. Five months from now. Okay. Very good. And it will go live then.

I guess the last couple of questions I want to ask is—obviously, everybody in this room agrees that, veterans receiving disability and IU would prefer to get better. I think anybody wants to get better. As a doctor, I saw patients; almost everybody I talked to wanted to improve when they came to you. That is why they were there.

And VA has a lot of tools in its toolbox. They have voc rehab, PTSD treatment, healthcare, all those things to help achieve that.

Does the VA track how many of the IU recipients utilize these benefits—in other words, utilize all these incredible resources that the VA supplies? Is there any way to track that?

Mr. FLOHR. In terms of voc rehab? I would have to ask——

Dr. ROE. Or just all those things. If you are in IU and you are trying to get back to work, how many people actually access themselves to all the benefits that VA supplies?

Mr. FLOHR. Well, they do receive treatment. We know that. VHA has told us they do not discontinue treatment once they get at a certain level of compensation. They continue to be treated, in an effort to get back to employment. VR&E works with veterans with PTSD and all disabilities to try and return them to the workforce.

The numbers I don't know off the top of my head.

Dr. ROE. I think that Mr. Takano asked this question a minute ago, and I will just re-ask the same question. His question was, I think when veterans access themselves to these benefits that they have earned, how many actually come off of IU rolls because they have been helped?

It is like what voc rehab does in the private sector. And we look at that in Tennessee and see how many people use voc rehabilitation and get education benefits and so forth and actually return to the workforce.

Do you all have that number?

Mr. FLOHR. Yes, sir. I do, actually.

At the end of fiscal year 2014, during that year, we proposed to terminate almost 6,800 veterans who were on IU. That is due to them having returned to work, having exceeded the income at a point where we found them to be gainfully employed, or where their disability got worse to the point that they could get a schedular 100-percent evaluation, so they got an increase. And, additionally, 12,000 in that year died, so they were taken off the rolls too.

So approximately 18,000 were removed from the IU rolls over fiscal year 2014.

Dr. ROE. But you said 6,800 went back to work or——

Mr. FLOHR. Either went back to work or else got an increase to 100 percent.

Dr. ROE. Got it increased. I am not sure I quite understand that, so, after we get through, I would like to ask you to put that in writing for me, if you would.

Mr. FLOHR. Okay.

Dr. ROE. I certainly appreciate you all being here today.

Mr. O'Rourke. Do you have further questions?

Mr. O'ROURKE. I may have just a couple, if you don't mind.

Dr. ROE. Okay. You are recognized.

Mr. O'ROURKE. Thank you, Mr. Chairman.

You know, following up on the question that Dr. Roe just asked, I would also like to see more information about the 6,800 and how many of those were deemed employable again versus 100 percent. And, of those who were deemed employable, how many actually found employment? I think that is important for us to know.

And my second request or question is the four findings that the GAO has made, Mr. Flohr, that you have acknowledged and are working on, what is your deadline to complete the work necessary to come into compliance or to resolve the concerns in those?

And if you have already given us that, I apologize. I didn't hear it.

Mr. FLOHR. We did give that information to Mr. Bertoni when we responded to their recommendations.

We have a group that has been put together that includes people from the Vocational Rehabilitation and Employment Service, our Compensation Service, our general counsel, and we are looking at specific actions that we can take to improve the process. We have a number identified right now that have not yet been briefed, however, to our leadership. We expect to do that by the end of this month.

In terms of the recommendation about updating IU guidance, we expect to do that within—or at least by the end of January 2016 after we do some consistency reviews and determine really how can we better improve the process using both GAO's recommendations and what we find during our studies.

Recommendation number two, to improve the quality assurance approaches, we have started doing that already. We expect to have that completed by October of this year.

Recommendation three was verify self-reported income. We have talked about that. That is 2016, January.

And recommendation four, develop a plan to study IU in terms of age or voc rehab assessments. We expect to have some either legislative proposals or regulation changes which would be required by the end of July, of this month.

Mr. O'ROURKE. Of this month. And do you feel confident in meeting all of those proposed deadlines?

Mr. FLOHR. At this point, from what I know, yes, sir, I do.

Mr. O'ROURKE. Okay.

And then my last question, Mr. Chairman, is for Mr. Bertoni.

When I had asked questions during the previous round about the 94-percent accuracy rating, Mr. Flohr said that that is done internally by the VA. You said you don't disagree with the 94 percent, but you may disagree with what that represents. I would like to give you a chance to expand on that answer.

Mr. BERTONI. Sure. Thank you.

In terms of IU, the STAR reviews sample a very small proportion of the IU claims. So we have some concerns there about their ability to project for that subpopulation.

Also, I think there is a very high standard within STAR and even within the in-process reviews that my colleague just mentioned, that the error has to be clear and undebatable. And it is very difficult for an examiner, even if they feel that there was a mistake made, to substitute their judgment in a particular instance.

So it is almost impossible, to find an error in STAR and in in-process reviews. And I am a bit concerned, as they move forward, that they are not taking a different approach.

I think there are other vehicles. They do special targeted studies, they do greater reliability reviews, they do these comparable questionnaires to try to get at, sort of, consistency that we believe may be better tools for getting at the inconsistencies, the root causes for inconsistencies, and ultimately building their training around those areas.

Mr. O'ROURKE. As with all VA measurements, I would like to see more independent assessments and verifications of anything that the VA reports because of past concerns—or, current concerns based upon past problems that we have had with VA self-reporting. So any further recommendations that you have or that the VSOs have, I think we are very open to hear those.

Mr. BERTONI. For what it is, like I said, it is an accurate figure. But for what it is supposed to be doing, we don't believe it hits the mark.

Mr. de PLANQUE. One thing that we would additionally note on that, the STAR reviews—and their reviews tend to be things—did they make a particular evaluation, as opposed to what was the quality of that evaluation. And so they may get a check for they made the evaluation, but if you look further at it, the evaluation was done in an improper fashion or it didn't take the right things into account.

And so you don't get any notion of the quality within that step. And so, at a 94-percent rate, yes, 94 percent of the steps may be being done, but it is a qualitative versus quantitative kind of measure in it, which sometimes leads to—you know, that is where we would like to see more investigation, from an American Legion standpoint.

Mr. O'ROURKE. Great.

And, again, if there is a specific proposal from American Legion or anyone else about how to more accurately assess how VBA is doing, I am very open to seeing that, and either VA adopts that or we can introduce that as legislation. So thank you.

Thank you, Mr. Chair.

Dr. ROE. Thank you, Mr. O'Rourke.

And full disclosure, I just sent my American Legion dues in Monday. So I wanted to get that on the record. The check is in the mail.

Thank all of you. You have been a terrific panel. I thank you for taking your time, preparing.

This, obviously, is an important issue. I am sure there are many veterans out there watching this expectantly, and it is good to have this information.

And if there are no further questions, and there are not, you all are now excused.

Mr. O'Rourke. Do you have any closing comments?

Mr. O'ROURKE. I do not. Thank you.

Dr. ROE. Okay.

I would ask unanimous consent that all members have 5 legislative days to revise and extend their remarks and include extraneous material.

Hearing no objection, so ordered.

Dr. ROE. I thank all the members who were here for being here today.

Without any further comments, this meeting is adjourned.

[Whereupon, at 12:35 p.m. the committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF CHAIRMAN JEFF MILLER

I want to welcome our witnesses this morning.

Today's hearing will focus on how VA is administering unemployability benefits.

This important benefit compensates disabled veterans at the 100% rate, even though they are rated as less than 100% but, because of their service-connected disabilities, are unable to find or keep substantially gainful employment.

In June 2015, GAO released a report that raises concerns about whether VA's procedures for adjudicating IU claims are resulting in consistent and accurate decisions, and whether Congress should review how VA applies the criteria used to determine eligibility for IU benefits.

The cost of the IU benefit is growing at a fast pace.

Disability compensation paid to veterans who qualify for IU benefits increased from $8.5 billion in FY 2009 to $11 billion in FY 2013, which is a 30% increase.

GAO estimates that in FY 2013, the cost of the IU benefit alone was $5.2 billion more than if the qualifying veterans had been paid based on their schedular evaluation.

Given the growing cost, I was very disappointed to learn that VA has not implemented procedures to ensure that only veterans who are rightfully entitled to IU benefits are receiving those benefits.

To qualify for IU benefits, veterans are required to report their income, yet VA stopped verifying veterans' self-reported income in 2012.

Let's be clear: we're not talking about an isolated problem in one or two regional offices.

This is a systemic issue based on a decision by VBA's upper management to stop verifying veterans' self-reported income.

According to GAO, VA's explanation for stopping the verification is that the Department planned to adopt a new electronic data system in FY 2015, which, of course, is this year.

The new system has still not been implemented, and will not be ready until next year—maybe.

This begs the question of why did VA discontinue income checks before the new system was in place, and how much more time will elapse before VA resumes income verifications.

The GAO report also raises the question of whether VA should consider age as a factor when deciding if a veteran is eligible to receive IU benefits.

According to the GAO, in FY 2013, 180,043 IU beneficiaries were at least 65 years old—which represents a 73% increase from FY 2009.

GAO found that approximately half of all new IU beneficiaries are age 65 and older.

Even more surprising was that according to GAO, 408 veterans age 90 and older began receiving IU benefits for the first time in FY 2013.

Finally, this hearing will address another systemic problem within VA: the lack of consistency in the adjudication of disability claims.

Although VA's written testimony provides a detailed description of its training program for IU rating specialists, the GAO report found that VA has not issued clear guidance to help rating specialists determine if a veteran is eligible for IU benefits.

GAO also found that VA has neglected to establish a quality review assurance approach that would allow VA to ensure that IU decisions are complete, accurate, and consistent.

I expect VA to explain in detail, the steps it is taking to implement GAO's recommendations to improve its training programs and quality review procedures.

Finally, in the recent past, each of our witnesses has praised VA's vocational rehabilitation and employment program designed to put disabled veterans back to work. So what I don't understand is why an evaluation by that same program is not a part of the process for awarding IU benefits.

I look forward to hearing from our witnesses about VA's plans to fix this program and ensure taxpayer dollars are used as intended: to compensate veterans who are unable to work because of a service-connected disability.

United States Government Accountability Office

Testimony
Before the Committee on Veterans' Affairs, House of Representatives

For Release on Delivery
Expected at 10:30 a.m. ET
Wednesday, July 15, 2015

VETERANS' DISABILITY BENEFITS

Improvements Needed to Better Ensure VA Unemployability Decisions Are Well Supported

Statement of Daniel Bertoni, Director Education, Workforce, and Income Security

GAO-15-735T

Chairman Miller, Ranking Member Brown, and Members of the Committee:

I am pleased to discuss our work on the Department of Veterans Affairs (VA) Total Disability Individual Unemployability (TDIU) benefits. The TDIU benefit is a supplemental benefit created by VA to allow veterans to be deemed totally disabled even if they do not meet the criteria for a 100 percent rating.[1] To be eligible for TDIU benefits, a veteran must have a single service-connected disability rated at least 60 percent or multiple disabilities with a combined rating of at least 70 percent (with at least one disability rated at 40 percent or higher). In addition, the veteran must be unable to obtain or maintain "substantially gainful employment" as a result of these service-connected disabilities.

In fiscal year 2013, over 330,000 of the approximately 3.7 million veterans VA compensated for disabilities incurred during active military service received TDIU benefits. The number of older veterans receiving TDIU benefits has been increasing, as has the total amount of benefit payments. From 2009 to 2013, the disability payments to those receiving TDIU benefits—the base payment plus the supplement—increased by 30 percent (to $11 billion in fiscal year 2013). For that year, we estimated $5.2 billion in payments for the supplement alone. These benefit trends have occurred alongside advances in medicine and technology and changes in the labor market and society. These trends have led to questions and suggested changes regarding TDIU benefits. My remarks today are based on our report issued on June 2, 2015, and like that report my statement (1) examines age-related trends in the population of Individual Unemployability beneficiaries and benefit payments; (2) assesses the procedures used for benefit decision-making; and (3) describes suggested options for revising the benefit.[2]

For our June report, we obtained and analyzed data from VA regarding new and continuing beneficiaries covering fiscal years 2009 through 2013

[1]Veterans who are eligible for TDIU do not actually receive separate TDIU payments. Instead, TDIU serves as a method by which veterans can have their disability rating raised to 100 percent and receive larger disability payments. For ease of reporting, however, we refer to TDIU "benefits" and the TDIU "supplement" throughout the report and in this testimony.

[2]See GAO, *Veterans' Disability Benefits: VA Can Better Ensure Unemployability Decisions Are Well Supported*, GAO-15-464 (Washington, D.C.: June 2, 2015).

(the most recently available data); examined relevant federal laws, regulations and procedures for new and continuing claim determination decisions; conducted interviews with VA and its Veterans Benefits Administration (VBA)[3] officials in their central office and regional offices as well as disability experts familiar with TDIU benefits and representatives of veterans service organizations (VSO); and reviewed options presented for revising the TDIU eligibility and benefit structure. We conducted a total of 11 in-person discussion groups with rating specialists—the VA officials who review TDIU claims—across 5 of the regional offices; each discussion group consisted of 2 to 3 rating specialists, for a total of 29 rating specialists. In addition, we conducted a non-generalizable file review of 34 randomly-selected claims, including those resulting in granted and denied benefits that were decided between April 2012 and April 2014. A more detailed explanation of our methodology is available in our report.[4] We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[3]Throughout this statement, we refer to VBA when discussing items that fall under their roles and responsibilities; otherwise we refer to VA.

[4]GAO-15-464.

The TDIU Beneficiary Population and Benefit Costs Are Growing, Especially Among Older Veterans

As we reported in June 2015, in fiscal year 2013, 332,934 veterans received TDIU benefits, an increase of 22 percent since fiscal year 2009.[5] Overall, TDIU beneficiaries make up a substantial portion (45 percent) of the group of all veterans who receive benefit payments at the 100 percent disability compensation rate.[6] This population of TDIU beneficiaries increased in each of the 4 years we compared to the following year. Moreover, the number of older beneficiaries (aged 65 and older) increased for each of the years we examined and by fiscal year 2013, they represented the majority (54 percent) of the TDIU population—a 73 percent increase from fiscal year 2009.[7] Further, of these older beneficiaries, 56,578 were 75 years of age and older in fiscal year 2013 while 10,567 were 90 years of age and older. The increase in beneficiaries over age 65 was mostly attributed to new beneficiaries who were receiving the benefit for the first time as shown in figure 1. Between 2009 and 2013, the number of new older beneficiaries more than doubled to 13,259. Of these new older beneficiaries, 2,801 were aged 75 and over while 408 were 90 and over.[8]

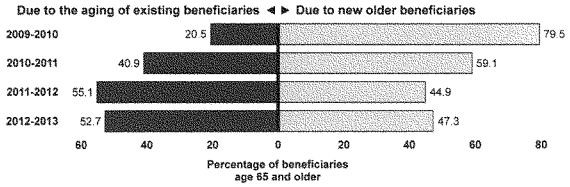
[5]GAO-15-464.

[6]In fiscal year 2013, 712,000 veterans received 100 percent disability compensation.

[7]We categorized veterans who were 65 years of age and above as "older" because age 65 has been the traditional age at which individuals would be eligible to receive their full Social Security retirement payment. However, the full retirement age gradually increases from 65 (for 1937 and earlier birth cohorts) to 67 (for 1960 and later birth cohorts).

[8]According to data from the Census Bureau's American Community Survey, only a small percentage of veterans work beyond age 65. Between 2011 and 2013, 17.5 percent of veterans aged 65 and older and 7.9 percent of veterans aged 75 and older were employed. The American Community Survey 3-year Public Use Microdata Series percentage estimates are reported as having 95 percent confidence intervals of +/- 1 percentage point of the estimate.

Figure 1: Sources of the Increase in the Older Total Disability Individual Unemployability (TDIU) Beneficiary Population, Fiscal Years 2009-2013



Source: GAO analysis of VA data. | GAO-15-735T

We estimated that, in fiscal year 2013, the TDIU benefit was a $5.2 billion supplemental payment above what beneficiaries would have received in the absence of TDIU benefits. Although VA does not track the overall costs of TDIU benefits, we used disability compensation payment rate information, data on the TDIU beneficiary population, and data on the population of all new beneficiaries to calculate this estimate.

VBA's Benefit Decision-Making Procedures Do Not Ensure TDIU Decisions Are Well Supported

In our June 2015 report, we found that VBA's guidance, quality assurance approach, and income verification procedures do not ensure that TDIU decisions are well supported.[9] Specifically, we identified the following challenges in decision-making procedures:

- **Incomplete guidance on how to determine unemployability:** VBA provides guidance to rating specialists to help them determine if veterans meet the eligibility requirements for TDIU benefits. This guidance tasks rating specialists, based upon the evidence at hand, to determine veterans' unemployability; it also recognizes that the process is subjective and involves professional interpretation. However, the guidance provided by VBA on which factors to consider when determining if a veteran is "unemployable" is incomplete in three ways, creating potential variation in TDIU claim decisions.

[9]GAO-15-464.

- First, rating specialists in some (5 of 11) of the discussion groups we held at five regional offices disagreed on whether they are permitted to consider additional factors not specifically mentioned in VBA's guidance such as, enrollment in school, education level, or prior work history when assessing an applicant's employability. For example, one rating specialist recently reviewed a claim for TDIU that was submitted by a veteran suffering from traumatic brain injury. The rating specialist found that the veteran was enrolled in school part time and earning A's in engineering classes, which the specialist felt clearly demonstrated employability. However, another rating specialist within the group stated that the veteran's enrollment in classes would not be part of her decision-making.

- Second, rating specialists noted that for those factors that rating specialists can consider in their decision-making process, such as whether the veteran receives Social Security Disability Insurance benefits, the guidance is silent on which, if any, should be given greater priority or weight. We confirmed that this information was not in the manual or guidance provided by VBA. Rating specialists in the majority (7 of 11) of the discussion groups specifically noted that they could come to an opposite decision when reviewing the same evidence due to the fact that they weighted certain factors differently. For example, a rating specialist told us that a medical opinion was always weighted more heavily than all other evidence in the veteran's file while another specialist expressed a hesitancy to rely too much on the examiner's opinion.

- Third, the guidance does not provide instruction on how to separate extraneous factors from allowable ones. Findings from our case file review illustrates this issue: One file described a 77-year-old veteran claiming TDIU benefits for blindness that was caused by (1) a service-connected disability, (2) glaucoma, and (3) macular degeneration. However, because all three conditions related to the veteran's quality of vision, the rating specialist noted in the file her difficulty separating the effect of the service-connected disability from the non-service-connected glaucoma and macular degeneration due to the man's age.

In light of these challenges, in our June 2015 report, we recommended that VA instruct VBA to update the guidance to clarify how rating specialists should determine unemployability when making TDIU benefit decisions.[10] This update could clarify if factors such as enrollment in school, education level, and prior work history should be used and if so, how to consider them, and whether to assign more weight to certain factors than others. VA concurred with this recommendation and stated that VBA will review and identify improvements to TDIU policies and procedures to provide clearer guidance including the extent to which age, education, work history, and enrollment in training programs are factors claims processors must address. VA anticipates that its Compensation Service will complete this review and provide options to VBA for a decision by the end of January 2016.

- **Format and delivery of guidance is inefficient:** Rating specialists in the majority (7 of 11) of our discussion groups at five regional offices reported that VBA's guidance for reviewing TDIU claims is formatted and delivered in ways that make it difficult for them to efficiently complete their decision-making responsibilities. For example, TDIU guidance is delivered using multiple formats, including—but not limited to—manuals, policy and procedure letters, monthly bulletins, and e-mails. Thus, rating specialists lack a definitive source for TDIU benefit decision guidance. In addition, VBA officials acknowledged the manual for TDIU benefit decisions is outdated and stated they issue interim guidance in many forms between manual updates because such updates are time-consuming and difficult to do on a regular basis. VBA officials also told us they have completed two of the four stages for a web portal that will house all existing guidance and will subsequently consolidate the guidance into one processing manual, which they are in the process of rewriting. Officials told us they plan to complete the consolidation by the end of fiscal year 2015.

- **Quality assurance approach may not be comprehensive:** VBA's quality assurance approach—accomplished mainly through its Systematic Technical Accuracy Review (STAR)—may not be

[10]GAO-15-464.

providing a comprehensive assessment of TDIU claim decisions.[11] Specifically, the agency's current approach does not allow it to identify variations in these decisions or ascertain the root causes of variation that may exist. VBA's quality assurance standards indicate that for the quality assurance officer to decide that the rating specialist made an error, it must be clear and undebatable; the officer cannot substitute his or her professional opinion with the opinion of the rating specialist who made the original decision. Because of this high standard, a STAR review of a sample of claims finalized during the first three quarters of fiscal year 2014 determined that nearly 95 percent of TDIU claims (872 of 920) were error-free. Of the 48 claims found to contain an error, all the errors were found to be "procedural," such as an incorrect date for the onset of unemployability. No "decisional" errors—that is, an error on the decision to grant or deny the benefit—were found. According to VBA officials, it is unlikely that they will find many decisional errors because there is so much individual judgment allowed in TDIU claim decisions, and VBA's quality assurance standards do not allow for the reevaluation of the professional opinion of the original rating specialist.

While we recognize that TDIU benefit decisions have an inherently subjective component, in June 2015, we recommended that VA identify other quality assurance approaches to comprehensively assess TDIU benefit claim decisions.[12] The approach should assess the completeness, accuracy and consistency of decisions and ascertain the root causes of any significant variation so that VBA can take corrective actions as appropriate. This effort could be informed by the approaches VBA uses to assess non-TDIU claims. For example, as we reported in 2014, VBA conducted a targeted review of military sexual trauma claims using a consistency questionnaire to test rating specialists' understanding and interpretation of policies in response to concerns that related post-traumatic stress disorder claims were not being accurately decided.[13] VA

[11]VBA measures the accuracy of disability compensation claims decisions through the STAR process in which certified reviewers use a checklist to assess a random sample of completed claims for each of the 57 regional offices. VA reports national estimates of accuracy through its annual performance and accountability report and annual budget submission.

[12]GAO-15-464.

[13]GAO, *Military Sexual Trauma: Improvements Made, but VA Can Do More to Track and Improve the Consistency of Disability Claim Decisions*, GAO-14-477 (Washington, D.C.: June 9, 2014).

concurred with this recommendation and stated that quality assurance staff would add TDIU-specific questions to the In-Process Review checklist at the regional offices by September 2015. Based on the results of the reviews, VA stated that VBA will determine the most effective approach for assessing the accuracy and consistency of TDIU decisions.

- **Self-Reported income eligibility information is not verified:** VBA requires TDIU claimants and beneficiaries to provide information on their employment earnings, but it places the benefits at risk of being awarded to ineligible veterans by not using third-party data sources to independently verify self-reported earnings. To begin receiving and remain eligible for TDIU benefits, veterans must meet certain income eligibility requirements.[14] Rating specialists use information provided by claimants to request additional information from employers and, when possible, verify the claimant's reported income, especially for the year prior to applying for the benefit. However, VBA officials and our file review indicated that employers provide the requested information only about 50 percent of the time. If VBA does not receive verification from a veteran's employer after multiple attempts, it accepts the veteran's claimed earnings. VBA previously conducted audits of existing beneficiaries' reported income by obtaining income verification matches from Internal Revenue Service (IRS) earnings data through an agreement with the Social Security Administration (SSA). However, the agency is no longer doing so despite having standing agreements with the IRS and SSA to do so. In 2012, VBA suspended income verification matches to allow for the development of a new system that would allow for more frequent, electronic information sharing. However, that system was never developed.

To better ensure beneficiaries' eligibility, in June 2015, we recommended VA instruct VBA to verify the self-reported income provided by veterans (1) applying for TDIU benefits and (2) undergoing the annual eligibility review process by comparing such information against IRS earnings data.[15] VA concurred with this recommendation and stated that VBA is developing an upfront verification process including expanding the data

[14]If a veteran is employed, to be eligible for TDIU benefits such employment must be marginal, which under VA regulations is generally deemed to exist when annual earned income does not exceed the poverty threshold established by the Census Bureau of the U.S. Department of Commerce.

[15]GAO-15-464.

sharing agreement with SSA, which enables VBA to receive federal tax information via an encrypted electronic transmission through a secure portal. VBA expects to implement this new process for TDIU claimants by January 2016.

Options for Revising TDIU Eligibility Requirements

With regard to the options for revising TDIU eligibility requirements and the benefit structure, in our June 2015 report, we identified a number of options proposed by others as described in table 1.[16] More specifically, six options focused on revising eligibility such as changing existing requirements in various ways, for example, setting age limits, lowering the disability rating requirement, or increasing the income threshold. A seventh option would affect the benefit structure by lowering—but not immediately eliminating—the TDIU benefit payments as beneficiaries earn income beyond the eligibility limit.

Table 1: Seven Options Proposed by Others for Revising Total Disability Individual Unemployability (TDIU) Requirements and Benefit Structure

Option	Description
1. Discontinue benefits beyond retirement age*	Discontinue the TDIU payment when the veteran reaches Social Security's full retirement age (65 to 67, depending on birth year). This option was proposed by the Congressional Budget Office (CBO) in 2013, as part of a broader examination to reduce the federal deficit, and estimated that restricting TDIU benefits to veterans younger than their full Social Security retirement age would reduce costs by $15 billion between 2015 and 2023.[a]
2. Consider vocational assessment in eligibility decision	Consider the results of a mandatory vocational assessment before granting TDIU benefits. The vocational assessment would address whether the veteran could be rehabilitated in order to maintain employment.
3. Increase earnings limit	Increase the maximum earnings limit for TDIU eligibility to match that used in the SSDI, which was $12,480 per year (for a non-blind individual) in fiscal year 2013.
4. Lower disability rating criteria	Lower the TDIU eligibility criteria for veterans with multiple disabilities to a combined scheduled disability rating of 60 percent in place of the existing regulation which states that a veteran with multiple disabilities is eligible for TDIU if the combined rating is at least 70 percent so long as one of the multiple disabilities is rated at least 40 percent.[b] The change in the multiple disability ratings threshold would also eliminate the requirement that one of the disabilities have a minimum rating of 40 percent.

[16]In our report, and in this statement, we do not recommend or endorse the adoption of any particular policy option or package of options. Rather, we identify them from the literature review as potential options that could be considered. The options presented here are listed in no particular order.

Option	Description
5. Add new unemployability criteria*	Amend the criteria for assessing "unemployability" to include the veteran's education, work history, and the medical effects of an individual's age on his or her potential employability.
6. Use patient-centered work disability measure	Adopt a "patient-centered work disability measure" to evaluate TDIU eligibility. In addition to assessing the veteran's work history, as currently performed, VA would consider other factors, including motivation and interests. VA staff would measure multiple factors—impairments, functional limitations, and disability—relevant to health-related work disability.
7. Gradually reduce benefit payments	Implement a gradual reduction in the TDIU payment as the veteran, in returning to work, exceeds the maximum income that determines eligibility for TDIU, which was $11,888 per year for an individual in fiscal year 2013. The existing TDIU regulations call for a discontinuation of a TDIU benefit once a veteran has income above the maximum after having worked for more than a year.

Source: GAO review of selected reports on the TDIU benefit. | GAO-15-735T

Note: Options marked with a * have been implemented (or a similar approach has been) in the federal Social Security Disability Insurance (SSDI) program.

[a]Congressional Budget Office, Options for Reducing the Deficit: 2014 to 2023 (Washington, D.C.: November 2013), 48.

[b]VA regulations also state that veterans with a single disability rating at 60 percent and who meet the other criteria are eligible.

Based on interviews with selected experts and representatives of veterans service organizations (VSO), we identified a range of potential strengths and challenges associated with each option. The experts and VSO representatives commonly mentioned the equity of the proposed change, an increase or decrease of VA's management and administration efforts and cost, and the effect on veterans as potential strengths and challenges. For example, a couple of the options present possible opportunities for VA to better target TDIU benefits to veterans who are unemployable, but implementation of these options could pose challenges in ensuring that all veterans are treated equitably. Each of the seven options and the potential strengths and challenges identified by stakeholders that we interviewed are summarized in our report.

In addition to these options, in its 2012 report, the Advisory Committee on Disability Compensation made recommendations to VA regarding potential revisions to the TDIU benefit, and while VA concurred with those

recommendations, it has yet to take actions in response to them.[17] Specifically, the committee recommended that the agency (1) study whether age should be considered when deciding if a veteran is unemployable and (2) require a vocational assessment for all TDIU applicants. Taking the committee's advice into consideration could better position the agency to meet federal internal control standards. In its comments to the committee, VA noted that before it could proceed with the vocational assessment requirement, it needed to complete a study on whether it was possible to disallow TDIU benefits for veterans whose assessment indicated they would be employable after rehabilitation. In light of VA's agreement with the committee's recommendations, we subsequently recommended in our June 2015 report that VBA develop a plan to study (1) whether age should be considered when deciding if veterans are unemployable and (2) whether it is possible to disallow TDIU benefits for veterans whose vocational assessment indicated they would be employable after rehabilitation.[18] VA concurred with our recommendation and stated that Compensation Service initiated a review of TDIU policies and procedures in April 2015 including consideration of age and vocational assessments in claim decisions. VBA expects to complete an action plan to initiate any studies, legislative proposals, or proposed regulations deemed necessary, by July 2015.

In conclusion, the benefits veterans are entitled to, as well as VA's decisions on what constitutes a work disability, are in need of constant refinement to keep pace with changes in medicine, technology, and the modern work environment. Within this broad context, VA can position itself to better manage the TDIU benefit and look for opportunities to strengthen the assessments of its eligibility decisions. Having a strong framework for program integrity is important for any federal program, and in light of the multi-billion dollar—and growing—TDIU benefit, taking steps to ensure payments are properly awarded to veterans is essential. Moreover, VA has the opportunity to benefit from the attention the TDIU benefit has received by various experts, including its own advisory committee. The options and potential strengths and challenges identified

[17]The committee is required to issue reports no less than every 2 years on VA's programs and activities related to the payment of disability compensation and include recommendations deemed necessary. The 2014 report contained no new recommendations regarding TDIU and noted the committee intends to issue new recommendations no later than 2016.

[18]GAO-15-464.

by experts and VSO representatives may warrant consideration in any broader benefit refinement discussions and efforts to improve the TDIU benefit design and eligibility criteria going forward. VA generally agreed with our conclusions in our June 2015 report and concurred with all of our recommendations and made plans to address them.[19]

Chairman Miller, Ranking Member Brown, and Members of the Committee, this concludes my prepared remarks. I would be happy to answer any questions that you or other members of the committee may have.

For further information regarding this testimony, please contact Daniel Bertoni at (202) 512-7215 or bertonid@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Key contributors to this testimony include Brett Fallavollita (Assistant Director), Melissa Jaynes, Kurt Burgeson, David Chrisinger, Alexander Galuten, and Kirsten Lauber.

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[19]GAO-15-464.

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

JULY 15, 2015

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.

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STATEMENT OF
PAUL R. VARELA
DAV ASSISTANT NATIONAL LEGISLATIVE DIRECTOR
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 15, 2015

Mr. Chairman and Members of the Committee:

Thank you for inviting DAV (Disabled American Veterans) to testify at this oversight hearing. As you know, DAV is a non-profit veterans service organization comprised of 1.3 million wartime service-disabled veterans that is dedicated to a single purpose: empowering veterans to lead high-quality lives with respect and dignity.

The Committee's invitation request that DAV present our views on the standards the Department of Veterans Affairs (VA) uses to determine unemployability; VA's quality assurance approach to ensure decisions are complete, accurate, and consistent; and, VA's process to verity self-reported earnings information provided by veteran applicants and beneficiaries.

For veterans who are unable to work because of service-connected disabilities but whose disabilities do not meet the established threshold for total and permanent 100 percent disability rating under VA's regular rating schedule criteria, VA has established special provisions for awarding total disability ratings.

Congress delegated to the Secretary of Veterans Affairs authority to adopt and apply a schedule for rating veterans' disabilities. For purposes of disability compensation payments, the schedule provides for gradation of disability in increments of 10 percent, ranging from 10 percent to 90 percent for partial disability, and 100 percent for total disability. The ratings are to be based, "as far as practicable, upon the average impairments of earning capacity" from disability in civil occupations..

Title 38, Code of Federal Regulations (C.F.R.), section 4.16, states, "It is the established policy of [VA] that *all* veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled." Therefore, "[t]otal disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities."

The main question at issue for VA in individual unemployability (IU) claims is the inability of a veteran claimant to engage in "substantially gainful employment" because of his or her service-connected conditions. Substantially gainful employment means holding a job that

pays at least an amount equal to the annual poverty level set by the federal government, which currently stands at roughly $12,000 for an individual without dependents.

In order to qualify for the IU benefit, veterans with service-connected disabilities must meet these minimum rating thresholds:

- If the veteran has only one service-connected disability, it must be rated at least 60 percent disabling or higher;
- If the veteran has two or more service-connected disabilities, at least one of those disabilities must be rated at 40 percent or higher, and, after factoring in the ratings for the other disabilities, the veteran's combined disability rating must be 70 percent or higher;
- Finally, the veteran must be determined unemployable on the basis of one or more of his or her service-connected disabilities.

The distinction between total disability on a schedular basis, i.e., a 100 percent rating, and total disability based on IU is that total disability on a schedular basis is founded on an "average person" standard, as are all regular schedular ratings, while unemployability ratings are based on the impact of the disability in the individual's own circumstances.

Consequently, while the concept of average impairment in earnings capacity is the basis underlying the various percentage evaluations provided for given levels of disability in the rating schedule, IU determinations are not based on average impairment and must, therefore, take into account the disability as it affects the individual's ability to follow a substantially gainful occupation in light of his or her attained work skills and educational background. IU ratings recognize that individuals may be totally disabled for work with less disability than that which would be necessary to totally disable the average person. Sometimes, the extent of disability depends more upon the affected individual than upon the character of the disability. For example, the loss of both legs might totally disable a common laborer with little education, but this loss might have a smaller impact upon the earnings capacity of an accountant.

The Congressional Budget Office (CBO) reported in August 2014, the number of veterans rated totally disabled for IU in 2013 was 310,000, or 9 percent of those in receipt of disability compensation benefits, compared against 112,000 veterans in receipt of IU in 2000, or 5 percent of those in receipt of disability compensation benefits. DAV believes this growth is consistent with a pattern of higher numbers of more seriously disabled veterans from the wars in Iraq and Afghanistan,, increases in claims processing, VA's intense outreach efforts, and expansion of presumptive disabilities and new rules governing claims for PTSD.

An increasing prevalence of service-connected posttraumatic stress disorder (PTSD) and other mental disorders among veterans may also account for the increase in IU ratings. Under its "General Rating Formula for Mental Disorders," the VA rating schedule provides for six different levels of disability assessment: 0 percent, 10 percent, 30 percent, 50 percent, 70 percent, and 100 percent. To be rated 100 percent on a schedular basis under this formula, a veteran must meet the pertinent criteria from among the following:

> Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

A person who has a mental condition meeting these criteria would have impairment well beyond a level that would remove any possibility gainful employment. Such a person would be profoundly disabled and nearly helpless or helpless in fact. Few veterans would meet these criteria.

Now consider the criteria a veteran must meet to be rated 70 percent disabled, the only rating that meets the schedular prerequisite for IU.

> Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a work like setting); inability to establish and maintain effective relationships.

Few veterans would be able to work with such marked symptoms. If they are to be adequately compensated, a claim for IU is their only resort. Under the general rating formula in effect prior to the total restructuring in 1996, any veteran unable to work because of a service-connected mental disorder was deemed totally disabled under the schedular criteria. Section 4.16(c) of title 38, C.F.R. provided that the IU provisions of section 4.16(a) did not apply to mental disorders:

> "The provisions of paragraph (a) of this section are not for application in cases in which the only compensable service-connected disability is a mental disorder assigned a 70 percent evaluation, and such mental disorder precludes a veteran from securing or following a substantially gainful occupation. In such cases, the mental disorder shall be assigned a 100 percent schedular evaluation under the appropriate diagnostic code."

Paragraph (c) was removed with the promulgation of the new general rating formula for mental disorders. Because that rule no longer applies under the current rating formula, all ratings that would have been 100 percent on a schedular basis under this special rule now are made on the basis of IU, which caused an increase in the number of veterans rated IU. This effect is magnified by the increasing prevalence of claims for mental disorders by veterans. In FY 2013, 3.7 million veterans were in receipt of disability compensation benefits. During this time period, 648, 992 veterans were service-connected for PTSD, 130,155 for major depressive disorder, and 51,043 for generalized anxiety disorder.

Inherently, IU determinations must rely heavily on subjective data, particularly those involving mental disorders. However, that fact is unavoidable in the assessment of disability as it affects an individual because, as stated, the same medical condition affect different individuals quite differently, not only from the standpoint of physical or mental functioning, but also in light of innumerable variables relating to vocational and educational attainment.

A 60 percent or greater disability under the terms of the schedule necessarily means that, for veterans with more demanding occupations, the affected veteran is approaching that minimum level of efficiency or tolerance for the demands, stresses or strains of work which is acceptable to an employer who must confront the realities of a profit-driven, competitive economy. A veteran may struggle and be able to barely satisfy an employer's needs for years and then suddenly be unable to continue meeting those minimum requirements due to a gradual progression of his or her disability. A subtle change in the veteran's physical or mental capacity may reduce work attendance or performance to a level that is unacceptable to an employer. It is to be expected that many of these veterans will become unemployable as their disabilities worsen with age. Age however, is not a factor in the VA's IU determination.

Unlike VA pension benefits and Social Security disability insurance benefits where age is appropriately considered in determining entitlement, consideration of age as a factor of entitlement in a veteran's IU claims would be inappropriate. The purpose of veterans' pensions is "relieving distress from disability or destitution among the aging veteran population." Pension is by definition a benefit paid to a veteran "because of service, age, or non-service-connected disability."

Consistent with DAV Resolution No. 012, adopted at our most recent national convention, DAV would strongly oppose any measure that proposes to tax, reduce, or eliminate benefits. Therefore, DAV would strongly oppose any legislation or recommendation that would restrict entitlement to IU on the basis of age. While compensation is an age-neutral benefit, common sense suggests that age should be a factor in determining whether vocational rehabilitation is feasible, for reason that the effects of age diminish human faculties.

Consistent with DAV Resolution No. 066, DAV would strongly oppose any measure that proposes to offset the payment of any other Federal benefit, or earned benefit entitlement by VA compensation payments made to service-connected disabled veterans. Benefits received from the Department of Veterans Affairs (VA), or under military retirement pay and other Federal programs have differing eligibility criteria as compared with the earned payments of Social Security. Reducing a benefit provided to a disabled veteran in receipt of IU due to receipt of a different benefit offered through separate federal benefit program is an unjust penalty.

Insurance against disability from any cause is to be distinguished from compensation for disability from military service. Age is a factor in determining entitlement to disability insurance benefits under Social Security laws on the principle that, where a person is unable to perform his or her customary work, the effects of advancing age reduce a person's ability to adjust to other work for which the person has the necessary skills, education, and physical or mental abilities.

Title 20, C.F.R. section 404.1563, states the Social Security Administration

> ...will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment.

Because the purpose of VA compensation is to make up for the effects of service-connected disability, it should not be tied to factors extraneous to the character of the disability. It would be inappropriate to pay different levels of compensation based on age. It would be inappropriate to deny IU to a younger veteran on the basis of age and award it to an older veteran with the same level of disability, or vice versa.

Total compensation for IU is not a retirement benefit. Just as it should not be denied because of age, it should not be awarded because of age. Properly applied, the rules require a factual showing that the disability is incompatible with a veteran gaining substantial gainful employment, irrespective of age. Today, many people work well beyond what was once considered normal retirement age. Typically, VA awards the benefit when disability forces the veteran to terminate employment. To award IU to a veteran aged 64 and deny it to a veteran aged 66, for example, would be unfair discrimination, disparate treatment of veterans similarly situated, and wholly unjustified from an equitable standpoint. Nonetheless, if Congress or VA chose to make a fundamental change in this compensation principle to allow for the consideration of age in IU claims, as with Social Security disability benefits, such change should make it easier for most veterans to qualify for IU because veterans of service in Vietnam and all earlier periods would be of advanced age.

Under current rules, which do not complicate the decision by applying different rules to different age groups, if a veteran's functional limitations become such that they are incompatible with continuing performance of the veteran's job activities, a factual finding to that effect can be made with an adequately developed record. For decisions on IU, VA should look at the medical evidence, employment evidence, and any available relevant records from the Social Security Administration and VA's Vocational Rehabilitation and Employment Service. Experience has shown that, in many instances, there can be a valid purely medical conclusion that a veteran's disabilities are so severe in their effect upon "ordinary activity" as to obviously be incompatible with all work activities as generally understood and within common knowledge.

Although VA's IU regulations and policies are imperfect we believe the current rules, for the most part, prescribe consideration of the appropriate factors. These decisions do require careful examination of the facts and the exercise of well-informed and well-reasoned judgments. We believe most veterans would prefer to work if they are able, and experience has shown that VA adjudicators are not particularly liberal in awarding total ratings on the basis of IU. This is reflected in the many discussions of arbitrary VA denials by the court.

For these reasons, the increase in numbers of veterans receiving IU benefits as reported by CBO in August 2014 and in the Government Accountability Office's IU Report released July 2015 does not, in the view of DAV, signal a failure or fault in the administration of this benefit program.

The August 2014 CBO report states, "VA reviews the employment history of IU applicants but does not require those veterans to have their employability assessed by the department's vocational rehabilitation program." This suggests that a determination of IU could be made contingent upon a vocational rehabilitation evaluation and determination. Consider that in the cases where a veteran meets the schedular disability requirements as illustrated above for IU and is unemployed, this suggestion would add an additional claims processing component before VA could render a decision in a claim for IU. This additional step would add unnecessary delay and would undoubtedly place a greater burden upon veterans seeking a timely decision for adequate compensation to maintain a basic standard of living.

In the June 2015 GAO IU Report, several options were identified to revise IU eligibility requirements and the structure of the administration of this benefit. These options consisted of discontinuing IU beyond retirement age, consideration of vocational assessments before awarding IU benefits, gradually reducing IU payments, increasing earnings limits, lowering disability rating criteria, adding new IU criteria and the use of a patient-centered work disability measure.

Pertaining to the suggestion of discontinuing IU beyond the current retirement age, as mentioned earlier in our testimony, DAV is strongly opposed to the notation of limiting a compensation benefit due a veteran's age. We highlight two serious concerns identified by GAO associated with making such a change to administration of this benefit:

1. Some veterans might not have income replacement available—especially those who had been on IU in advance of reaching retirement age;
2. Could be unfair to veterans—older individuals might have the option of working past the retirement age, but older veterans whose service-connected disabilities stop them from working cannot.

Pertaining to the suggestion of lowering the disability rating criteria for IU for veterans with multiple disabilities to a combined disability rating of 60 percent, rather than 70 percent and eliminating the requirement that one of the disabilities have a minimum rating of 40 percent; DAV would be supportive of such a change. We highlight two benefits identified by GAO associated with making such a change to administration of this benefit:

1. Lowering the criteria could make it easier for veterans to qualify for TDIU if they did not have any disabilities above 40 percent, but were still considered unemployable;
2. Could provide consistency in the eligibility criteria since, instead of requiring a 70 percent rating for veterans with multiple disabilities and a 60 percent rating for veterans with a single disability in order for the veteran to be eligible for TDIU, the minimum required rating of a 60 percent disability would be the same for veterans regardless if they had a single or multiple disabilities

Pertaining to the suggestion of adding new IU criteria that would assess "unemployability" to include the veteran's education, work history, and the medical effects of an individual's "age" on his or her potential employability; DAV is strongly opposed to the notation of limiting a compensation benefit due a veteran's age. We highlight two serious concerns identified by GAO associated with making such a change to administration of this benefit:

1. Could be unfair to veterans—veterans who are otherwise similar might not be treated equally when deciding eligibility.
2. By adding multiple new factors to consider, could possibly increase the subjectivity of claim decision-making, thereby possibly creating more variation in decisions.

Pertaining to the suggestion of using patient-centered work disability measures to evaluate IU eligibility that would assess a veteran's work history, as currently performed, VA would also consider other factors, including a veteran's motivations and interests when considering entitlement to this benefit. DAV is strongly opposed to the creation new administrative procedures that would delay the delivery of benefits for veterans applying for IU benefits. We highlight two serious concerns identified by GAO associated with making such a change to administration of this benefit:

1. Could delay the benefit decisions while rating specialists collect the additional information required for the measure;
2. Could require VA to make changes to how the agency measures disability, such as through the inclusion of their motivations and interests.

DAV opposes the suggestion that disability compensation should be reduced through gradual elimination of IU payments. based on rising income; however, we are in the process of further exploring the impact these changes would have to current and future beneficiaries.

Pertaining to the suggestion of requiring a vocational assessment before awarding IU benefits, DAV is strongly opposed to the creation of a new administrative procedure that would delay the delivery of benefits for veterans applying for IU benefits. We highlight five serious concerns identified by GAO associated with making such a change to administration of this benefit:

1. Could cause delays in benefit decisions;
2. Could require VA to expand its vocational rehabilitation program to address the increase in required assessments;
3. Rating specialists and vocational rehabilitation counselors might need to receive additional training on how to assess the vocational rehabilitation findings;
4. Could increase the burden on veterans as they would likely need to submit to an additional assessment;
5. By adding a new factor to consider, could possibly increase the subjectivity of claim decision-making, thereby possibly creating more variation in decisions;

To expect an elderly disabled veteran to embark upon a new career in his or her final years of life is unrealistic. The demands of training may only make the disability worse. To refuse IU to a veteran who uses the good judgment not to undertake such an unwise course would contradict the purpose of veterans' benefits. We therefore believe that mandating or pressuring veterans of advanced age to attempt vocational rehabilitation would be ill-advised and would result in a waste of resources. The option should be left open, to a reasonable age, for those whose individual circumstances make vocational training and regained employability feasible.

In addition to making successful rehabilitation for a new vocation more improbable for elderly veterans, the infirmities of age, along with the effects of disabilities rated 60 percent or greater may very well cause the veteran to be a hazard to himself or herself and others in some training and work environments. In addition, unlike the evaluation of disability for compensation purposes where the effects of nonservice-connected disabilities must be disregarded, assessment of a veteran's potential for rehabilitation must take into account the effects of all impairments.

Rehabilitation potential for younger veterans is a different matter. We suspect most younger veterans resent the loss of independence and having been forced into the limitations of disability. Title 38 United State Code, section 1163 (c)1, requires the Secretary to notify a veteran awarded total disability for IU of the availability of vocational rehabilitation services and benefits; the law requires VA to offer the veteran counseling services and the opportunity for evaluation as to whether the achievement of a vocational goal is feasible.

Although a veteran might have the potential to perform substantially gainful employment in the future upon successful completion of vocational rehabilitation training, current law recognizes that the veteran and his or her family cannot survive on the level of compensation paid for the existing percentage rating assigned for partial disability while the veteran is training to become employable. Therefore, entry into a program of vocational rehabilitation, by itself, does not cause a termination of IU benefits. A veteran who undertakes a program of vocational rehabilitation is not considered "rehabilitated to the point of employability" unless he or she has been "rendered employable in an occupation for which a vocational rehabilitation program has been provided under [chapter 31, of title 38, United States Code]."

In conjunction with the enactment of provisions requiring VA to notify an IU veteran of the availability of vocational rehabilitation and employment services, Congress included provisions pertaining to periods of "trial work," codified at 38 United States Code, § 1163. Understanding that some IU recipients would seek to return to the workforce, simply returning to work would not constitute renewed employability. Therefore, Congress stipulated that an IU veteran must maintain employment in a substantially gainful occupation for 12 consecutive months before IU could be reduced.

IU is not necessarily a permanent benefit as illustrated in the June 2015 GAO IU Report. VA may periodically require a veteran to undergo medical examinations to verify whether he or she is still unable to work due to a service-connected disability. In instances when a veteran fails to report for such an examination, IU benefits could be terminated and the veteran's disability rating is reduced. Additionally, VA normally sends an employment questionnaire (VAF 21-

4140) annually to veterans in receipt of IU benefits inquiring about their income and employment. To continue receiving benefits, they must certify that they are not earning income over and above the federal poverty threshold. Failure to return this questionnaire could also result in revocation of the IU benefit.

It's important to note that some forms of employment, while a veteran is in receipt of the IU benefit, are not automatically disqualifying. In instances when a veteran's salary is substantially less than the prevailing poverty level, or is employment in a sheltered, or protected work environment, VA may not consider that income to be gainful employment.

Employment where salaries are below the poverty level is called "marginal" employment. Employment exempting veterans from normal work requirements is called a "sheltered" work environment. Both marginal and sheltered employments are exceptions to the unemployment requirement for IU benefits.

The VA defines substantial gainful employment as "that which is ordinarily followed by the nondisabled to earn their livelihood with earnings common to the particular occupation in the community where the veteran resides." Marginal employment, such as odd jobs in which the veteran with no dependents earns less than roughly $12,000 per year, is not considered substantial gainful employment and would therefore not preclude a veteran from receiving IU. Veterans with no dependents who make over $12,000 per year would generally be deemed to be "engaged in substantial gainful employment," which would likely disqualify them from receiving IU.

In closing, DAV appreciates the opportunity to discuss the merits and our concerns regarding administration of VA's IU benefit. As illustrated within my testimony, more seriously disabled veterans meeting specific numerical rating criteria for service-connected disabilities, who are also unemployed due to these service-connected disabilities, may be offered significant relief through the IU benefit. This benefit establishes payments at the 100 percent rate, providing considerable financial relief for veterans when employment opportunities diminish due to their wounds, injuries or illnesses sustained as a consequence of active military service.

This concludes my testimony Mr. Chairman; I am prepared to answer any questions from you or other members of the Committee.

PREPARED STATEMENT OF IAN DE PLANQUE

A recent report of the Government Accountability Office (GAO) examining the Department of Veterans Affairs (VA) Total Disability Individual Unemployability (TDIU) benefit recommends cutting the benefit for veterans over the age of 65.[1] The American Legion strongly disagrees with this recommendation, as it is not only in direct contradiction to clear directions from the Code of Federal Regulations, but it also flies in the face of the current trends in employment statistics and represents a bad precedent—the cutting of veterans' earned disability benefits because the costs of such benefits are increasing. The American Legion worked closely with the GAO in the preparation of the report, and does believe there are improvements that could help increase the efficiency of the program, but cuts to elderly veterans are not the way to begin.

Chairman Miller, Ranking Member Brown and distinguished Members of the committee, on behalf of National Commander Michael D. Helm and the over 2 million members of The American Legion, we thank you for the opportunity to testify regarding The American Legion's position on the Department of Veterans Affairs administration of individual unemployability benefits to our nations' veterans.

The Department of Veterans Affairs (VA) defines individual unemployability as being a part of the overall disability compensation program that allows VA to pay certain veterans disability compensation at the 100% rate even though the VA has not rated the overall veterans service connected disabilities at 100% by the statutory rating scale.[2] It is a recognition that some disabilities, while not rated at 100% may cause serious problems for individual veterans seeking gainful employment.

The Department of Veterans Affairs (VA) disability rating schedule is based upon the severity of chronic medical conditions, and the impact of those conditions upon earnings. For example, if a veteran receives a 50 percent disability rating, the medical condition could impact 50 percent of a veteran's earnings in a labor-intensive work environment. Unfortunately, VA's rating schedule does not always reflect the individual impact of disabilities on individual veterans. A service-connected condition or the combined effects of multiple service-connected conditions could be so severe that the veteran is unable to gain and sustain meaningful employment, even if the veteran's disability rating is not fully 100 percent. As a result, VA provides TDIU benefit.

According to the June 2015 GAO report—Veterans' Disability Benefits: VA Can Better Ensure Unemployability Decisions are Well Supported—in Fiscal Year (FY) 2013, there were approximately 333,000 veterans that were receiving TDIU benefits.[3] The report also indicated there was a 22 percent increase in number of veterans receiving the benefits and a 73 percent increase in veterans that were 65 years and older. This is likely reflective of an aging veteran population, and the increasing life expectancy of Americans.

The GAO report suggests discontinuing TDIU benefits beyond the Social Security Administration's full retirement age; the logic that was provided was that veterans older than the full retirement age would not be working due to age and would likely have income from other sources. However, The American Legion disagrees because this not only contradicts clearly stated law in the regulations, it also is not an accurate reflection of the changing statistics of the American workforce.

VA benefits are codified in the Code of Federal Regulations, where it clearly states:

Age may not be considered as a factor in evaluating service-connected disability; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating. Age, as such, is a factor only in evaluations of disability not resulting from service, i.e., for the purposes of pension.[4]

Furthermore (emphasis added):

. . . if the total rating is based on a disability or combination of disabilities for which the Schedule for Rating Disabilities provides an evaluation of less than 100 percent, it must be determined that the service-connected disabilities are sufficient to produce unemployability without regard to advancing age.[5]

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[1] GAO Report-15–464–June 2015.

[2] *http://www.benefits.va.gov/COMPENSATION/claims-special-individual—unemployability.asp.*

[3] GAO Report-15–464–June 2015.

[4] 38 CFR § 4.19.

[5] 38 CFR § 3.341(a)

The regulations are clear and have been enforced in this manner for decades without problems. It's not just the way VA has implemented the program, it's the law.

In addition, the labor statistics show that Americans are working later and later into their 60's and beyond, as health and lifespan have improved. From 1977–2007, Americans age 65 and older in the workforce has increased by 101 percent, according to the Bureau of Labor Statistics (BLS); of these individuals, 56 percent are working full-time. These Americans are eligible to collect Social Security retirement benefits concurrent with income received through their employment, according to Social Security's regulations.[6]

When preparing this report, GAO worked closely with The American Legion to understand TDIU benefits. During the process, The American Legion indicated that veterans receiving TDIU are by definition unable to sustain employment. For the Americans discussed in the BLS report, they are able to receive both Social Security benefits and the financial gain of employment. If TDIU benefits were eliminated at retirement age, those veterans receiving TDIU prior to retirement would only be able to survive off of Social Security benefits.

Furthermore, many veterans receive TDIU for decades prior to retirement. Due to this fact, they often do not receive an employer retirement package. Additionally, as the veterans would not have been contributing to Social Security during the period of receiving TDIU, their Social Security benefits would be greatly reduced. In the end, veterans that suffered severe medical conditions related to their military service to this nation that prevented an ability to work would ultimately suffer significant financial hardship once they reached 65 years old. The American Legion opposes 'any administrative or legislative proposal to dilute or eliminate any provision of the disability compensation program"[7] and will always oppose such diminutions.

Another significant area of concern highlighted in the report was the manner in which TDIU claims were being adjudicated. VA instructs its raters how to adjudicate the claims; however, the implementation of the instructions varies based upon the individual rater. As a result, a certain level of inconsistency in the delivery of the benefit occurs. The report also points to VA's quality assurance approach and an inability to provide a comprehensive assessment of TDIU adjudications.

The American Legion has testified before Congress on multiple occasions regarding VA's inconsistencies in the adjudications of claims; these concerns extend beyond TDIU benefits to the types of VA disability claims that are being adjudicated. In December 2013, The American Legion testified regarding concerns pertaining to VA's evaluation process. Within the testimony, we stated that VA fails to truly provide a comprehensive evaluation, instead opting for a checklist format to indicate that certain considerations have been offered.[8] We continue to assert that a thorough evaluation is unable to occur if VA does not conduct a thorough evaluation of its own processes. The entire purpose of the TDIU rating is to reflect

[6] Social Security: June 2015: "How Work Affects Your Benefits"
[7] Resolution No.18-AUG 2014.
[8] HVAC Subcommittee on Disability Assistance and Memorial Affairs Hearing-Dec 4, 2013.

a comprehensive understanding of the unique impact of the complete disability picture on an individual veteran.

In December 2012, VA announced that individuals receiving VA pension benefits no longer are obligated to complete an annual Eligibility Verification Report (EVR). The EVR was designed to verify that beneficiaries were earning below the prescribed amount for eligibility. Within VA's announcement, they indicated that they had formed a relationship with the Internal Revenue Service (IRS) and Social Security Administration (SSA) to verify income. The American Legion supported the VA's announcement, recognizing that this would improve efficiency in the administration of the VA pension program.[9]

Similar to VA's pension program, TDIU has income requirements. While the GAO report notes that VA has plans to release an electronic data system that it is compatible with SSA, it is frustrating that this has been unavailable to veterans receiving TDIU benefits; meanwhile, compatibility appears to exist for the pension program.

Previous employer cooperation also appears to hinder the adjudication process. Had VA been utilizing the relationship created in 2012 with SSA and the IRS, employer cooperation would not be required. Waiting for employers to report income likely takes significantly longer than reviewing an electronic database. The American Legion supports efforts to address all claims, to include its growing inventory of appeals, in an expeditious and accurate manner, provided that no program diminishes a veteran's due process rights.[10] If VA employs the process it efficiently uses with its pension beneficiaries, it would expedite the manner in which some claims are adjudicated.

The American Legion believes efficiencies with TDIU can be achieved through better electronic communication between VA, SSA, and the IRS, much in the same way these efficiencies have been achieved in the pension program. It's a way to improve the overall operation of the program.

Conclusion

The American Legion fully supports TDIU. We recognize that military service is inherently dangerous, and that service may have severe physical and psychological consequences. Quite simply the VA rating schedule does not address each symptom or condition, and the severity of a medical condition may prevent employment for some veterans while not impacting other veterans quite as severely. Through having a strong TDIU program, we are able to ensure that our nation's veterans receive the necessary compensation awarded due to catastrophic medical conditions incurred by our veterans.

There are ways to improve the TDIU program—better data efficiency by communication with other agencies and attention to most consistent adjudication would be two of them. Ensuring adjudicators understand the importance of looking at the entire disability picture of the veteran in question is essential to a well run program.

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[9] VA eliminates Eligibility Verification Report-Dec. 20, 2012.
[10] Resolution No. 28: May 2015.

However, cutting benefits to elderly veterans is a non-starter, and The American Legion strongly urges the Committee to dismiss this GAO recommendation. It contradicts the law, it contradicts labor statistics, and it will directly hurt veterans who have been devastatingly injured in service to this country.

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million members of this organization. Questions concerning this testimony can be directed to Warren J. Goldstein, Assistant Director in The American Legion's Legislative Division at (202) 861–2700, or *wgoldstein@legion.org*.

QUESTIONS FOR THE RECORD
U.S. House of Representatives
Committee on Veterans' Affairs
Individual Unemployability Hearing
July 15, 2015

Chairman Miller

Question 1: After a Veteran is awarded IU benefits, he or she is required to submit an annual unemployment certification until attaining the age of 70. Why does VA stop asking for this information from a Veteran who is age 70 or older?

Response: VA does not require Veterans age 70 or older to complete an annual unemployment certification because there is significantly less likelihood that these Veterans will return to the workforce and attain gainful employment. In general, VA considers the Social Security Administration's (SSA) maximum full retirement benefit age of 70 as the basis for determining the likelihood of future employment.

Question 2: Your written testimony indicates that the number of Veterans receiving IU benefits has increased each year. According to VA, there were 316,554 Veterans receiving IU benefits in FY 2014, but according to GAO, there were 332,934 Veterans receiving IU benefits in FY 2013. Please explain this discrepancy given that all parties agree that the number of IU beneficiaries has increased every year since 2009?

Response: The number of Veterans receiving Individual Unemployability (IU) has continued to increase annually. The data presented by the Government Accountability Office (GAO) and the data presented by VA in written testimony were calculated in different manners. VA's data measured the number of Veterans with an active IU award at the end of the fiscal year, rather than the number of Veterans who had an award of IU at some point during the fiscal year. For instance, VA's data excluded any Veteran who had an IU award followed by a 100 percent combined disability evaluation at some point prior to the end of the fiscal year, whereas the GAO data did not. Furthermore, VA's data also excluded any IU award that had been terminated, whereas the GAO data did not exclude terminated IU awards.

Question 3: Please describe the specific steps VBA is taking to implement GAO's recommendation that VA should update TDIU guidance to clarify how rating specialists should determine unemployability when making TDIU benefit decisions.

Response: In April 2015, the Veterans Benefits Administration (VBA) initiated an internal review of its IU policies and procedures. In this review, VBA is identifying any necessary actions for improvements, to include developing new policies and procedures that will provide clearer guidance to process these claims. Any updated guidance will address the extent to which, if any, age, education, work history, and enrollment in

training programs are factors that claims processors must address, and will be designed to promote clarity and consistency among VBA's claims processors nationally.

Question 4: Please describe the specific steps VBA is taking to implement GAO's recommendation that VA should identify other quality assurance approaches that will allow the agency to conduct a comprehensive assessment of TDIU benefit claims decisions.

Response: To assess the accuracy of IU decisions and determine the causes of errors in these decisions, VBA added IU-specific questions to the In-Process Review (IPR) checklist used by the regional offices effective July 1, 2015. Based on the results of the IPRs, VBA will determine the most effective approach for assessing the accuracy and consistency of IU decisions.

Question 5: Please describe the specific steps VBA is taking to implement GAO's recommendation that VA should develop a plan to study the complex TDIU policy questions on (1) whether age should be considered when deciding if Veterans are unemployable and (2) whether it is possible to disallow TDIU benefits for Veterans whose vocational assessment indicated they would be employable after rehabilitation.

Response: In April 2015, VBA initiated an internal review of its current IU policies. Once the review is complete, VBA will develop an action plan for any policy concerns identified during the review. VBA will determine whether legislative proposals or rulemaking are necessary to implement any recommended policy changes.

Question 6: Veterans must meet certain income restrictions in order to receive IU benefits. However, three years ago, in 2012, VBA suspended income verification matches. According to the GAO, this decision may have resulted in ineligible Veterans receiving IU benefits.

a. Please explain why VBA decided to suspend income verifications in 2012?

Response: In FY2012, VBA determined that its longstanding process for administering income matching agreements with the IRS and SSA was inefficient and inadequate for purposes of ensuring program integrity. As a result, VBA decided to overhaul the process by implementing upfront income verification for the pension program, followed by post-award auditing for pension and individual employability. VBA entered into new matching agreements with the IRS and SSA that provide three years of historical income information, allow for more detailed analysis of claimant and beneficiary income, and match information as it becomes available rather than at the end of the agencies' tax year processing. VBA also modified its information technology systems to automate the matching of claimant and beneficiary records with IRS and SSA records, as well as to display match results electronically for claim processors. These enhancements eliminated the need for VBA regional office storage of sensitive paper Federal tax

information and allowed VBA to discontinue the longstanding practice of requiring annual income verification reports.

To complete this transformation under the new matching agreements and coordinate development of systems modifications, VBA reviewed the pending IVM inventory and determined that the field was currently working three years of IVMs. Based on the pending inventory and anticipated delivery date of the new post award audit process VBA determined that it was feasible to temporarily suspend the matching program.

b. The new IT system was not scheduled to be operational until 2015, and I note that it is still not operational. Why didn't VBA continue using the old system to verify income until the new system was in place?

Response: The original evaluation of the operational availability of the new IT system incorporated a much more aggressive schedule that included an initial delivery date of July 2014 for the new post-award audit process. However, during the development of the system requirements VBA identified numerous functional and technical requirements that it had not previously considered, such as: the potential for improved automation, streamlining of administrative processes, and federal tax information handling requirements. These new requirements resulted in a delayed delivery of the needed functionality.

Although VBA had employed the old income verification system for a number of years, each annual iteration of the matching program was a unique event that required IT system modifications. These changes were required to account for changes that occurred within VA systems and IRS tax code changes. Each delivery of IVM data required IT resources to develop and program the system to support the new requirements. VBA elected to focus resources on the development and deployment of the new matching system as opposed to developing and deploying both the old and new systems simultaneously.

c. According to GAO, VBA has not provided a plan or timeline for implementing the new verification system. What is the current status of the new income verification system? When will development be complete, and when will it go live?

Response: VBA has developed an upfront verification process by expanding a data sharing agreement with SSA, which enables VBA to receive federal tax information and verify a claimant's income through the secured SSA portal. This process will serve as a more efficient way to verify a claimant's eligibility for IU benefits upon receipt of the claim and maintain integrity of the IU program. VBA expects to implement the upfront verification process for IU claimants by January 2016. In addition, VBA is transitioning from the income verification match process to a post-award audit process by reinstituting a data match with SSA, which enables VBA to receive earned income (employment wages) information

and verify recipients' continued entitlement to IU benefits. VBA expects to implement the post award audit process in January 2016.

Question 7: According to GAO's report, the number of new IU beneficiaries who are age 65 and older has increased from 103,903 in FY 2009 to 180,043 in FY 2013, which represents a 73% increase. GAO also found that 53% of this increase is attributable to Veterans who began receiving IU benefits for the first time. In your opinion, why has there been a substantial increase in the number of older Veterans applying for IU benefits for the first time?

Response: Although we do not have data showing the causes of older Veterans applying for IU for the first time, VBA believes several factors impacted this trend. For example, the overall population of the United States is living longer than in previous generations. As Veterans age, it is expected that some will suffer from a worsening of their service-connected disabilities, resulting in their removal from the work force and entitlement to IU benefits. In addition, VA established a presumption of service connection for three diseases associated with exposure to Agent Orange in Vietnam: ischemic heart disease, chronic B cell leukemia, and Parkinson's disease. When VA established these presumptions, the decision had an immediate impact on a large number of elderly Veterans, many of whom were unemployable due to these conditions. This decision contributed to the significant increase noted in the GAO report.

Rep. Coffman

Question 8: Given that the TDIU benefit was established in the 1930's, can you explain how the VA has adjusted the evaluation for this benefit over the years to account for changes in the modern workplace? For example, today many employees can work remotely from home.

Response: Although the workplace has changed since the 1930s, the basic requirements for entitlement to IU have not significantly changed. To receive IU benefits, it is a requirement that a Veteran cannot obtain or maintain gainful employment due to service-connected disabilities. However, a Veteran working remotely from home in a substantially gainful occupation (one where income exceeds the poverty level) would not be entitled to IU.

Question 9: Do you believe that a Veteran who is eligible to attend a degree program, perhaps even under the GI Bill, should also be eligible for TDIU benefits? The June 2015 GAO report revealed that some VA claims examiners did not consider high-performance in degree programs to be relevant to the individual's unemployability determination.

Response: If a disabled Veteran completes a degree program and finds gainful employment, he or she would not be eligible for the IU benefits. Conversely, if the Veteran is so severely disabled that, even having completed a degree program, he or

she cannot obtain or maintain substantially gainful employment, then IU could be granted.

Rep. Walorski

Question 10: GAO's testimony indicates that VBA assured them they have completed two of the four stages of a consolidated web portal and the second two stages would be completed by the end of this year. Does VBA still plan on having the web portal up and running by the end of the year? What did the first two stages consist of? What's involved in the last two? How long did each of the first two stages take?

Response: The consolidated web portal referenced in the GAO report is the new M21-1, Adjudication Procedures Manual. It is an integrated, up-to-date, electronic resource for all of the policies and procedures applicable to processing compensation, pension, dependency and indemnity compensation, and monetary burial benefit claims. The goal for this modern manual is to incorporate existing guidance, which was previously maintained in various guidance documents, into one authoritative source for claims processors.

The first phase, which entailed moving all content to the knowledge management portal, began in October 2014, and was completed in January 2015. The second phase, which consisted of integrating the various resources gathered from phase one into the M21-1 manual, and updating and drafting new manual material, began in November 2014, and was completed in August 2015.

A formal launch and training for the new manual are currently scheduled for September 2015.

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