

Beyond Transformation: Reviewing Current Status and Secondary Effects of VBA Technology

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STATEMENT OF

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BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY AND MEMORIAL AFFAIRS

WITH RESPECT TO

Beyond Transformation: Reviewing Current Status and Secondary Effects of VBA Technology

WASHINGTON, D.C.

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to present our views on the current status of Veterans Benefits Administration (VBA) transformation and secondary effects of VBA technology.

The wide ranging focus of today's hearing on the status of VBA's transformation and intended and unintended consequences of these changes is both apt and timely. VBA is moving forward so quickly and on so many fronts to modernize its claims processing tools that it is only appropriate that all of us pause from time to time, and determine where the

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Department of Veterans Affairs (VA) is at in the process and examine the effects of this massive effort.

While the VFW is both an observer of these changes and a participant in many of them, and we have some knowledge and understanding of all the topics you are interested in today, we will confine our comments to three issues which concern us the most: VA's national work-queue strategy within Veterans Benefits Management System (VBMS); how that strategy will affect VFW representational activities; and the recently proposed rule mandating electronic forms and its potential impact on veterans and veterans' rights.

VA's national work-queue strategy

VA has one of the most geographically diverse claims adjudication operations of any federal agency or department in the federal government. Claims processing occurs in VA regional offices found in every state. Several states have two regional offices; California has three. Regional offices also exist in Puerto Rico and the Philippines. In addition, claims processing has been further dispersed to other locations, including Sacramento and Orlando. Claims intake sites, and some claims processing personnel, are also located on scores of military bases around the nation.

Even with this widespread diffusion of personnel, claims processing is still largely worked on by staff in the office with jurisdiction over the geographic area in which the veteran lives. Except for several counties in the southern part of the state, for instance, New Jersey claims are processed in Newark; claims submitted by residents of Nevada are processed in Reno; and claims from veterans living in California are adjudicated in San Diego, Los Angeles or Oakland. However, for at least 30 years, VBA has increasingly transferred cases from offices with high workloads to those more capable of processing the work more quickly - a process called brokering. VBA has developed tools to assess the capacity of offices to handle more work and moved the work to those locations.

The VFW has often been critical of the practice of brokering work. All too often, VBA has chosen to move work around rather than address the problems extant in overburdened offices with overworked staff. Inadequate training, poor management and other factors have not always been addressed in a timely manner in order to fix known problems and ameliorate the need to transfer work to another office.

Further, the practice of brokering work has the unintended consequence of undermining the "ownership" of claims that many VA employees feel, which has a subtle but real effect on the quality of development and decisions in cases not from their state. Poor quality of decisions in brokered claims has been a common complaint of veteran service officers and VA employees alike. While VBA claims that quality of brokered work is no different than work that is not brokered, the near constant cacophony of reports to the contrary makes us question VBA's claims.

We are in the midst of a great and long overdue renaissance in claims processing technology. While we may still talk about the electronic transfer of claims from one office to another, the reality is that the only thing transferred is the *authority* to work a claim, or pieces of that claim, to an office other than the one with jurisdiction over it. For the first time in its history, VBA has the capability to develop a claim in Phoenix, rate a claim for PTSD in Pittsburgh and evaluate the other claimed conditions in Jackson. The question is not whether they can do this. It is, rather, how they can do this while ensuring that veterans receive quality correspondence from Phoenix and legally correct decisions from Pittsburgh and Jackson.

The VFW generally supports VBA's modernization efforts, recognizing full well that in order to be effective, it must take advantage of all the resources and assets it has available to it. The VFW has worked with VBA administrators, innovators and contractors over the past three years, often on a daily basis. The VFW, along with other major Veteran Service Organizations (VSOs), have cooperated with VBA by providing not just our time, ideas and observations, but also by providing personnel to work side by side on specific projects.

Even though we are living through an unprecedented period of cooperation and transparency, we find that significant gaps exist in what we are allowed to see and comment on. For instance, other than talking to us about the *vision* of developing a national work-queue, of truly nationalizing the work to more effectively deal with workload peaks and valleys, VBA leadership has not yet presented us with a coherent picture of their vision nor have they sat down to explore with us how representatives from veterans service organizations fit into that plan.

Impact of a national work-queue strategy on service organization representation

Over the past few years, as the major VSOs sat with VBA personnel and contractors to discuss how accredited service officers will access and use VBMS, SEP, D2D and other programs, they often seem confounded and occasionally confused by the divergent business models that exist between VSOs. There are two basic business models between the major VSOs. The VFW and the American Legion service programs generally follow a federal model: most representational activity is performed at the local regional office level by service officers employed by the respective organizational Departments or states. For instance, the VFW Department of Michigan employs the VFW service officers who work in Detroit. While the national VFW contributes to Michigan's service program, the employees do not work for the national organization.

This business model works best when local service officers work with and support local veterans and other claimants. The claims are worked in the regional office where they are collocated which allows them to develop professional relationships with local VA personnel. This close proximity allows them to get problems corrected quickly and informally, helping

veterans receive the benefits to which they are legally entitled and avoiding unnecessary appeals.

Other VSOs, such as the Disabled American Veterans and the Military Order of the Purple Heart, employ a cadre of national service officers. While these service officers may be stationed in the various regional offices, they work for the national organization. The national organization in this business model may find it easier to repurpose or redirect their service officers and can tell them which cases they are to review regardless of geographical boundaries. While there are significant differences in these two business models, under the current work processing system employed by VA, both models work similarly. In both, local service officers assist claimants, review decisions made by VA and work to get mistakes corrected without the need to appeal.

Today the work queue provided to service officers only shows the work in the office where they are situated. While the service officer can search for a specific claim and view whatever information is available in VBMS and Virtual VA for any case in the VA system, they must do this on a case by case basis since the current work queue does not show work outside the geographical boundaries of the office in which they work.

There are over 4,000 Illinois cases brokered from the Chicago regional office to other offices around the United States. Our service officer currently has no way to obtain a list of all Illinois VFW cases being worked in another VA office. Although he may have helped many of these claimants file a claim with VA, he is unable to identify which cases have been brokered or what is being done with them unless he searches these cases one by one. VA can and should do better.

Under a national work-queue plan, VA must accommodate the service organizations which have represented veterans for decades. It is not enough to allow service officers in Detroit to review a file and rating for a claim brokered to Detroit from Fargo. VA must allow the service officer in Detroit to review a Michigan claim which was developed three states away and rated in Utah. VA is developing this capability for its claims personnel. It is critical that VSO service officers are not left behind.

This, then, comes full circle to our previous comments about VBA's failure to sit down with VSOs, discuss the needs of each service organization, explore in a robust and frank manner how VBA systems can be modified to allow for the various business models employed by the various VSO's and then commit to making these system changes concurrent with developing a national work-queue.

VA proposed rule AO81 – Standard Claims and Appeals Forms

VA published a proposed rule on October 3, 2013, which caught the attention of the veteran community. Disguised as a proposal to require claimants to complete standardized forms, it

actually proposed to:

- Eliminate all informal claims
- Create a new and arbitrary burden on all claimants to submit a "complete claim" before VA is required to take any notice of a claim
- Advance the concept that VA will work no claim until a veteran first complies with every arcane bureaucratic requirement it creates.

The comments of the VFW, along with over 60 other responses, were submitted by the December 30, 2013, deadline. Every major veteran service organization, and virtually all of the other respondents, opposed these changes.

Over the past five years, the VFW has been generally supportive, both publicly and privately, of the focus and vision of both Secretary Shinseki and Under Secretary for Benefits Hickey. Together they have accomplished more, and advanced VBA further than all of their predecessors for at least the previous decade combined. However, we have become increasingly concerned over the past year that the focus on achieving the Secretary's goals of ending the "backlog" by 2015 and achieving 98 percent accuracy in claims processing has taken on a life of its own; that the goal is no longer to help all veterans but to create the *appearance* of success by changing the playing field.

These regulatory proposals change the playing field for veterans. In order to force them to use specifically designated forms, VA makes it demonstrably harder for veterans to begin a claim. Under current law, a claimant need only submit a communication to VA indicating his or her intent to file a claim for one or more benefits. If a formal application is not of record, VA is obligated to send the claimant an application to complete. The claimant has one year in which to return the completed application. If benefits are awarded, benefits may start as early as the date of receipt of that first communication.

If these changes go into effect, that first communication can no longer act as an effective date, nor does it compel VA to respond to the veteran. VA may eventually send a letter to the veteran stating the communication was received. However, VA will not take any action until the veteran fully completes and returns a required form. Omission of a single required entry means that the veteran has not submitted a "complete claim" and VA will continue to do nothing.

While surely not intended by Secretary Shinseki, the implementation of these changes will result in substantial delays in veterans being able to file a "complete claim" and a substantial reduction of benefits because the date of claim is delayed by months while veterans are forced to comply with arbitrary administrative requirements. The backlog will be reduced, not because VA is more efficient, but because it tells thousands of veterans that they have not filled out VA forms to its satisfaction. Because a date of claim is not established until VA accepts an application as "complete," veterans will lose months of benefits. These proposed

changes are not in keeping with the veteran friendly laws enacted by Congress over the last four score years.

The VFW believes that there is an alternative to this draconian and heavy handed approach. The acceptance of an informal claim in the absence of a "complete claim" does not harm VA. It is nothing more than a place holder. If a claimant submits a "complete claim" within one year, then VA can use the date of receipt of the informal claim as a possible effective date as is currently allowed by law and regulation, allowing VA to obtain the data it wants from claimants in the form it wishes to receive it, regardless of the initial informal claim. However, claimants are not harmed because, under current law, they have one year in which to submit a claim form satisfactory to VA.

The authors of these proposed changes must believe themselves to be clever, because while doing away with informal claims they create the concept of an "incomplete claim" only for claims started electronically. Incomplete electronic claims can be completed at any time within a year after they are started, and VA may use the date the claim was started electronically as the date of claim. They create a special incentive for claimants who are aware of, and comfortable with the online application process. VA elects to penalize claimants who do not have a computer, access to the internet, an eBenefits account, or just like to sit at the kitchen table and complete a paper form.

It is strange that VA chooses to not just incentivize the filing of an electronic claim; instead they have decided to penalize veterans who write a letter or fill out most of a prescribed form by delaying the start of any earned benefits by many months. The Internal Revenue Service incentivizes Americans to file electronically by processing refunds with lightning speed. However, they do not reduce a refund simply because the filer chooses to send in a paper form 1040.

VA has proven that it can process claims submitted electronically much faster than those received on paper. Many dependency claims filed electronically today can be worked in minutes while over 235,000 previously filed paper claims continue to wait. What more incentive do people need? It is VFW's contention that these draconian measures are unneeded to encourage many thousands of veterans to file electronically.

There is one other consequence of the elimination of the informal claim. The Fully Developed Claim (FDC) program, created by VA to encourage veterans to accomplish all required development before submitting a claim to VA in exchange for expedited claims processing, will be dealt a severe and likely fatal blow. In Fast Letter 10-22, Fully Developed Claim Program (June 15, 2010), specifically addresses and endorses the use of informal claims in FDC claims. Veterans may notify VA that they intend to file a claim under the FDC program. VA acknowledges that notification and tells the veteran that they have one year in which to submit a complete FDC.

Implementation of the changes proposed by VA to eliminate informal claims will take away a major incentive offered to veterans for accomplishing their own development. Without the ability to file an informal claim, veterans stand to lose months of retroactive benefits if they chose to submit an FDC. We fully anticipate that veterans will decide that the cost of delay in filing a claim is too great. Without the ability to file an informal claim they will elect to file a standard claim and forgo the FDC program. Currently, over 27 percent of disability claims submitted to VA are accepted as Fully Developed Claims. Implementation of this rule will eliminate this vast savings of VA manpower overnight.

The VFW does not oppose the use of standardized forms, nor do we oppose the required use of such forms in order to complete a claim for benefits. However, the proposed elimination of the ability to file an informal claim will have a profound impact on every veteran who does not or cannot use a computer to start a claim.

This proposed rule will take away a basic and fundamental right that has existed for many decades. It unnecessarily increases the complexity of starting a claim with VA, and will substantially reduce the amount of compensation awarded to veterans and other claimants. Further, because VA will not count any attempt to file a claim until the veteran has filled out every form to VA's satisfaction, it will have the effect of reducing pending claims, making VA appear to be more efficient than it really is.

The VFW opposes these proposed changes. We believe them to be unnecessary to accomplish VA's stated objectives and harmful to veterans and other claimants. We have talked to VA leadership about these proposed changes with little apparent result. We ask Congress to take action to protect the ability of claimants to file an informal claim, whether electronically or on paper.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you or the committee may have.

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Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, VFW has not received any federal grants in Fiscal Year 2013, nor has it received any federal grants in the two previous Fiscal Years.

The national VFW employs service officers at the Board of Veterans Appeals supporting claimants who have appealed to the BVA. Other national service officers work at over 16 military installations helping service members understand VA benefit programs and, where appropriate, file a claim for compensation.

"Any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant, his or her

duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim." 38 CFR 3.155(a)

Monday Morning Workload Report, <http://www.vba.va.gov/reports/mmwr/>, January 27, 2014. VA reported that dependency claims, controlled by End Product (EP) 130 totaled 235,189; 74.2 percent were pending over 125 days. In the last 42 months the number of dependency claims has grown 474 percent from 40,990 in June 2010.

Fast Letter 10-22, Fully Developed Claim Program, June 15, 2010, states in part:

Consider **any** communication or action that shows intent to apply for benefits under the FDC Program as an informal FDC. [emphasis supplied] Upon receipt of an informal FDC: Advise the claimant to complete and return a formal claim within one year to receive benefits from the date of receipt of the informal claim