

**INVESTIGATING HOW VA IMPROPERLY PAID  
MILLIONS TO INCARCERATED VETERANS**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON DISABILITY  
ASSISTANCE AND MEMORIAL AFFAIRS**

OF THE

**COMMITTEE ON VETERANS' AFFAIRS**

**U.S. HOUSE OF REPRESENTATIVES**

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# CONTENTS

Tuesday, September 27, 2016

	Page
Investigating How VA Improperly Paid Millions To Incarcerated Veterans .....	1
OPENING STATEMENTS	
Honorable Ralph Abraham, Chairman .....	1
Honorable Dina Titus, Ranking Member .....	2
WITNESSES	
The Honorable Michael J. Missal, Inspector General, Office of Inspector General, U. S. Department of Veterans Affairs .....	3
Prepared Statement .....	22
Accompanied by:	
Mr. Nick Dahl, Director, Bedford Office of Audits and Evaluations, Office of Inspector General, U. S. Department of Veterans Affairs	
Ms. Beth Murphy, Director, Compensation Service, Veterans Benefits Administration, U. S. Department of Veterans Affairs .....	5
Prepared Statement .....	25
Accompanied by:	
Mr. Willie Clark, Acting Deputy Under Secretary for Field Operations, Veterans Benefits Administration, U. S. Department of Veterans Affairs	
Mr. David R. McLenachen, Director, Appeals Management Center, Veterans Benefits Administration, U. S. Department of Veterans Affairs	



## **INVESTIGATING HOW VA IMPROPERLY PAID MILLIONS TO INCARCERATED VETERANS**

**Tuesday, September 27, 2016**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON DISABILITY ASSISTANCE  
AND MEMORIAL AFFAIRS,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 10:33 a.m., in Room 334, Cannon House Office Building, Hon. Ralph Abraham [Chairman of the Subcommittee] presiding.

Present: Representatives Abraham, Lamborn, Zeldin, Costello, Bost, Titus, Brownley, Ruiz.

### **OPENING STATEMENT OF RALPH ABRAHAM, CHAIRMAN**

Mr. ABRAHAM. The Subcommittee on Disability Assistance and Memorial Affairs will now come to order. And I want to thank the witnesses for being here today. I think I met all of you.

According to a June 28, 2016 IG report, the VA has failed to process incarceration adjustments in a timely manner. To date, VA's error has resulted in more than \$100 million of overpayments. What is worse, if VA does not address this issue soon, the IG estimates that the VA will issue more than \$200 million in overpayments between fiscal year 2016, and fiscal year 2020. And this is simply not acceptable.

By law, if a beneficiary is incarcerated for more than 60 days, VA is usually required to reduce compensation and pension benefits to no more than the ten percent disability rate. The IG recently discovered that the VA has not processed the incarceration adjustments in a timely manner since 2008. The veterans who receive these overpayments have committed crimes, but the overpayments are not their fault. VA's testimony blames the veteran for not notifying VA of his or her incarceration. I have a copy of an attachment to a VA decision letter, and I know that there is one buried sentence stating that incarceration affects their rights to payments. At the very end of the document is a blanket request that veterans contact VA if there is a change in any condition affecting their right to payments. However, the information sheet does not clearly explain how the veteran is supposed to notify the VA, nor is there any warning that a debt may be created. Besides, does VA really expect a veteran to remember to contact VA from prison, what may be many years after receiving the decision letter so VA can reduce their compensation payment? I would venture to say that these veterans have more urgent matters on their minds.

Moreover, even if the veteran did notify the VA of his or her incarceration, based on the IG report, there is no evidence that the VA would have promptly processed the adjustment.

Regardless, nothing excuses the VA for failing to do its job. I am particularly concerned about the families of these veterans. On the other hand, although I am sympathetic to these families if a veteran is unable to repay the debt, American taxpayers will be on the hook.

According to the IG report, this failure is not limited to one or two ROs, it is system wide. That means that the decision not to make the adjustment a priority was made at a higher level, probably by someone at the central office. And I also hope that we will receive these answers in a timely manner, unlike the VA's failure to respond to the questions from the record that the Subcommittee submitted on July 25, 2016 following the hearing, "TBI Claims: VA's Failure to Provide Adequate Examinations."

I am also frustrated that despite repeated requests, it was only last night that the VA finally responded to questions submitted by my staff on the subject of the present hearing, questions submitted over a month and a half ago. VA cannot continue to avoid answering questions to escape scrutiny.

Ms. Murphy, I expect that we will receive VA's responses to our questions on the overpayments by no later than the end of this week. With that, I call on our distinguished Ranking Member Ms. Titus for her opening statements.

#### **OPENING STATEMENT OF DINA TITUS, RANKING MEMBER**

Ms. TITUS. Well thank you very much, Mr. Chairman. Like you, I am concerned about the improper payments that are outlined in the GAO report, and I look forward to hearing from the VA about what can be done to eliminate the problem. I hope you all, our witnesses today, will make recommendations as to how we can help and assist in this effort. I would remind the Committee, however, that it was Congress that in its infinite wisdom that passed that law and wrote it that required the veteran to call from prison and let the VA know they were having a change in status.

Today's hearing is focused on just one small part of the many responsibilities of the VBA. We realize that, and I think it is important that we take a look at the whole picture. Over the past four years, the VBA has made significant progress in reducing the workload for the backlog. This is something that we asked you to do, and you have done it. Unfortunately, over the same time work has piled up in other areas. You squeezed the balloon, the air has moved to another part.

In July, 2013 there were more than 883,000 disability and compensation claims waiting for a decision by the VA. By July of 2015, the claims inventory had been reduced to 375,000. This is a reduction of half a million claims in just two years. That is commendable. In terms of the backlog claims, the claims that have been pending for more than 125 days, you also made significant improvement. In March of 2013, there were 611,000 claims that were considered to be backlogged. Veterans were waiting for years for their initial decisions on those claims. But now thanks to your hard work, veterans are waiting only 130 days for a decision on their

initial claim, and 115 days if they utilize the fully developed claim process which this Committee helped to establish.

In clearing out the backlog, however, we asked you to make some tough decisions, and the results of that have been unfortunate in some areas. While the benefits backlog was a top priority, other work was put on the back burner, and that is one of the things that we are addressing today. Our Subcommittee was promised that once the claims and pension backlog was reduced, resources would be moved around and utilized to work on other priorities within the VBA. I am interested in hearing from you all, how the VBA is going to maintain that benchmark or those benchmarks that we set for timeliness of benefits claims while also addressing the non-rating backlog and the backlog of appeals, which we have talked about over and over again.

Incarcerated veterans' claims equate to 1.19 percent of the total non-rating workload of the VBA. These claims represent less than 25,000 claimants nationwide, or half a percent of the total pending rating and non-rating workload. Our Subcommittee, however, should not forget to look at the larger issues as well. There are currently 213,000 non-rating claims waiting an average of 350 days for a decision. There are nearly half a million veterans waiting more than three years on average for their decision on an appeal. In sum, total that is nearly three-fourths of a million claimants waiting extensive periods of time for something from the VA, so we need to be focusing our attention now on all of those backlogs, including these for incarcerated veteran problems.

So Mr. Chairman, I look forward to working with you on this issue and others along these same lines that come before our Subcommittee, and I yield back.

Mr. ABRAHAM. Thank you, Ms. Titus. And I know Chairman Miller is coming this way. He has been detained, but he does plan to join us. So I do ask unanimous consent that when he does arrive he be allowed to sit at the dais and make opening statements and to ask questions. Does anyone else have an opening statement that they would like to make? Okay. Hearing no objection, so ordered.

Now I would like to welcome today's witnesses. We are honored to have the Inspector General Michael Missal with us. Congratulations on your confirmation as the VA Inspector General. I am looking forward to working with you. And Inspector General Missal is accompanied with Mr. Nick Dahl, the Director of the Bedford Office of Audits and Evaluations. We also welcome the VA's witnesses. Ms. Beth Murphy is the Director of Compensation Service. She is accompanied by Mr. Willie Clark, Acting Deputy Under Secretary for Field Operations, and Mr. David McLenachen, Director of the Appeals Management Center. Mr. McLenachen is here today to answer questions related to his previous position as Deputy Under Secretary for Disability Assistance. I want to remind the witnesses that your complete written statements will be entered into the hearing record. Inspector General, you are recognized now for five minutes to present the testimony of the VA Inspector General.

#### **STATEMENT OF MICHAEL J. MISSAL**

Mr. MISSAL. Thank you. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss the OIG's

June, 2016 report, "Veterans Benefits Administration Audit of Compensation and Pension Benefit Payments to Incarcerated Veterans." This morning, as you noted, I am accompanied by Mr. Nick Dahl, Director of OIG's Audits and Evaluations Division in Bedford, Massachusetts.

On May 2, 2016, I was sworn in as the Inspector General. Since that time, I have immersed myself to better understand the people, work, and priorities of our office. My integration has gone very well. I am impressed with the OIG staff, many of whom are veterans. Our office has a strong commitment and focus on bringing about positive changes in the integrity, efficiency, and effectiveness of VA programs and operations. I have submitted my written statement for the record so I will summarize.

Federal law requires VBA to reduce compensation and pension benefit payments for veterans incarcerated for more than 60 days in a Federal, state, or local penal institution. Our audit objective was to determine whether VBA was adjusting C&P benefits payments for incarcerated veterans. We found that VA regional office and pension management center staff did not consistently take action to adjust C&P benefits for incarcerated veterans.

For those in Federal facilities ranging from May 2008 through June 2015, VBA did not adjust veterans' C&P benefits as required in an estimated 53 percent of the cases. This resulted in improper payments totaling approximately \$59.9 million. Without improvements, we estimate that VBA could make improper benefit payments totaling about \$41.8 million for Federal incarceration cases from fiscal year 2016 through fiscal year 2020.

VA regional office and pension management center staff also did not take consistent and timely action to adjust C&P benefits for veterans incarcerated in state and local penal institutions. Based on incarceration notifications received from March 2013 to August 2014, the most current data available at the time of our audit, VBA did not effectively adjust veterans' C&P benefits in an estimated 18 percent of cases. This resulted in significant delays and improper payments totaling approximately \$44.2 million. Without improvements, we estimate that VBA could make additional improper benefit payments totaling about \$162 million for state and local incarceration cases from fiscal year 2016 through fiscal year 2020. In total, we estimated potential improper benefit payments of about \$307.9 million.

In general, VBA did not place priority on processing these adjustments because VBA did not consider these non-rating claims to be part of the disability claims backlog. Both VBA central office staff from Compensation Service and the Office of Field Operations, as well as VA regional office service center managers and staff consistently reported that incarceration adjustments were not a high priority. Accordingly we recommended the Acting Under Secretary for Benefits increase the priority of VBA's incarceration adjustment workload.

We made six recommendation to the then Acting Under Secretary for Benefits. These recommendations included increasing the priority of Federal, state, and local incarceration workload by making timely benefit adjustments when appropriate; reviewing Bureau of Prisons data on Federal incarcerations and issuing bills of



collection to recover improper benefit payments; and monitoring the terms of its computer matching agreements and take timely action to extend the agreements when appropriate.

The Acting Under Secretary for Benefits concurred with our recommendations. Management's planned actions were responsive and we will follow-up as required.

In summary, VBA needs to prioritize its workload, make improvements to ensure sound financial stewardship over benefits earned through entitlements, and take timely actions that reduce improper benefit payments.

Mr. Chairman, this concludes my statement. Mr. Dahl and I would be happy to answer any questions you or Members of the Subcommittee may have. I would like to add that this is my first House hearing as the Inspector General and I look forward to continuing the OIG tradition of providing the Committee with independent oversight reports on VA programs and operations. Thank you.

[THE PREPARED STATEMENT OF MICHAEL J. MISSAL APPEARS IN THE APPENDIX]

Mr. ABRAHAM. Thank you, Mr. Missal. Ms. Murphy, you are recognized to give the department's testimony now for five minutes.

#### **STATEMENT OF BETH MURPHY**

Ms. MURPHY. Thank you. Good morning, Chairman Abraham, Ranking Member Titus, and Members of the Committee. As you mentioned earlier I am joined today by Mr. Clark and Mr. McLenachen. We appreciate the opportunity to respond to the concerns raised by the Committee regarding benefits paid to incarcerated veterans.

Today I will address the recent IG audit of C&P payments, compensation and pension payments to incarcerated veterans. I will highlight VA's response to the IG recommendations and describe the actions taken by the department.

Federal law requires VA to reduce compensation payments and terminate pension payments to individuals incarcerated for a period in excess of 60 days for conviction of a felony. Veterans receiving compensation or pension payments are responsible for notifying VA of their incarceration and the date of release. This important reminder is sent to veterans when they receive an award of benefits or an increase in benefits, and because VA does not always receive this notification from veterans we have established data matching agreements with the Federal Bureau of Prisons and Social Security as backup mechanisms.

IG in its report in June, 2016 found VBA offices did not take timely and consistent actions to adjust payments made to incarcerated veterans in Federal institutions between May, 2008 and June, 2015, and state and local institutions between March, 2013 and August, 2014. As a result IG made recommendations to the department which included prioritizing incarceration adjustment workload, recouping overpayments, and renewing VA's formal agreement with Bureau of Prisons.

In accordance with IG's recommendation VA has renewed our data matching agreements and we are seeking to expand the type of

electronic data we receive. This will enhance efficiency of the process and support future automation of incarceration adjustments.

The VA's agrees with IG's recommendation to increase the priority of processing of incarceration adjustments. VBA has issued guidance to all regional offices to ensure these claims are appropriately prioritized. Claims are being processed based on the date of incarceration, focusing on working the oldest dates first.

VA also agrees with the recommendations to initiate more timely development of the work product after receiving notification of incarceration from the veteran or from the Bureau of Prisons or Social Security, and to make more timely adjustments after the due process notification has been issued.

VA agrees with the IG recommendation to initiate procedures to recover improper payments where necessary after due process has been afforded. As a result, VBA will continue to retroactively adjust awards of veterans who are currently incarcerated, as well as those who were previously but no longer incarcerated. Veterans who become indebted as a result of incarceration are notified they have a right to request a waive of the overpayment, offer a compromise, or establish a repayment plan to help ease the financial burden once released. Repayment options can include partial withholdings from future benefit payments. Veterans are provided with information on how to contact the debt management center in VA for assistance in resolving their debts.

VA acknowledges the importance of timely processing of the non-rating workload on behalf of veterans, their families, and taxpayers. This includes the timely processing of award adjustments to incarcerated veterans. As VBA completed record-breaking numbers of disability rating claims in recent years and eliminated almost 90 percent of the rating backlog one result is an associated increase in the volume of non-rating claims.

In fiscal year 2015 VBA completed more non-rating claims than ever before. We will continue to prioritize these incarceration adjustments and balance resources accordingly to address non-rating inventory of claims. We will continue to renew and improve the data matching agreements with Federal Bureau of Prisons and Social Security so that all necessary data is included in their transmission of data to VA. And finally as part of VBA's continued transformational efforts we will improve our electronic systems to streamline the processing of incarceration adjustments.

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

[THE PREPARED STATEMENT OF BETH MURPHY APPEARS IN THE APPENDIX]

Mr. ABRAHAM. Thank you, Ms. Murphy. I will start the questioning. You made a comment in your opening statement there about you wanted to expand the electronic data and that leads into a question I want to ask. In April of 2015 VBA reentered into a computer matching agreement with the Bureau of Prisons, over seven years after the previous was allowed to lapse. However, according to the IG's report even after this agreement was signed VBA was still not working the backlog of incarceration adjustments

ten months after the data was provided. So I guess my question is why were these adjustments not made in a timely manner?

Ms. MURPHY. Mr. Chairman, I would say that there were a number of factors at play, and I can start down the list. There are complications with the source of information and the data feeds that we get in particular.

Mr. ABRAHAM. Who inputs that data into the system? The Bureau of Prisons? The VA? I mean, how do they match up?

Ms. MURPHY. So it is my understanding that we provide information to Bureau of Prisons, they bump it against their lists, and then they provide us information back. A key piece of this, is the information we get, does not include the date of incarceration. So unless that is provided by, verified by the veteran or we get that making phone calls or doing development—

Mr. ABRAHAM. That is not on the Bureau of Prisons' match, with the day they got into the prison? I mean, that would seem like an important date.

Ms. MURPHY. The date of conviction is not included and the date of incarceration is not included. These are pieces of information that we have to follow-up on in a manual manner, making phone calls, sending letters. If we send a letter we have to give 30 days for the institution to respond. So there are manual processes, time lags involved in getting this information if it is not provided to us.

Mr. ABRAHAM. Okay. That is, you know, good enough for now.

Mr. ABRAHAM. We will come back. Inspector General Missal, this is a question for you, sir. Based on the VA's testimony, do you believe that there is an appropriate level of engagement to determine who was responsible for allowing the data sharing agreement with the Bureau of Prisons to lapse for seven years?

Mr. MISSAL. We believe that this is now an issue that they are focused on. It did not appear to be an issue during our review. Holding a hearing like this certainly raises that issue again. One of our recommendations was to make sure that they are focused on that. We follow-up on all our recommendations.

Mr. ABRAHAM. And you guys are focused on it now, I am assuming, Ms. Murphy?

Ms. MURPHY. We are focused, sir. Yes, sir.

Mr. ABRAHAM. All right. I will take that as a yes. And I am going to come back to you, Ms. Murphy—

Ms. MURPHY. Yes.

Mr. ABRAHAM [continued]. —for the next question. Now I understand that you are new to your role as the Director of the Compensation Service whose responsibility was to ensure that the data sharing agreement with the Bureau of Prisons was in place. So who is responsible now? I mean, who is the go to person that makes sure this is happening?

Ms. MURPHY. So there are lots of different pieces of this. There is an IT piece of this to make sure that the information is provided securely.

Mr. ABRAHAM. All right. So who, all right, so give me that name.

Ms. MURPHY. I do not have a particular name. On the IT side there are folks that work with us on that. But as far as going forward I have got my eye on that ball and making sure from the

Compensation Service aspect that we will make sure that matching agreement remains viable going forward.

Mr. ABRAHAM. Well if you could give me, I would appreciate it if you could give me that name of that IT person. But who, who is ultimately responsible for this? I mean, whose doorstep does it land at, at the end of the day?

Ms. MURPHY. I would say now going forward I will be watching this. It is my responsibility. I work with other partners. We work with a bigger universe, including IT, working with the Bureau of Prisons and Social Security, all the right parties working together to make sure we have that data feed.

Mr. ABRAHAM. And again I, you know, I am, you know me, I am pretty stickler about accountability. Who was it, whose responsibility was it at the time it lapsed?

Ms. MURPHY. Sir, I would say, and I am not being evasive, I have asked. I have looked into this. There were a lot of factors at play. And if I could comment on that a little bit? This was over a long time period.

Mr. ABRAHAM. Mr. McLenachen, do you know that answer, to who was overall responsible for this lapse period here?

Mr. MCLENACHEN. I cannot provide you a name either, but I can tell you that this is administered at the service level, the Compensation Service level. But if you look back the history is pretty long regarding this issue. Congress first enacted this law in 1980. The data that we get from the Bureau of Prisons and from Social Security is not really clean data that we can use, like we have in other non-rating circumstances, to automate how we do this. Until we get the data to that point, just because of the nature of the law, we are always going to have a certain period of time where we are having to go back and adjust these—

Mr. ABRAHAM. But my point is, and hopefully you understand, somebody has got to own this. Somebody has to be accountable for this seven-year lapse. I mean, it is just not responsible government. It is not responsible business. It is not responsible for our taxpayers. And it is not responsible for the veterans' families.

Mr. MCLENACHEN. So, during the period that I was Deputy Under Secretary for Disability Assistance, one of the programs I administered was the compensation program. To that extent I am accountable because this has not happened. It is administered at the service level. Nonetheless, it was under my control during about the 2014 to July of 2016 period.

Mr. ABRAHAM. Well I thank you for that.

Mr. MCLENACHEN. So I will tell you that I was accountable during that time.

Mr. ABRAHAM. I appreciate that. I am out of time. Ms. Titus?

Ms. TITUS. Thank you, Mr. Chairman. I would just ask Mr. Misal about his perspective of the bigger picture. I know this is a problem and we need to focus on it. But let us work on the whole non-rating workload. Could you remind us of the last time that the IG's office took a look at that whole workload? And would you say, I think I know but I want to hear it from you, would you say it is fair that you all did not focus your auditing efforts on the non-rating workload because you were focused on the rating workload for all the more recent years?

Mr. MISSAL. We are looking at all of the benefit payment programs that they have on a fairly regular basis. Part of the audit group that I have is divided into benefit inspection teams that look at it, so we are looking at both rating and non-rating claim processes as well. And this is not something that we thought was unusual given the focus on the rating claims.

Ms. TITUS. Well what, can you tell us what the state of that is now, what you are looking at with these different teams?

Mr. MISSAL. We have a number of different programs that we are looking at now. We have put out various reports over time and we have a number of projects in the work stream.

Ms. TITUS. Well I have information here that looks like you, the last time you looked at the non-rating workload and issued a report it was February, 2008. Now apparently a lot can happen in almost ten years, or eight years. So I would not say that is kind of keeping up with the problem.

Mr. MISSAL. We do look at it. I have been in the job now almost five months—

Ms. TITUS. And I understand that is not fair to blame you for something in 2008.

Mr. MISSAL [continued]. and with respect to our benefits team, in fact, we had recent discussions on that in terms of going forward, what we are looking at. And we actually expanded our benefits inspection team. We now have three separate teams that are going to be working so we are going to be expanding our look at the benefit programs.

Ms. TITUS. I think that would be helpful so we do not get so far behind the curve. That makes it more difficult to make improvements when you do find problems and things like this come out.

Mr. MISSAL. We agree.

Ms. TITUS. Thank you. All right I would like to kind of shift over to Ms. Murphy. Just to go back to some of the details of how this process works, some context to how the non-rating claims related to the prisoners' process versus the other people's claims, how we could change the law to make it better. Do you not really think it is silly that you are relying on a prisoner to call you up and say, hey, I got arrested, cut off my benefits? I mean, give us a little help here so it is not just a hearing about accountability, we can actually do something.

Ms. MURPHY. Ranking Member Titus, thank you. And thank you for your comments earlier for the context that this incarcerated veteran population of non-rating claims are just over one percent of all of our non-rating claims that we are working with. So it is a small subset, but all of our claims are important and we are not trying to put anything off. We have been focused on the rating claims, as you mentioned. But the more rating claims we do, potentially the more folks are entitled to benefits, and then non-rating claims flow from that.

During this time period where we were giving prioritization to backlog, we have designated non-rating and appeals folks. And during their daylight hours we said you have to continue to do rating and appeals work. So we did not take them off of that work during their regular hours. So there was continued work and focus on non-rating and appeals.

As far as non-rating work in the last few years, we have really been looking at automation to help us standardize and make this go smoother and faster. Getting the essential data elements we need from Bureau of Prisons will help that. Support for our IT systems will help that. So that we have either claims that we do not have to touch, or that we do not have to touch, with data support and evaluation support tools. So I think automation is a piece, getting the right feed, and support tools are a big part of this.

Ms. TITUS. Should we not have somebody here from the prison side of things to talk about what they need to do to help you with this to do it better?

Ms. MURPHY. Well we are working with them now just to make sure that we can get as much information as possible, also with Social Security. I would say that they are good partners. We just have to really get down into the weeds of what we need to have to stop chasing this in a manual way.

Ms. TITUS. Do you need additional resources from us? Have you asked for any additional resources?

Ms. MURPHY. Yes, ma'am. In the fiscal year 2017 budget request that is still pending there is about 300 more FTE for non-rating that has been asked for. We also appreciate the support from Congress in the past. We have added some non-rating FTE, full time employees, in the past couple of years. And that is helping. We are bringing down the dependency claims. We have made great strides in that, drill pay adjustments as well, so they are some of the very large buckets that put money into veterans' hands that we are working through and have made great strides.

Ms. TITUS. Thank you. Mr. Chairman?

Mr. ABRAHAM. Mr. Lamborn, you are recognized for five minutes.

Mr. LAMBORN. Thank you. I am going to build on the questions that have already been asked by the Chairman and Ranking Member. You said you are asking for 300 more FTEs. Is that just for this problem? Or is it a wider range of issues that that 300 people would be working on if you received them?

Ms. MURPHY. That would be for the whole category of non-rating claims that we complete. And this incarcerated veteran piece of that is about one percent of that total. So there are other adjustments in the non-rating bucket.

Mr. LAMBORN. Okay, that helps put it in perspective.

Ms. MURPHY. Yes.

Mr. LAMBORN. Because that would otherwise eat up the entire recovery. So it sounds like you know what you want to do but you have not started doing it, is that a fair assessment? I mean, you have not talked to SSA. You have not talked to BOP. Or you have talked to them but no one has sat down and hammered out a final agreement?

Ms. MURPHY. We have the agreement back in place. It is running. It has been in place since June. We have been getting the data information from Bureau of Prisons. We continue to get it from Social Security Administration. So that flow of information is coming. We have been working these.

Another thing I want to point out is that during all of this time period, we were working these. We did get information from the veterans. Many do call us. We do get information from other

sources. So when we identified these in working a claim, if we know that someone is in prison, we make that adjustment.

Mr. LAMBORN. No, and I am glad that it is done on a case by case basis.

Ms. MURPHY. Yes.

Mr. LAMBORN. But it obviously has to be automated and you have to have the accurate social security numbers and you have to know the dates of incarceration. Is there anything else out there? Or just those two bits of information?

Ms. MURPHY. That primarily is the information we would need. I think Mr. McLenachen may have more to add to that.

Mr. MCLENACHEN. Congressman, part of the problem is the nature of incarceration. It is a lot different than other things that we can automate, because you have the whole recidivism issue, we have early release, we have pre-trial confinement. It is just the nature of incarceration that makes this one of the harder things to do, and one of the more complex things to do. And for that reason the data that would allow us to automate is just not there yet. So it is not just getting the data elements, the additional data elements, it is the nature of incarceration that makes it very difficult to automate.

Mr. LAMBORN. Does it go back to the date of incarceration? Or is it 60 days forward?

Mr. MCLENACHEN. It is the 61st day of incarceration after a conviction for a felony or a misdemeanor, depending on whether it is compensation or pension.

Mr. LAMBORN. Okay. And I understand that there are a lot of wrinkles here. Halfway houses—

Mr. MCLENACHEN. Exactly.

Mr. LAMBORN [continued]. —all those things.

Mr. MCLENACHEN. We do not reduce for certain circumstances, like a halfway house. We do take those types of things into consideration. And again, you have to assume that the Bureau of Prisons, or a state or local penal institution, has accurate data about when somebody is released after an incarceration, or when the transition occurs from pre-trial confinement to actual incarceration for a conviction, and that is part of the problem. And then we have, individual veterans who go in and out of the system many times during a certain period of time.

Mr. LAMBORN. This is complicated. Paragraph five on this hand-out says the amount not payable may be apportioned to a spouse, dependent children, or parents. What does that mean?

Mr. MCLENACHEN. That means that if a veteran is incarcerated and they have a family that they are providing support for, the benefits can be apportioned by VA to the spouse so that while the veteran is incarcerated the spouse can continue to receive the veteran's benefits for support.

Mr. LAMBORN. So if someone is married they would get that consideration?

Mr. MCLENACHEN. Yes, they have to apply—

Mr. LAMBORN. Or if they are single, they will not?

Mr. MCLENACHEN [continued]. They have to apply for it. If there is a veteran who has the responsibility to support family members—

Mr. LAMBORN. Is it routine to grant that?

Mr. MCLENACHEN [continued]. It depends on the circumstances. They have to provide information about their ability to support themselves while their spouse is incarcerated: those type of situations. But in general, if the spouse can establish that they need the support of the compensation benefits, for example, then we would grant the apportionment.

Mr. LAMBORN. And in terms of recouping debts, is that ever done? Or is that basically blown off?

Mr. MCLENACHEN. That is done. I believe Ms. Murphy has some information on how often we do that.

Ms. MURPHY. So there is a process and we look at various standards of equity and good conscience. The fault of the veteran, whether they should have told us that they had gone into prison, undue hardship, things like that are taken into a case by case account. The latest information I was able to get roughly overall with our overpayments and requests for waivers, it is a little over half of them are granted. But again, it is on a case by case basis and it depends on the facts and circumstances.

Mr. LAMBORN. Well I wish you would start doing this. I mean, it is complicated and it is going to take a lot more work and it needs to get to the automated stage and it is not there yet. The IG's report is very helpful but we just have not really followed through quite yet like we need to. Mr. Chairman, I yield back.

Mr. ABRAHAM. Thank you. Ms. Brownley, five minutes, please.

Ms. BROWNLEY. Thank you, Mr. Chairman. Ms. Murphy you had, in your testimony you said we are focused on this issue now, and I think, you know, my question is, you know, do you have any sort of checks and balances, you know, to know about problems that exist in the overall organization before the OIG has to investigate it and surface those issues? So you know, in the ideal world I would much prefer that you would be coming to us and saying, I have got this problem, I need your help in solving the problem, as opposed to the OIG having to raise the problem and then say, well now it is a priority. So could you comment on that?

Ms. MURPHY. Absolutely, Congresswoman. So we have a lot more data analysis and data available to us than ever before. The more we get into our electronic systems the better we are doing at tracking all the different types of actions that we have and being able to automate some of that. So we are able to move some of the folks from rating to non-rating, and balance out that work load. But as far as internal controls and checks and balances, our new national work queue is something that we are doing a better job of that as we move forward—

Ms. BROWNLEY. Were you aware of the problem before the OIG raised it?

Ms. MURPHY. So we have been aware of the fact that this is happening. But I think the fact that these were coming in and we were working them as we learned of them from other sources, or from the veteran themselves, was part of the situation. So we knew we were working some and that there were, again, different pieces of the organization that were involved with getting the data, making sure the data matches were happening, making sure the flow was



coming through IT in a secure, private manner. And there was some clunkiness in those pieces.

Ms. BROWNLEY. So understood. And I want to say that I think that, you know, your folks with VBA are working hard. Our office, my local office in my district, we are in touch with them all the time. I just hope that you understand the point that I am trying to make is that, you know, I would feel better if you were raising the issue versus the OIG having to raise the issues. And I know in many respects you are partners. But it would still, you know, I would feel better that we are recognizing the problem and trying to address it ahead of the OIG.

So now that we have prioritized this as an issue, you know, if you could comment a little bit on what will be your process. You talked about, you know, future payments and being deducted from those future payments I think you said could be the solution. But what specifically, you know, is the process and have you decided on a process and is there, you know, a formula that is not one size fits all, or is it a formula depending on, you know, the particular set of circumstances, etcetera?

Ms. MURPHY. So very quickly a couple of points. In the old days and until just recently under this matching agreements, these work items adjustments that may need to be made on these incarcerated veterans was a paper process. Since we have gone into more of an electronic environment we were able to have that feed starting August 1st. So now that these are going out in an electronic work item to the regional offices. So we are not working with a paper process. So that is one thing. Number two, we have been able—

Ms. BROWNLEY. Well does the electronic process have a formula, of how to treat this? Or I am not sure how that answer—

Ms. MURPHY. Not so much a formula but there is less of a lag as to when we know that we have this work to do. And also as we get all of our work into the national work queue, that will help to balance the work and decide instead of 56 different regional offices deciding what is the next right case to work, the system helps us determine that in a global sense.

Ms. BROWNLEY. Yes, I think I am just trying to drive at sort of, you know, specifically, you know, once you have the claim and now you are going to act on it more quickly, then how are you going to treat it? You know? And what is the formula? How much are you going to take out of that future check and really trying to understand the specifics of it. So in terms of, you mentioned that veterans, that some veterans do actually give notice, and not looking into the future but looking into the past, when those veterans did give notice were they addressed in terms of, you know, the deductions that they should be receiving? Or were they also sort of put on the back burner like the other claims?

Ms. MURPHY. We were working non-rating claims, as I said, all along. And incarcerated veterans were part of that. So just for a reference, the last couple of fiscal years we completed 11,500 of these in fiscal year 2015, and completed so far this year almost 15,000 so far. And we have about 13,000 pending overall, Federal, state and local. So this is a body of work that has been moving. But again, the non-rating work was not prioritized at the same level as the rating workload was.

You asked about the process. Again, very high level. We make the review of the incarcerated veteran. We look to see what their circumstances are. We send them notification to say we see that you are in a penal institution. After 60 days of being there we propose to reduce your benefit according to the law. The veteran has 60 days for due process to respond, tell us anything that might be relevant, including, hey, maybe you have the wrong person. After that 60 days is over we make the adjustment and send the final notification to the veteran with notification that they should contact our debt management center in St. Paul, which is our agent to collect those debts. They can contact St. Paul and request a waiver of this, a partial or a full waiver of this monies due. Then we engage on our Committee on waivers, look at the facts and circumstances and decide based on the standards of equity and good conscience if we are going to waive a portion of these overpayments in total or in part. And our debt management center finally also can set up a repayment plan that is a little more forgiving, stretches the payments out a little bit so it is not such a hardship on the veteran.

Ms. BROWNLEY. Thank you. I yield back.

Mr. ABRAHAM. Thank you. Mr. Costello?

Mr. COSTELLO. Let me commend my colleagues for their questions. There are still so many questions that were not asked that I do not know where to start. So let me speak with a couple of, Mr. Clark, first for you, towards the IG report VBA has planned to improve the process for incarceration adjustments had not been implemented as of June 14, 2016. Has the VA implemented the plan as of this date? And if so when? And if not, why?

Mr. CLARK. Mr. Costello, thank you for that question. And yes, we have. Starting on May 11th of this year we actually started processing those claims and with the expectation that we will complete them by the end of this calendar year, December 31st.

Mr. COSTELLO. So it was implemented as of May, so prior to June 14th, actually?

Mr. CLARK. That is correct.

Mr. COSTELLO. Okay. Mr. Missal, do you think the VBA's proposed plan to improve processing of incarceration adjustments will be effective? If so, why? If not, why not?

Mr. MISSAL. As part of our work we made six recommendations which we felt best addressed the situation. As part of our process we monitor their progress toward meeting those recommendations and we do not release them from their obligation until they do so. So we will be doing that on a regular basis and our goal is to make sure it is an effective program based on the recommendations we made.

Mr. COSTELLO. Can we reconcile, and honestly if it is a week or two off it really does not matter I think in the grand scheme of things. But Mr. Clark is saying May 11th implementation occurred. Your IG report says as of June 14th implementation had not yet occurred. Can somebody try and reconcile that? I do not want to spend too much time on this. But because if it has now been implemented, whether it was implemented May 28th or June 15th or June 20th, at least it is now implemented.

Mr. MISSAL. Yes—

Mr. COSTELLO. Do you know whether it has been implemented now?

Mr. MISSAL [continued]. Yes, I would like to defer to Mr. Dahl, who is closer to this audit.

Mr. DAHL. When we checked in June just before we were ready to issue our report the response we got was that they were not working the claims yet. Maybe they had gotten the word out in May, but we were told in June that they had not started yet.

Mr. COSTELLO. Okay, Mr. Clark?

Mr. CLARK. Yes, sir. We issued guidance on May 11th, and with the expectation to be completed by the end of December. So I can go back and check the actual day that the first person started. But we issued guidance—

Mr. COSTELLO. Okay.

Mr. CLARK [continued]. —on May 11, 2016.

Mr. COSTELLO. It would be nice for you to provide something in writing for the IG to basically sign off on that or say yes, we are on the same page now. Next question, and this really is something that bothers me, and it is not just exclusive to this proceeding today but writ large our oversight capacity here at the VA. It is my understanding that VA Committee staff has been told that the individual who failed to maintain the computer matching agreement has since retired, is that correct?

Ms. MURPHY. Congressman, as I mentioned earlier there are a lot of folks that are involved in this and over a long period of time. So I cannot—

Mr. COSTELLO. You do not know offhand? Sure, I am not going to, if you do not know offhand, you do not know offhand.

Ms. MURPHY. I do not know.

Mr. COSTELLO. Okay. It is my understanding that the person who failed to maintain the CMA has retired and therefore there was no disciplinary action taken against that individual. Could you confirm whether that is accurate or not for me by follow-up?

Here is something else that frustrates me. Staff has also been advised that we do not even know who that individual's supervisor is. And here is my, and that is also a source of frustration because, I mean, everybody has a supervisor, right, unless you are at the top. Why that is bothersome to me is when we are talking about using better technology in order to get to the bottom line to hold people accountable, and yet a computer matching agreement is intended to do that. And so if the computer matching agreement is intended to make things interoperable and you have an individual who is tasked with maintaining it does not do their job, I mean, the whole point of technology is if it is not working another set of eyes will be able to identify that rather quickly and so then you will be able to solve the problem. And that is a big source of concern for me. So I would appreciate any follow-up on that point.

My final point, another question, is this. I understand that someone gets incarcerated, and the question I have for you, Mr. McLenachen, if you can answer at some point here is you said the nature of incarceration makes it difficult. I used to be a county commissioner and a lawyer. I sort of understand what you are saying with that. But I would ask you to embellish on that a little bit. But the question I have is the due process which has to occur in

order for the 60-day notice, has to occur for you to stop the payment, must the due process go out before the stop payment—can the stop payment precede the due process notice? Or must the due process notice happen and only from that date forward stop payment can occur? And the reason why that is very important is if you are sitting on a pile of, you know, you are saying you are going to prioritize more of them. But if you are sitting on a pile of them until that due process goes out, payments are going to continue. And that is a real problem. Because until you send out the due process all these potentially improper payments are going to continue. Can somebody shed some light on that? And then I am over my time.

Mr. MCLENACHEN. You are absolutely correct. To answer your question about due process, yes, as a general rule we have to give due process before we take adverse action on a benefit payment.

Mr. COSTELLO. But can the, but the payment, can you, you cannot claw back a payment from a date that precedes the due process notice, correct? I would not think—

Mr. MCLENACHEN. No, that is not correct. We can—

Mr. COSTELLO. You can?

Mr. MCLENACHEN. We can retroactively recover—

Mr. COSTELLO. Okay. Very good.

Mr. MCLENACHEN [continued]. —overpaid.

Mr. COSTELLO. All right. So the actual date on which the due process notice goes out is not quite as significant because you can, you can—

Mr. MCLENACHEN. We can always go back, the same thing when we are generally paying benefits. Basically, there is retroactive action in everything we do. And I want to share with the Committee that a big focus for VA is our compliance with the Improper Payments Elimination and Recovery Act. That is discussed at the highest level in the department, it is tracked very carefully. This is among the types of improper payments that we have to report on in VA in every one of our benefit programs. So it is a big issue for us and that is why this program integrity oversight is very important. But basically we have improper payments in every part of our business and the idea is we have got to shrink the amount of time that it takes to make these adjustments to; we will always have improper payments but we need to make them smaller—

Mr. COSTELLO. Right.

Mr. MCLENACHEN [continued]. —rather than larger.

Mr. COSTELLO. Yeah. The question I failed to ask, since no one has shut me up, is I see the number, you know, 3,000, 1,800, a couple of different numbers. How many actually were done timely and properly so that we understand, you know, how many, we see how many were improperly paid, right? How much, how often did the system actually work? I do not have that information in front of me. Because to your point, improper payments are going to happen in a system that large. We get it. The question is, how often is it happening?

Mr. MCLENACHEN. So it depends on the definition—

Mr. COSTELLO. I will yield back now that I am three minutes over.

Mr. MCLENACHEN [continued]. —the definition we are going to use for timely. There is no such standard. We are not doing them as fast as we should now, that is the bottom line. There is no standard. But just because of the fact that we need to get notice of the incarceration, provide 60 days of due process, and go through the steps that Ms. Murphy described, we are always going to have an improper payment that we have to retroactively go back and collect. But we need to do them quicker to shrink that.

Mr. ABRAHAM. Okay. Thank you, Mr. Costello. Just for the record I will follow-up a little bit with what Mr. Costello asked. We would also like, the Committee, the date that the VA started processing the backlog, okay? We are going to, we have a little time so we are going to have another round of questions right quick. And I will start them. This is going to be for you, Inspector General Missal. In 2015, the Major Management Challenge Report, your office had identified overpayments and improper payments as one of VA's management challenges. Do you agree that \$100 million of improper payments to incarcerated beneficiaries was the result of poor management?

Mr. MISSAL. Yes. I think our report outlines the various areas where we thought this was not managed in a proper way, and we thought this was a significant improper payment.

Mr. ABRAHAM. Okay. Thank you. And this next question is to you, too. The IG report addressed issues related to the VA's failure to reduce benefit payments when the veteran begins their incarceration sentence. Do you know if the VA is similarly failing to adjust veterans' payments back to their pre-incarceration level upon release?

Ms. MURPHY. So as we mentioned earlier—

Mr. ABRAHAM. That was to Mr. Missal.

Ms. MURPHY. Oh, I am sorry.

Mr. MISSAL. I am sorry. Could you repeat that?

Mr. ABRAHAM. I can. The IG report addressed issues relating to the VA's failure to reduce benefit payments when the veteran begins their incarceration sentence. Do you know if the VA is similarly failing to adjust veterans' payments back to their pre-incarceration level on release?

Mr. MISSAL. That was not part of our audit scope so we did not look at that. However, I would say that given the problems not only with having an agreement in place but even when an agreement was in place the information still was not being transferred because they did not have the necessary hookup, you would assume that they would have similar problems on the other side after the veteran was released from prison.

Mr. ABRAHAM. Ms. Murphy, do you have a comment on that? Go ahead.

Ms. MURPHY. I would agree generally. I would also mention that the similar situation that the veteran is required to notify us when they get out of prison. And for financial reasons they tend to be more compliant with notifying us when they get out of prison.

Mr. ABRAHAM. Okay. And I would like to know just for the record how many days on average it takes for the VA to restore the full amount of benefit payments to veterans once their debt to society is paid and they are released from prison.

Mr. McLenachen, one last question for you. You used to be the Deputy Under Secretary for Disability Assistance, so I would like your perspective on these overpayments.

Mr. MCLENACHEN. Mr. Chairman, I recall back in about January of this year, I did an interview with I believe it was NPR. And that was basically the question that they asked was, "are we doing a good enough job on these?" And my response to that was, "no, we are not. We need to do them faster. In particular, there was a veteran who was actually released from incarceration, was still getting the full amount of benefits, and had a debt, of I believe about \$38,000 upon release that he had to contend with. And those were the facts that were presented. Basically the same situation we are talking about here today. My response was, "we are not doing a good enough job on these."

Mr. ABRAHAM. Okay. And I think it is safe to say that the situation with, you know, these improper payments arose because the VA dropped the ball. And let me go back to you, in your opinion balancing fairness to the veterans with good stewardship, do you think the VA should waive repayment? Or should the department try to recoup the money?

Mr. MCLENACHEN. We have a legal obligation to recoup the money. Congress has created an equitable relief for veterans, not the equitable relief under Section 503, but under Section 5302. Congress has created an equitable consideration and that is what Ms. Murphy was talking about when she mentioned the debt management center and the Committee on waivers process provides equitable relief based on the hardship they may have.

Mr. ABRAHAM. Okay. Thank you. Ms. Titus?

Ms. TITUS. Thank you. We have kind of danced all around the issue of veterans as prisoners. Perhaps we should be talking about are there any patterns of what kinds of crimes are committed by veterans? Are there mental health problems of veterans who end up in prison? Do VA medical centers have outreach to prisons to deal with veterans while they are there? Those seem to be some major issues that we want to probably look at in the future, maybe not today. But let us put that on the radar. Do you want to address it?

Ms. MURPHY. Congresswoman Titus, if I could mention it, there is a Healthcare for Reentry veterans program that is administered through VHA. They do some outreach to folks while they are in prison to help prepare them to get out, and with a particular focus to try to avoid homelessness. There are some mental health resources that are pointed out, resources in the community. So there is engagement with these veterans to try to make their reentry into society a positive one.

Ms. TITUS. Is that a standard program? Or does it vary from hospital to hospital, place to place? I wonder if there is one, for example, with the new hospital in Las Vegas?

Ms. MURPHY. Being a VHA entity, I do not know a lot about it. But I do know that it is a standardized program that is in VHA.

Ms. TITUS. Well I will have to look into that. Another question I wanted to ask you is that we did a lot of work on that national work queue, to set that up to broker out the rating claims. And I know that worked in Reno. It helped and you brokered out a lot

of those claims. It helped bring down the backlog, bring down the wait time. And that has become pretty standard nationally. I would like to hear more about that work queue, actually. But my question today is are the non-rating claims in any kind of work queue? Should they be? Is that something we should address? Because from regional office to regional office there is a great deal of difference. For example, in Nevada they wait 475 days on average. The national average is 343. In Las Angeles it is 435. In San Diego it is 316. Is there something we need to look at making this more equal across the regional offices?

Mr. CLARK. Ranking Member Titus, you are right. And we have plans to place non-rating workload into our national work queue and that is starting next year, second or third quarter of next year we are hopeful to have that in. Technology is the key. We understand that automation, you know, obviating the need to go out and query the veteran about getting information. That is the long way of taking care of work. It requires more manual labor on our part. And any time you get the human factor involved in doing that it sometimes increases errors. So national work queue, which as you stated, if you recall I worked with you there in Nevada. We brought down the backlog.

Ms. TITUS. We did.

Mr. CLARK. And the national work queue is going to do that for our non-rating portion of our work just like it did for our rating work.

Ms. TITUS. Well, good. I am glad to hear that. Because it was very helpful for the other claims. And so I think it might be helpful for these as well. Not just the prisoners, but all of those non-rating ones. And I would ask the Chairman if maybe we could have a hearing to kind of look at how that worked and get some of those statistics and how you are going to incorporate the new claims in there. Thank you very much. And thank you for helping us with Reno. We really appreciate it.

Mr. COSTELLO. All right. Ms. Murphy, this goes back in time a little bit. I understand you were not in your current position at that time, but I suspect this is a question that you may have anticipated. Eighty-three months went by where the needed data was not yet obtained and when you finally, when the department finally received the data in May, 2015 OIG nevertheless found that it took, or that even five months after obtaining the data the VBA still had not used it. Is that your understanding?

Ms. MURPHY. There were different renewals of the data matching agreements and the farther back in history we go the less I can speak to that. More recently we just renewed that most recent one with Bureau of Prisons in June and that is going forward for a 12-month period. We will watch that carefully to make sure it continues to be renewed.

As far as getting the information, once there is a matching agreement in place that is also another piece of the puzzle and that requires a secure connection to make sure that we are getting that information with the appropriate security and data integrity and privacy attached to that. So there were some challenges with getting the feed over on the IT side of things. So there were a couple

of different pieces that had to come together successfully to get that information to our claims processors.

Mr. COSTELLO. Do you have something to add, Mr. Clark?

Mr. CLARK. Yes, Congressman Costello. I just want to bookmark the fact that we have placed a great deal of emphasis on non-rating, the total. These incarcerated veterans claims represent only one percent of all of the aggregate total of non-rating work that we do. We have an agency priority goal for dependency claims. We have lowered that inventory. We started last year at 227,000. We are at about 117,000 of those now pending, well ahead of schedule and getting to our goal of 100,000 by the end of next fiscal year.

Mr. COSTELLO. Fair point. I am going to ask the IG to weigh in. But something for everybody to consider, and I understand we are talking about one percent, you mentioned one percent. This cohort is one percent. But we do have to extrapolate that and ask ourselves the following question. That one percent over a seven- or eight-year period resulted in over \$100 million in improper payments being made. So if we were to take that one percent and multiply it times 100, that is a very scary number. So this one percent in a certain respect is a cohort that requires VA to improve considerably how we, the integrity of your systems, for lack of a better term. The IG, I was going to ask you to weigh in on the same question.

Mr. MISSAL. Yes. As our report identified, we did not find in our audit that they moved as quickly as they could have once they had the information. We did make the recommendations, they concurred with them, they made obligations to fulfill them going forward, and we are going to continue to monitor their progress and not release them from their obligation until we are satisfied they have done so.

Ms. MURPHY. And Congressman, if I could add also?

Mr. COSTELLO. Sure.

Ms. MURPHY. The IG talks about estimates and extrapolations. If I could talk about the reality of what we have looked at in our review so far.

Mr. COSTELLO. Mm-hmm.

Ms. MURPHY. 2008 to 2015 was the timeframe, and there were 3,600 in that timeframe that we are reviewing. So granted, a long period of time. But of those 3,600 we are about halfway through that review. As Mr. Clark mentioned, they are due to have that done by the end of this calendar year. Of the half, roughly half we have looked so far, about a third of them do not need an adjustment and there are a number of reasons for that. It could be that they were some of the folks that already came in and told us they were in prison and we have done the adjustment. It could be that in the interim they applied for an increase in benefits and were granted that so there was an offset in what we would have had to recoup. It could be that we had the wrong data information, it was the wrong veteran—

Mr. COSTELLO. Right.

Ms. MURPHY [continued]. —from Bureau of Prisons. There are only about nine percent so far of those that we have reviewed that we have to go and make some sort of adjustment or recoupment. So when we are talking about extrapolations and estimates that is



different from what we are seeing in the actual reviews and the actual data.

Mr. COSTELLO. I appreciate your follow-up. Does the IG have a follow-up?

Mr. MISSAL. Well I would say that we did an audit using a statistical random sampling. We feel confident in our numbers to the degree of comfort stated in the report. So we believe the number is significant.

Mr. COSTELLO. Stepping back, this question is more elementary than a lot of what has happened. And you know, layperson, it is very difficult to understand someone becomes incarcerated, they are a veteran, we obviously cannot totally rely on them to notify, right? I just, it is very difficult for me to understand why, whether it is the lag time, the confusing nature of the incarceration process, which I do understand a little bit about what you are saying there, Mr. McLenachen. But there is always somebody at every prison who you could send the notification to. Like you have a point of contact at every single prison in this country, correct?

Ms. MURPHY. Generally, I would say that is true. Folks change, their personnel changes. We make calls to these institutions. Sometimes they do not get back to us. If that is the case we need to send a letter to the institution. We have a 30-day response time that we provide for that. So it is not an artful process.

Mr. COSTELLO. And it may never be an artful process. We just want to make sure it is a more efficient process.

Ms. MURPHY. Absolutely.

Mr. COSTELLO. Okay. Thank you. I yield back.

Mr. ABRAHAM. All right. Thank you. Well, ladies and gentlemen, thanks for being here again on behalf of the Subcommittee. Unfortunately even after what we have learned today, and I have learned a lot, I remain very concerned that the VA is not yet appropriately prioritizing its workload and properly safeguarding taxpayer funds. Both veterans and taxpayers have the right to expect that the VA will ensure that veterans receive the benefits they are entitled to, and respond fairly when the department's errors disadvantage veterans. The Subcommittee will certainly continue to monitor this issue closely. Furthermore as I said in my opening statement I expect the VA to properly respond to the Subcommittee's requests for information. I look forward to the VA's answers by the end of this week.

Again, thanks for being here. The complete written statement of today's witnesses will be entered into the hearing record. I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and include extraneous material. Hearing no objection, so ordered. I thank the members and witnesses for being here today. This hearing is now adjourned.

[Whereupon, at 11:40 a.m., the Subcommittee was adjourned.]

# A P P E N D I X

## Prepared Statement of Michael J. Missal

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

### BACKGROUND

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

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

VA Regional Office (VARO) and Pension Management Center (PMC) employees are responsible for making incarceration adjustments. VBA classifies incarceration adjustments as non-rating claims. Generally, these claims require development, review, and administrative decision or award action. Non-rating claims are different from disability rating claims because staff can process non-rating claims without a rating decision. VBA's disability claims backlog includes claims that require a rating decision that have been pending for more than 125 days. Since non-rating claims including incarceration adjustments do not require a rating decision to complete, they are not considered part of the disability claims backlog.

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

#### Computer Matching Agreements

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

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

### Improper Payments

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

Improper payments include payments made in the incorrect amount (payments not reduced timely) and payments made to ineligible recipients (payments not terminated timely). Some forms of improper payments include payments to incarcerated veterans; not reducing temporary 100 percent disability ratings; and any reductions in benefits where the veteran or beneficiary is not entitled, such as payments to ineligible children of veterans and continued payments to veterans for spouses when they are no longer married.<sup>4</sup> During our Benefits Inspection reviews, we have reported that VBA's focus on reducing the disability claims backlog leaves little time for staff to process reductions in benefits. We made recommendations to VARO Directors to implement a plan to prioritize actions related to benefits reductions to minimize improper payments to veterans.

### INCARCERATION ADJUSTMENT ISSUES

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

#### Federal Incarceration Adjustments

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

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

Once VBA fully implemented the secure connection, BOP did not transfer Federal incarceration data because VBA had allowed the computer matching agreement to expire in April 2012. VBA could have extended the agreement for 1 year if VBA and BOP certified in writing that the matching program complied with the original agreement and would continue without change. However, VBA did not complete this

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

<sup>3</sup> Office of Inspector General 2015 Major Management Challenges, November 16, 2015.

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

action within 3 months prior to the end of the agreement, as required. Therefore, the agreement was not in place to manage the data exchange needed.

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

#### State and Local Incarceration Adjustments

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

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

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

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

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

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

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

#### CONCLUSION

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

financial stewardship over benefits earned through entitlements, and take timely actions that reduce improper benefit payments.

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

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### **Prepared Statement of Beth Murphy**

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

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

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

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

#### **Current Procedures**

Federal law requires VA to reduce disability compensation payments (38 United States Code (U.S.C.) § 5313) to individuals incarcerated for a period in excess of 60 days for conviction of a felony and discontinue pension payments (38 U.S.C. § 1505) to individuals imprisoned for more than 60 days as a result of conviction of a felony or misdemeanor. VA is required to reduce compensation benefits of incarcerated Veterans rated 20 percent or higher to the 10 percent disability compensation rate (currently \$133.17). Incarcerated Veterans rated at 10 percent service-connection are reduced to one-half (currently \$66.58) of their compensation. Once a Veteran is released from prison, VBA can restore C&P payments upon notice of his or her release.

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

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

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

Veterans should notify VA immediately upon release from prison. VA may reinstate compensation payments based upon the severity of the service-connected disabilities at that time. The level of severity assigned after release is generally the same as when the Veteran was incarcerated. Payments are not reduced for recipients participating in work release programs, residing in halfway houses (also known

as “residential re-entry centers”), or under community control. According to law, VA may resume payments effective the date of release only if VA receives notice within 1 year of release.

### **Addressing OIG Recommendations**

#### *Monitoring Computer Matching Agreements*

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

#### *Increasing Priority of Processing of Incarceration Adjustments*

For the 7th year in a row, VBA completed over a million disability compensation claims. Even as VBA focused on its priority goal to eliminate the disability rating claims inventory for Veterans who have waited the longest, VBA remained focused on non-rating claims, including incarceration adjustments. As VBA completed record-breaking numbers of disability rating claims in recent years, one result is an associated increase in the volume of non-rating claims and appeals. In FY 2015, VBA completed a record 3.1 million non-rating claims, a 15-percent increase over FY 2014.

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

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

### **Debt Management Center**

#### *Steps VA is taking to recoup such improper payments*

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

#### *DMC Operations, Guidelines, and Procedures*

DMC follows VA procedures and Federal debt collection laws, regulations, and policies to collect debts. In general, the VBA station of jurisdiction establishes the debt and electronically transfers the debt to DMC’s Centralized Accounts Receivable System. DMC performs standard debt collection activities, such as sending notifica-

tion letters of indebtedness; notifying debtors of their rights and obligations; establishing repayment agreements; and referring accounts to credit bureaus, the Department of the Treasury, and Credit Alert System. DMC also utilizes VA's authority to internally offset monthly benefit payments to satisfy the debt.

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

### **Committee on Waivers and Compromises (COWC)**

#### *Operations, Guidelines, and Procedures*

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

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

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

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

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

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

### **Reintegration**

Upon release from incarceration, VA is prepared to assist Veterans to reintegrate. The VA Health Care for Re-entry Veterans (HCRV) Program is designed to help in-

carcerated Veterans successfully reintegrate back into the community after their release. A critical part of HCRV is providing information to Veterans while they are incarcerated, so they can plan for re-entry. A primary goal of the HCRV program is to prevent Veterans from becoming homeless once they are re-integrated back into the community and the program has regional and state HCRV Specialists who are VA points of contact for incarcerated Veterans and their family members.

**Conclusion**

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

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

