

Protecting Veterans in the Claims and Appeals Processes

In recent years, Congress and the Department of Veterans Affairs (VA) have proposed and enacted many pieces of bipartisan legislation and policies advantageous to veterans and their families. However, there have been policy decisions that have negatively impacted veterans in the claims and appeals process, as well as policy proposals, which, if enacted, would reduce or eliminate existing veterans' benefits, ultimately undermining the long-standing non-adversarial process between, veteran service organizations (VSOs), veterans and the VA.

Ensuring Correct VA Decisions by Reestablishing Predecisional Review

For over seven decades, the Veterans Benefits Administration (VBA) maintained a policy, as previously included in its M21-1 Adjudication Procedures Manual, which allowed accredited VSOs a predecisional review period of 48 hours for decisions on those veterans and claimants the VSO represented. After reviewing these decisions, VSOs were able to notify VBA of errors before a decision was formally promulgated. The types of errors identified included: incorrect effective dates of grants, incorrect evaluations and combined evaluations, and incorrect denials of benefits. If VBA agreed with recommendations, it would issue a new decision. This process benefited many veterans and claimants and in many instances avoided the time-consuming and often costly appeals process.

On April 15, 2020, a coalition of 8 veterans service organizations, including DAV, sent a letter calling on the President to direct the VA Secretary to maintain the 48-hour VSO review policy. Despite this request—VBA officially eliminated the predecisional review period.

Two recent reports from the Office of the Inspector General confirm the need for the predecisional review, which provides representatives the ability to work with VA to identify and correct errors in VA decisions prior to final promulgation, acting as another layer of quality review. DAV is concerned the elimination of this important review period will delay veterans' entitlement to earned benefits and add more unnecessary claims and appeals, which could be resolved by predecisional review.

- **Congress must enact legislation to re-establish the predecisional review for VA accredited representatives to ensure all veterans and claimants receive quality and timely entitlement to benefits.**

Protecting Effective Dates

Effective March 24, 2015, VA started a major change in its policy and regulations regarding use of standard forms. VA eliminated informal claims and replaced it with an Intent to File form which acts as a placeholder, preserving the effective date for one year. VA further requires all claims and appeals to be submitted on specific forms and will not accept any claim or appeal on the incorrect VA form.

Currently, if a veteran submits a claim or appeal on the wrong form, it may take VA months to review and advise the veteran that the claim will not be accepted because it was submitted on the wrong form. Additionally, VA does not consistently advise the veteran which form should have been used and does not provide the correct form to the claimant to file. Thus, when a veteran does file the correct form, they can lose months of entitlement as VA does not accept the claim submitted on the wrong form as a claim submission or as a place holder for benefits even though the exact same information may have been provided by the veteran on both forms.

This issue was complicated by the implementation of the Appeals Modernization Act (AMA). VA will not accept any claims for previously denied issues on any form except a Supplemental Claim, which again can lead to a significant delay before the correct form is submitted and loss of an earlier effective date. The complexity increases as the VA's Intent to File Form cannot be associated with a supplemental claim and many claimants are not aware of what conditions were applied for in the past. Additionally, if a veteran submits an appeal directly to the Board of Veterans' Appeals on the wrong form, again it may be months before it is discovered and the veteran may lose an earlier effective date or even expiration of the appeal period.

VA's current processes are firmly placing an unnecessary burden on too many veterans, which was not the intent of Congress when the AMA was enacted into law. When a veteran submits a claim and it is understood by VBA what the veteran is seeking, it should accept that as a date of claim, advise the veteran on the correct form, provide the correct form, and adjudicate said claim. The non-adversarial nature of the VA must be restored and the effective dates and earned benefits of the men and women who served must be protected.

- **Congress must enact legislation to protect veterans' date of claim, time periods and earned benefits by accepting their claims regardless of the form used.**

Preserving Benefits from Erosion

Reduction of Individual Unemployability. Veterans with a service-connected disability of 60% or combined disabilities at 70% or more that prevents them from maintaining and obtaining gainful employment, are eligible for Total Disability Based on Individual Unemployability (TDIU). Those in receipt of TDIU stop earning Social Security credits and many do not have entitlement to Social Security retirement benefits or any employment-based retirement or pension benefits. Although regulatory provisions prevent VA from considering a veteran's age in TDIU determinations, the Administration's fiscal year (FY) 2018 budget contained a proposal to eliminate eligibility for TDIU for thousands of disabled veterans when they reach the age of 62. The Administration subsequently backed away from this proposal.

It is important to note that in 2019, data from the Census Bureau and Bureau of Labor Statistics (BLS), analyzed by investment and financial-planning firm United Income, reported that 20% of Americans over 65 are still working. The December 2020 Congressional Budget Office (CBO) report included a proposal to "End VA's Individual Unemployability Payments to Disabled Veterans at the Full Retirement Age for Social Security." This option to end TDIU entitlement at the age of 67, is arbitrary.

Many veterans in receipt of TDIU do not have entitlement to Social Security retirement benefits or any employment-based retirement benefits and depend upon for their disability compensation for basic necessities. Congress needs to protect veterans from these continuing attempts to reduce and limit TDIU benefits, by codifying TDIU into statute.

Benefits Proposed for Elimination or Reduction. In December 2020, CBO's biennial report entitled "Options for Reducing the Deficit: 2021 to 2030," included harmful proposals that would reduce or negatively impact veterans' benefits. The report provides no justification of the options, only that these proposals are solely financial savings placed on the backs of veterans and in conflict with current statutory and regulatory provisions.

Veterans proposals included in CBO's 2020 report would:

- Reduce all veterans' existing VA benefits by 30% on reaching full retirement age for Social Security.
- Eliminate compensation payments to veterans with combined evaluations of 10 or 20% disabling.
- Remove the tax-free status of VA compensation and pension benefits and include these benefits as taxable income.

While CBO periodically publishes this report, most of the proposals are never acted on. Congress must ensure that existing veterans' benefits are defended from reductions and eliminations, particularly for the sake of budgetary savings.

- **Congress must enact legislation to protect TDIU from reductions and limitations that will negatively impact thousands of veterans.**
- **We urge Congress to exempt veterans' benefits and services from PAYGO rules, since these benefits should be "paid for" by all Americans, not just veterans themselves.**