

GAO

Testimony
before the Subcommittee on Military
Personnel, Committee on Armed Services,
House of Representatives

For Release on Delivery
Expected at 9:00 a.m. EDT
Thursday, April 6, 2006

MILITARY DISABILITY EVALUATION

Ensuring Consistent and Timely Outcomes for Reserve and Active Duty Service Members

Statement of Robert E. Robertson, Director, Education,
Workforce, and Income Security Issues





Highlights of GAO-06-561T, a testimony to the Subcommittee on Military Personnel, House Committee on Armed Services

Why GAO Did This Study

The House Subcommittee on Military Personnel asked GAO to discuss the results of its recent study on the Military Disability Evaluation System. In this study, GAO determined (1) how current DOD policies and guidance for disability determinations compare for the Army, Navy, and Air Force, and what policies are specific to reserve component members of the military; (2) what oversight and quality control mechanisms are in place at DOD and these three services of the military to ensure consistent and timely disability decisions for active and reserve component members As shown in figure 1.; and (3) how disability decisions, ratings, and processing times compare for active and reserve component members of the Army, the largest branch of the service, and what factors might explain any differences.

What GAO Recommends

In this report, GAO recommended that the Secretary of Defense take certain steps to improve DOD oversight of the military disability evaluation system, including evaluating the appropriateness of timeliness standards for case processing, and assessing the adequacy of training for disability evaluation staff.

The Secretary concurred and indicated that our recommendations would be implemented.

www.gao.gov/cgi-bin/getrpt?GAO-06-561T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson at (202) 512-7215 or robertsonr@gao.gov.

MILITARY DISABILITY EVALUATION

Ensuring Consistent and Timely Outcomes for Reserve and Active Duty Service Members

What GAO Found

In March 2006, GAO reported that policies and guidance for military disability determinations differ somewhat among the Army, Navy, and Air Force. DOD has explicitly given the services the responsibility to set up their own processes for certain aspects of the disability evaluation system and has given them latitude in how they go about this. As a result, each service implements its system somewhat differently. Further, the laws that govern military disability and the policies that the Department of Defense (DOD) and the services have developed to implement these laws have led reservists to have different experiences in the disability system compared to active duty members. For example, because they are not on active duty at all times, it takes longer for reservists to accrue the 20 years of service that may be needed to earn monthly disability retirement benefits.

While DOD has issued policies and guidance to promote consistent and timely disability decisions for active duty and reserve disability cases, DOD is not monitoring compliance. To encourage consistent decision-making, DOD requires all services to use multiple reviewers to evaluate disability cases. Furthermore, federal law requires that they use a standardized disability rating system to classify the severity of the medical impairment. In addition, DOD periodically convenes the Disability Advisory Council, comprised of DOD and service officials, to review and update disability policy and to discuss current issues. However, neither DOD nor the services systematically determine the consistency of disability decision-making. DOD has issued timeliness goals for processing disability cases, but is not collecting information to determine compliance. Finally, the consistency and timeliness of decisions depend, in part, on the training that disability staff receive. However, DOD is not exercising oversight over training for staff in the disability system.

While GAO's review of the military disability evaluation system's policies and oversight covered the three services, GAO examined Army data on disability ratings and benefit decisions from 2001 to 2005. After controlling for many of the differences between reserve and active duty soldiers, GAO found that among soldiers who received disability ratings, the ratings of reservists were comparable to those of active duty soldiers with similar conditions. GAO's analyses of the military disability benefit decisions for the soldiers who were determined to be unfit for duty were less definitive, but suggest that Army reservists were less likely to receive permanent disability retirement or lump sum disability severance pay than their active duty counterparts. However, data on possible reasons for this difference, such as whether the condition existed prior to service, were not available for our analysis. GAO did not compare processing times for Army reserve and active duty cases because we found that Army's data needed to calculate processing times were unreliable. However, Army statistics based on this data indicate that from fiscal year 2001 through 2005, reservists' cases took longer to process than active duty cases.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to present the results of our work in response to this committee's mandate to review the Department of Defense (DOD) disability evaluation system, in particular how the system ensures that decisions in reserve and active duty cases are consistent and timely. Under certain circumstances, both active duty and reserve component members of the military are entitled to receive compensation for service-incurred or -aggravated injuries or illnesses that render them unfit for continued military service. According to DOD regulations, a primary goal of the military disability evaluation system is to ensure consistent and timely decisions for active duty and reserve component members.

Over the past 5 years, nearly half a million reserve component members across all services have been mobilized to augment active duty military forces in conflicts and peacekeeping missions worldwide.¹ In total, the Army, Navy, and Air Force evaluated 23,316 disability cases in fiscal year 2005. One in four of these was a reservist's case. Because reserve component members represent a substantial proportion of the mobilized military force, it is incumbent on DOD and the military to ensure that disability decisions made in their cases are consistent with those made in the cases of active duty members, and as timely.

The information I'm providing today is based on work we reported on March 31, 2006, which was completed in accordance with generally accepted government auditing standards.² I will be discussing (1) how current DOD policies and guidance for disability determinations compare for the Army, Navy, and Air Force, and what policies are specific to reserve component members of the military; (2) what oversight and quality control mechanisms are in place at DOD and these three services to ensure consistent and timely disability decisions for active and reserve component members; and (3) how disability decisions, ratings and processing times compare for active and reserve component members of the Army, the largest branch of the military, and what factors might explain any differences.

¹In this testimony, the word "reservist" refers to a reserve component member.

²GAO, *Military Disability System: Improved Oversight Needed to Ensure Consistent and Timely Outcomes for Reserve and Active Duty Service Members*, GAO-06-362 (Washington, D.C.: Mar. 31, 2006).

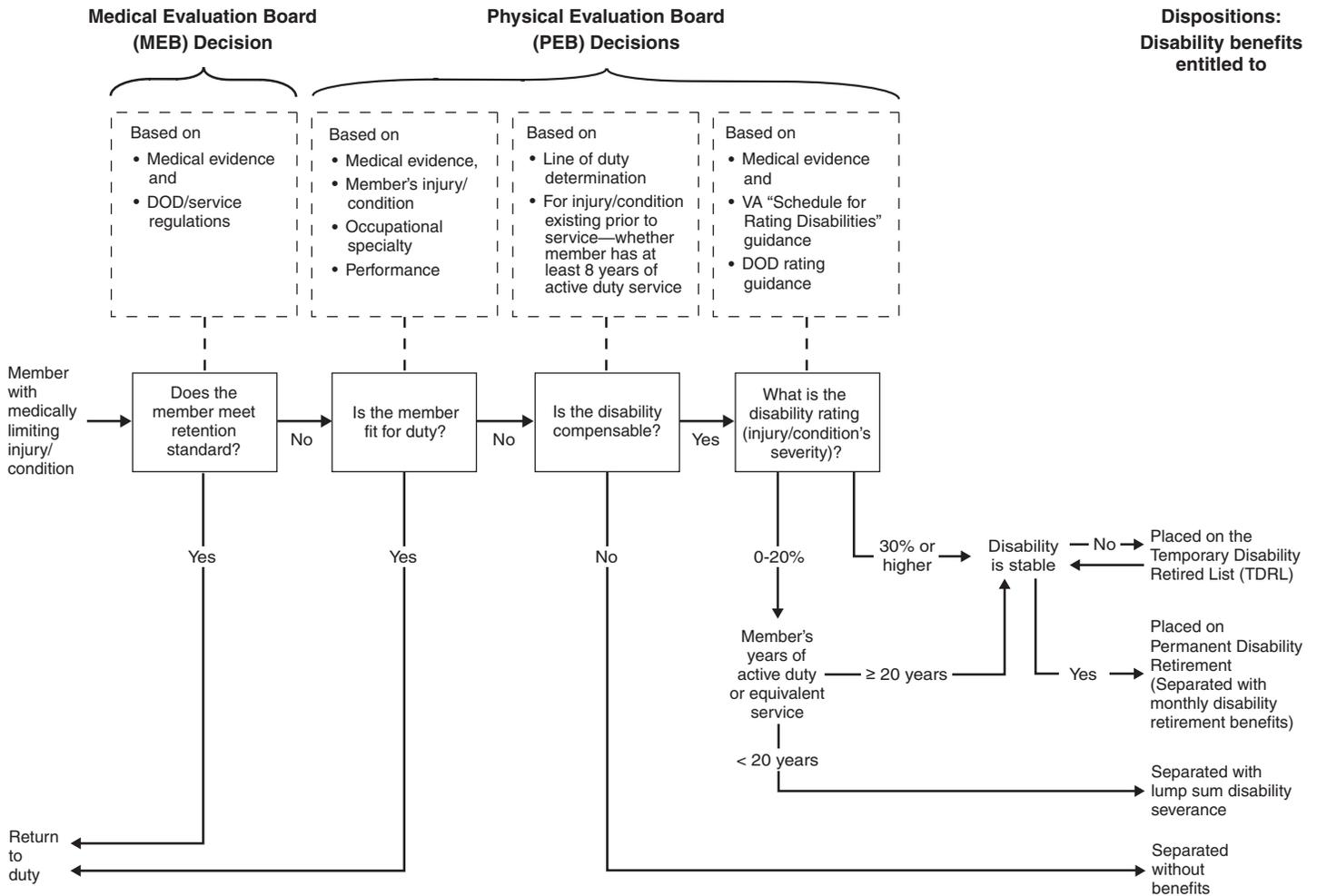
In summary, GAO found that DOD has explicitly given the services the responsibility to set up their own processes for certain aspects of the disability evaluation system and has given them latitude in how they go about this. As a result, each service implements its system somewhat differently. Further, the laws that govern military disability and DOD and service policies implementing these laws have led reservists to have different experiences in the disability system compared to active duty members. While DOD has issued policies and guidance to promote consistent and timely disability decisions for active duty and reserve disability cases, DOD is not monitoring compliance, and neither DOD nor the services systematically determine the consistency of disability decision making. With regard to ensuring the timeliness of disability case processing, DOD has issued processing time goals but is not collecting information to determine compliance. Our own statistical analysis found that Army reservists received similar disability ratings as their active duty counterparts, but reservists may be less likely to receive military disability benefits than their active duty counterparts. Data available from the Army were not reliable enough for our analysis. However, Army statistics indicate that from 2001 through 2005 reservists' cases took longer to process than active duty soldiers' cases.

Background

Service members who become physically unfit to perform military duties due to service-incurred or -aggravated injuries or illnesses may receive military disability compensation under certain conditions. Each of the services administers its own disability evaluation process. According to DOD regulations, the process should include a medical evaluation board (MEB), a physical evaluation board (PEB), an appellate review process, and a final disposition. Each service member who goes through the system should be assigned a Physical Evaluation Board Liaison Officer (PEBLO) to help the service member navigate the system and prepare documents for the PEB.

There are a number of steps in the disability evaluation process and several factors play a role in the decisions that are made at each step. See fig. 1.

Figure 1: Decisions Made During the Military Disability Evaluation Process



Source: DOD documents.

The disability evaluation process has four possible outcomes. A service member can be

1. Found fit for duty;
2. Separated from the service without benefits—service members whose disabilities were incurred while not on duty or as a result of intentional misconduct are discharged from the service without disability benefits;
3. Separated from the service with lump sum disability severance pay; or

-
4. Retired from the service with permanent monthly disability benefits or placed on the temporary disability retirement list (TDRL).

The disability evaluation process begins at a military treatment facility (MTF) when a physician medically evaluates a service member's injury or condition to determine if the service member meets the military's retention standards, and prepares a narrative summary describing the findings. This process is referred to as a medical evaluation board (MEB). Service members who meet retention standards are returned to duty. Those who do not are referred to the physical evaluation board (PEB).

The first step in the PEB stage of the process is the informal PEB—an administrative review of the case file without the presence of the service member. To arrive at its findings and recommendations regarding eligibility for disability benefits, the PEB determines if service members are fit for duty and their injuries or conditions are compensable, and what disability rating their injuries or conditions should be assigned. The PEB also considers the stability of the condition in cases eligible for monthly disability retirement benefits. Service members with conditions that might improve or worsen are placed on TDRL and reevaluated by the PEB at least every 18 months to determine if their condition has stabilized. Those who continue to be unfit for duty after 5 years on TDRL are separated from the military with monthly retirement benefits, discharged with severance pay, or discharged without benefits, depending on their condition and years of service.

Service members have the opportunity to review the informal PEB's findings and may request a formal hearing with the PEB. However, only those found unfit are guaranteed a formal hearing. If service members disagree with a formal PEB's findings and recommendations, they can, under certain circumstances, appeal to the reviewing authority of the PEB. Once the service member either agrees with the PEB's findings and recommendations or exhausts all available appeals, the reviewing authority issues the final disposition in the case.

DOD Policies and Guidance Allow the Services to Implement the Disability Evaluation System Differently

DOD explicitly gives the services responsibility for administering the military disability evaluation system. While DOD regulations establish some parameters and guidelines for this system, the services have considerable latitude in how they interpret them. Consequently, across the services there are differences in MEB and PEB procedures and the use of counselors to help service members navigate the system.

With regard to the MEB, the medical evaluation of a service member's ability to meet military retention standards, the Air Force convenes an actual board of physicians who meet regularly and vote on whether service members meet retention standards. In contrast, the Army and Navy MEBs are informal procedures during which case files are separately reviewed by board members. Each branch of the service has established PEB to determine whether service members who do not meet medical retention standards are entitled to disability compensation. Makeup of the board differs by service. The Army allows the same individuals to sit on both the informal and formal PEB in the same case. The Air Force allows this only under certain circumstances. The Navy has no written policy on the matter, and one Navy PEB official indicated that the same individuals often served on both informal and formal PEBs in a case.

DOD regulations require that each service assign a Physical Evaluation Board Liaison Officer to service members whose disability cases are being evaluated. According to these regulations, PEBLOs are expected to counsel these service members on their rights, the effects of MEB and PEB decisions, and available disability benefits. Each service employs PEBLO counselors in accordance with these rules, but has placed them under different commands, begins the counseling process at different points in the disability evaluation process, and provides PEBLOS with different levels of training.

DOD and the Services Have Established Policies That Result in Different Experiences with the Disability System for Reservists

Due to the part-time nature of reserve service, some laws governing military disability compensation result in different experiences with the disability system for reservists. Under the law, to receive monthly disability retirement benefits, a service member determined unfit for duty must have at least 20 years of active duty service or a disability rated at least 30 percent. Because reservists are not on duty at all times, it takes longer for them to accrue the 20 years of service needed to qualify for monthly disability retirement benefits when their disability rating is less than 30 percent.

Part-time status also makes it more difficult for reservists with preexisting conditions to be covered by the 8-year rule and therefore eligible for disability compensation of any kind. By law, service members determined to be unfit for duty are automatically eligible for disability compensation if they have at least 8 years of active duty service, even if their conditions existed prior to entry into the military or were not aggravated by their military service. However, this entitlement only applies to reservists when they are on ordered active duty of more than 30 days at the time their case

is before a PEB. For reservists, accruing these 8 years can be more difficult than for active duty service members.

Questions About Line of Duty Determinations

Officials reported that commanders and others responsible for completing line of duty determinations were often uncertain as to when line of duty determinations were necessary for reservists and active duty members. Moreover, these officials noted that in some cases, the necessary line of duty determinations were not made, resulting in delays for service members. For example, Air Force officials we spoke with had different impressions as to whether line of duty determinations were always required for reservists, even though Air Force regulations state they are. Officials from the Army and Army National Guard similarly offered different perspectives on the need for line of duty determinations for reservists.

Army Reservists Often Are Not Returned Home for Medical Treatment

In the Army, deployed active duty soldiers return to their unit for service in a back up capacity when they are injured or ill and require medical treatment. Mobilized injured or ill Army reservists have no similar unit to return to. Consequently, their mobilization orders are often suspended; they are retained on active duty in “medical holdover status” and often assigned to a medical retention processing unit while they receive medical treatment. While in medical holdover status, reservists may live on base, at a military treatment facility, at home or at other locations. After their mobilization orders expire, they can elect to continue on active duty through a program such as medical retention processing, which allows them to continue receiving pay and benefits. According to the Army, about 26,000 reservists entered medical holdover status between 2003 and 2005.

Unlike most injured active duty soldiers, reservists in medical holdover generally must live away from their families while receiving medical treatment. In certain cases reservists in medical holdover may receive treatment and recuperate at home. The Army’s Community Based Health Care Organizations (CBHCO) provide medical and case management for these reservists. As of December 2005, about 35 percent of the reservists in medical holdover were being cared for in the CBHCO program. In order to be assigned to this program, reservists must meet a number of criteria. For example, reservists must live in communities where they can get appropriate care, and they must also be reliable in keeping medical appointments.

Several Features of the Disability Evaluation System Are Intended to Help Ensure Consistent Decision Making

To help ensure consistent decision making in disability cases, all services must use a common rating schedule, multiple reviews are required, and a disability advisory council was created to oversee administration of the system. The law requires all services to assign ratings to disabilities based on a common schedule—the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). The VASRD is a descriptive list of medical conditions associated with disability ratings. DOD regulations require each service to review service members' case files multiple times during the disability evaluation process by a number of officials with different roles. Military officials also regard the appeals process required by DOD as helping to ensure the consistency of disability evaluation decision making.

According to DOD officials, primary oversight of the disability evaluation system currently rests with the DOD Disability Advisory Council. The council is composed of officials from each of the three services' disability agency; DOD health affairs, reserve affairs, and personnel officials; and representatives from the Department of Veterans Affairs. According to DOD officials, the council serves as a forum to discuss issues such as changing rules and increasing coordination among the services. The council generally does not formally report on its activities and accomplishments to higher officials in the DOD chain of command nor has it met on a regular basis during the last year.

Lack of Oversight by DOD and the Services Provides Little Assurance Decisions Are Consistent

Despite this policy guidance and the presence of the disability council, both DOD and the three services lack quality assurance mechanisms to ensure that decisions are consistent. Given that one of the primary goals of the disability system is that disability evaluations take place in a consistent manner, collecting and analyzing the service member's final disability determinations are critical for ensuring that decisions are consistent. DOD regulations recognize this and require that the agency establish necessary reporting requirements to monitor and assess the performance of the disability system and compliance with relevant DOD regulations. Yet DOD does not collect and analyze information from the services on the final disability determinations and personal characteristics of service members going through the disability system.

DOD Has Instituted Timeliness Goals for Processing Disability Cases but Does Not Oversee Compliance with Them

To help ensure timely disability decisions, DOD regulations indicate that MEBs should normally be completed in 30 days or less; PEBs should normally be completed in 40 days or less. DOD does not regularly collect available data from the services on their MEB and PEB processing times, however, so it does not monitor compliance with its goals.

The Army and Navy generally use the data they compile on their disability cases to track the timeliness of both MEB and PEB decisions. The Air Force only tracks processing times for PEB cases because it has no centralized database containing information from all its MEB cases. Data reported by the services show disability case processing time goals are not being met. Some of the military officials we spoke with believe this is because the goals themselves are unrealistic, particularly when addendums to the MEB's findings are required, such as in orthopedic or psychiatric cases requiring certain medical tests.

The usefulness of data of disability case processing times may also be undermined by confusion among military officials and data entry staff regarding when the disability evaluation process begins. According to DOD, the process begins on the date a physician dictates the narrative summary for an MEB. When we compared original Army PEB case files to Army electronic data from both its MEB and PEB databases, for example, we found that the date entered in the electronic file was often not the date on the narrative summary. When we asked about these errors, Army officials said that increased training of data entry staff would help resolve this problem. Navy officials also noted that there was some confusion about when case processing begins if additional medical information is needed to make a disability decision for a service member.

DOD's Delegation of Training to the Services and Staff Turnover Present Additional Challenges for the Disability System

According to DOD regulations, the Assistant Secretary of Defense for Health Affairs is given explicit instructions to develop and maintain a training program for MEB and PEB staff. When we spoke with officials from the Office of Health Affairs, however, they indicated they were unaware that they had the responsibility to develop such a training program. In addition, despite high turnover among military disability evaluation staff, the services do not have a system to ensure that all staff are properly trained. This turnover stems, in part, from the military requirement that personnel rotate to different positions in order to be promoted. Military officials told us that depending on the positions involved, some staff remain in their positions from 1 to 6 years, with most remaining about 3 years. This turnover and the resulting loss of institutional knowledge require that the services systematically track who

has been properly trained. However, all of the services lack data systems that would allow them to do so, an issue that was highlighted in a recent RAND report.³

**Some Inconsistencies
May Exist in Disability
Decisions for Army
Reserve and Active Duty
Service Members**

Our analyses of Army data from calendar years 2001 to 2005 indicated that after taking into account many of the differences between reserve and active duty soldiers, Army reservists and their active duty counterparts received similar disability ratings. The results of our analyses of military disability benefit decisions for soldiers suggest that Army reservists with impairments that made them unfit for duty were less likely to receive either permanent disability retirement or lump sum disability severance pay than their active duty counterparts. The results of our analysis of benefits are less definitive than those from our analysis of ratings, however, because data on all possible reasons for the difference in receipt of benefits, such as years of service and whether the condition existed prior to service, were not available for our analysis.

**Poor Quality Data
Precluded GAO Analysis,
but the Army Reports
Reservists' Cases Can
Take Longer to Process**

We did not conduct our own statistical analysis to determine if processing times for Army reserve and active duty soldiers' cases were comparable. The electronic data needed to calculate these times were unreliable, so not of sufficient quality to warrant their use in our analysis. Nonetheless, the statistics the Army provided on PEB disability case processing times indicate that reservists' cases reviewed between fiscal years 2001 and 2005 took consistently longer than those of active duty soldiers. Over half (54 percent) of reserve soldiers' cases took longer than 90 days, while over one-third (35 percent) of active duty soldiers' cases exceeded 90 days.

According to Army officials, there are a number of possible explanations for the differences in processing times in reservist and active duty cases. In reservists' cases, the MEB often must request medical records from private medical practitioners, which can cause considerable delays in the process. In addition, the personnel documents for reservists are stored in facilities around the United States, and may take longer to retrieve than records for active duty soldiers.

³ Cheryl Y. Marcum, Robert M. Emmerichs, Jennifer S. Sloan, and Harry J. Thie, *Methods and Actions for Improving Performance of the Department of Defense Disability Evaluation System*. MR-1228-OSD (Santa Monica, California: the Rand Corporation, 2002).

Conclusions

Decisions affecting eligibility for military disability benefits have a significant impact on the future of service members dedicated to serving their country. Given the importance of these decisions and the complexity of the evaluation process and rules governing eligibility for benefits, it is essential that the services take adequate steps to ensure that decisions in reserve and active duty cases are consistent and timely. It is also incumbent on DOD to adequately oversee administration of its disability evaluation system and the fairness of the system's outcomes for both reserve and active duty members of the military across all the services.

DOD is not adequately monitoring disability evaluation outcomes in reserve and active duty disability cases. The services are not systematically evaluating the consistency and timeliness of disability decisions, or compiling reliable data on all aspects of the system needed to statistically analyze disability evaluation outcomes. With regard to the timeliness of disability case processing, military officials recognize that not all disability cases are processed within the time frames set by DOD and that reservist cases take longer to process than those of active duty members. They have suggested that the goals may not be appropriate in many cases. If timeliness goals do not reflect appropriate processing times, they may not be a useful program management tool. Finally, while the consistency and timeliness of decisions depend on the adequate training and experience of all those involved in evaluating disability cases, we found that DOD had little assurance that staff at all levels in the process are properly trained.

Based on these findings and conclusions, we recommended in our recent report that the Secretary of Defense take certain steps to improve DOD oversight of the military disability system, including evaluating the appropriateness of timeliness standards for case processing and assessing the adequacy of training for disability evaluation staff. The Secretary concurred with our recommendations and indicated our recommendations would be implemented.

Mr. Chairman, this concludes my remarks. I would be happy to answer any questions you or the other members of the committee may have.

GAO Contact

Robert E. Robertson (202)512-7215 or robertsonr@gao.gov

**Staff
Acknowledgments**

The following individuals have made major contributions to this statement— Jason Barnosky, Erin Godtland, Scott Heacock, Anna Kelley, and Clarita Mrena.

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "Subscribe to Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Gloria Jarmon, Managing Director, JarmonG@gao.gov (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, D.C. 20548

Public Affairs

Paul Anderson, Managing Director, AndersonP1@gao.gov (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, D.C. 20548