



Testimony
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VETERANS' DISABILITY BENEFITS

Improvements Needed to Better Ensure VA Unemployability Decisions Are Well Supported

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

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

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

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

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

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

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

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

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

⁴[GAO-15-464](#).

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

As we reported in June 2015, in fiscal year 2013, 332,934 veterans received TDIU benefits, an increase of 22 percent since fiscal year 2009.⁵ Overall, TDIU beneficiaries make up a substantial portion (45 percent) of the group of all veterans who receive benefit payments at the 100 percent disability compensation rate.⁶ This population of TDIU beneficiaries increased in each of the 4 years we compared to the following year. Moreover, the number of older beneficiaries (aged 65 and older) increased for each of the years we examined and by fiscal year 2013, they represented the majority (54 percent) of the TDIU population—a 73 percent increase from fiscal year 2009.⁷ Further, of these older beneficiaries, 56,578 were 75 years of age and older in fiscal year 2013 while 10,567 were 90 years of age and older. The increase in beneficiaries over age 65 was mostly attributed to new beneficiaries who were receiving the benefit for the first time as shown in figure 1. Between 2009 and 2013, the number of new older beneficiaries more than doubled to 13,259. Of these new older beneficiaries, 2,801 were aged 75 and over while 408 were 90 and over.⁸

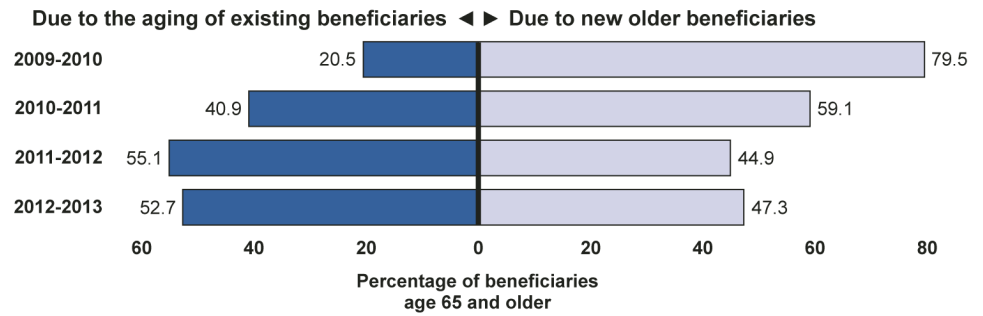
⁵[GAO-15-464](#).

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

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

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

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



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

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

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

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

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

⁹GAO-15-464.

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- First, rating specialists in some (5 of 11) of the discussion groups we held at five regional offices disagreed on whether they are permitted to consider additional factors not specifically mentioned in VBA's guidance such as, enrollment in school, education level, or prior work history when assessing an applicant's employability. For example, one rating specialist recently reviewed a claim for TDIU that was submitted by a veteran suffering from traumatic brain injury. The rating specialist found that the veteran was enrolled in school part time and earning A's in engineering classes, which the specialist felt clearly demonstrated employability. However, another rating specialist within the group stated that the veteran's enrollment in classes would not be part of her decision-making.
 - Second, rating specialists noted that for those factors that rating specialists can consider in their decision-making process, such as whether the veteran receives Social Security Disability Insurance benefits, the guidance is silent on which, if any, should be given greater priority or weight. We confirmed that this information was not in the manual or guidance provided by VBA. Rating specialists in the majority (7 of 11) of the discussion groups specifically noted that they could come to an opposite decision when reviewing the same evidence due to the fact that they weighted certain factors differently. For example, a rating specialist told us that a medical opinion was always weighted more heavily than all other evidence in the veteran's file while another specialist expressed a hesitancy to rely too much on the examiner's opinion.
 - Third, the guidance does not provide instruction on how to separate extraneous factors from allowable ones. Findings from our case file review illustrates this issue: One file described a 77-year-old veteran claiming TDIU benefits for blindness that was caused by (1) a service-connected disability, (2) glaucoma, and (3) macular degeneration. However, because all three conditions related to the veteran's quality of vision, the rating specialist noted in the file her difficulty separating the effect of the service-connected disability from the non-service-connected glaucoma and macular degeneration due to the man's age.

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

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

¹⁰[GAO-15-464](#).

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

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

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

¹²[GAO-15-464](#).

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

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

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

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

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

¹⁵[GAO-15-464](#).

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

Options for Revising TDIU Eligibility Requirements

With regard to the options for revising TDIU eligibility requirements and the benefit structure, in our June 2015 report, we identified a number of options proposed by others as described in table 1.¹⁶ More specifically, six options focused on revising eligibility such as changing existing requirements in various ways, for example, setting age limits, lowering the disability rating requirement, or increasing the income threshold. A seventh option would affect the benefit structure by lowering—but not immediately eliminating—the TDIU benefit payments as beneficiaries earn income beyond the eligibility limit.

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

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

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

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

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

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

^aCongressional Budget Office, Options for Reducing the Deficit: 2014 to 2023 (Washington, D.C.: November 2013), 48.

^bVA regulations also state that veterans with a single disability rating at 60 percent and who meet the other criteria are eligible.

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

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

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

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

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

¹⁸[GAO-15-464](#).

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

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

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

¹⁹[GAO-15-464](#).

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