

VIA www.regulations.gov

November 13, 2012

Ms. Nancy J. Kessinger
Veterans Benefits Administration (20M35)
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Subject: OMB Control No. 2900-0744, Proposed Information Collection (Call Center Satisfaction Survey): Comment Request

Dear Ms. Kessinger:

The law firm of Bergmann & Moore, LLC is pleased to submit a letter in response to the above-referenced comment request. We thank the Department of Veterans Affairs (VA) for soliciting comments on Call Center Satisfaction Surveys by the Veterans Benefits Administration (VBA). Bergmann & Moore focuses on disability compensation claims filed against VA by Veterans and dependents.

We support the collection of data about calls to VBA in order to "enhance the quality, utility, and clarity of the information to be collected" by VBA. However, Bergmann & Moore believes the data collected should also be transparent and address the needs of claimants as well as the attorneys representing claimants.

VBA operates call centers to answer claimants' questions about a wide array of benefits administered by VBA. For our comments, Bergmann & Moore limits the scope of our concerns to questions regarding disability compensation and pension claims placed by Bergmann & Moore to VBA's call centers plus questions placed to VBA's Attorney Fee Coordinators (AFC) at each of VBA's 57 Regional Offices.

We comment on both because they are closely related. Specifically, when an attorney representing a claimant is unable to reach an AFC or other employee within a VBA Regional Office (RO) working on a claim, the attorney often calls VBA's Toll-Free "Inquiry Routing and Information System" (IRIS), at 800-827-1000.

1. Improving Access to VBA Points of Contact for Private Practitioners

Under current VA rules (M21-1MR, Part I, Chapter 3, Section C, 14, "General Information on Fees"), VBA's AFCs at VBA ROs serve as liaisons with attorneys and agents. In most cases, AFCs are cooperative and helpful, providing prompt and accurate status updates on Veterans' claims. This is important because Bergmann & Moore staff are not co-located inside the VA Regional Office and do not have physical access to VBA staff, VBA computer systems, or VBA paper records in a manner similar to Veteran Service Organizations (VSO). Our contact is limited to e-mails, fax, and telephone, which is severely restricted by VBA. Private practitioners currently have no assured access to VBA claims processors, and long delays often result in cases where VA communicates with Veteran advocates only via the U.S. Postal Service or fails to answer important and time-sensitive questions entirely.

There are exceptions harmful to claimants, where some AFCs are directed by their supervisors to refuse to provide attorneys and agents with critical information about the status of a case, in spite of the fact that the Office of General Counsel specifically informs attorneys and agents that their primary contact with VA should be the AFCs.

The lack of accurate and timely information about the status of a Veteran's case significantly interferes with the ability of Bergmann & Moore to properly represent our clients. In many instances, AFCs provided inaccurate information or referred our staff to VBA's IRIS. We understand AFCs often have several other job functions and lack the time and training to properly and promptly assist attorneys and agents. However, when an AFC does not provide information or provides incorrect or incomplete information, VBA's actions further delay Veterans' claims.

For example, efforts to confirm VBA's receipt of appeals are often ignored until the appeal period has expired, at which point VBA may indicate they never received a timely appeal; months or even years may be (and have been) wasted to prove that a timely appeal was received by VBA. In cases where AFCs respond promptly to these questions, they are usually able to pull the claimant's physical file to confirm whether the appeal was received but not updated properly in the computer system, and if not, the AFCs often direct counsel to resubmit the appeal directly to the AFC's attention so that the appeal will be updated and processed properly. When calling the IRIS number, however, counsel is unable to speak to someone within the specific office at issue, making it impossible to know what is physically in the file or ensure that resubmissions will be updated properly.

Specifically, Bergmann & Moore cites VBA's Detroit RO as a source of significant concern. When we contacted the Detroit RO's AFC, we were told the AFC was ordered not to assist attorneys with providing the status of the claim or other pertinent information vital to the claim. Furthermore, the AFC directed Bergmann & Moore to VA's faulty IRIS. This situation is untenable, and we ask VBA to address this quickly in the best interests of our Veterans and their rights to counsel for their claim.

Bergmann & Moore urges VA to make it clear, through regulation and position descriptions, that AFCs are to assist accredited attorneys and agents by providing accurate and prompt status information on Veterans' claims. As the number of claimants represented by counsel increase, the number of calls to AFCs should be increasing. We believe the duties of AFCs should be limited to the role of assisting accredited attorneys and agents in all but the smallest VBA ROs. Furthermore, we believe VBA should collect sufficient data about the number and type of calls from accredited attorneys and agents, as well as complaints and concerns, so VBA leadership can provide sufficient resources and oversight for these vital positions.

2. Decreasing Blocked Calls and Incorrect Information Given by VA

Calls placed to VA's IRIS too often result in incomplete or incorrect information. As described above, many AFCs refer attorneys and agents to IRIS. The results are dismal, and in need of urgent correction. According to VA's Office of the Inspector General (OIG):

In [Fiscal Year] 2009, individuals reached an agent 76 percent of the time. Of those reaching an agent, agents answered 72 percent of their questions correctly. When we combined VBA's reported data on access and accuracy, we concluded that any one call placed by a unique caller had a 49 percent chance of reaching an agent and getting the correct information (Veterans Benefits Administration: Audit of National Call Centers and the Inquiry Routing and Information System, May 13, 2010 <http://www.va.gov/oig/52/reports/2010/VAOIG-09-01968-150.pdf>).

Even worse, VBA employees appear hesitant to answer indirect questions, defined by OIG as questions "that are not asked directly but are relevant to providing a complete answer." In those cases, VBA staff only answered 60 percent of indirect questions accurately. This issue remains a chronic challenge for VBA.

For eight years, Veterans and their advocates remain unable to obtain correct answers from VBA. Knight Ridder Newspapers reported on an internal VA report from 2004 ("VA

Help Lines Found to Regularly Provide Wrong Information," Chris Adams, December 30, 2005):

According to an internal VA memo on the mystery-caller program that's buried deep in the department's Web site, 22 percent of the answers the callers got were "completely incorrect," 23 percent were "minimally correct" and 20 percent were "partially correct." Nineteen percent of the answers were "completely correct," and 16 percent were "mostly correct."

Veterans, attorneys, and agents deserve correct and complete answers. Bergmann & Moore recommends that VBA improve training and oversight with two goals in mind. First, VBA needs to end the 24 percent of calls from Veterans to VBA that are blocked. Second, VBA needs to increase the accuracy of both direct and indirect answers provided to Veterans to well above 90 percent.

3. Entering Information Sent to VBA in a Correct and Timely Manner

In order to improve call quality, VBA should enter information about the documents and the status of claims in a more timely and accurate manner. Most large VSOs are co-located inside VBA Regional Offices. They often hand-deliver critical and time sensitive documents such as notices of disagreement and substantive appeals, and thus are able to ensure VBA's databases are correctly updated and documents are associated with the Veterans' paper claims folder. In contrast, Bergmann & Moore staff are not co-located at VBA Regional Offices. Therefore, we usually fax or mail (through certified mail) vital Power of Attorney, appeals, and other important documents to VBA ROs.

Unfortunately, it is the widespread experience of Bergmann & Moore that, depending on the individual Regional Office, documents need to be resent because VBA lost them – or did not update the system correctly when they were received so no one knows they are in the claims folder – anywhere from 25 to 75 percent of the time. This is especially critical since the mishandling of timely documents such as an appeal can potentially cause further delay of a Veteran's case, as noted above.

Therefore, Bergmann & Moore urges Congress to mandate that VBA upgrade the training provided to mailroom employees, including offering incentives encouraging VBA's mailroom staff to complete their jobs correctly the first time. This, we believe, will improve the accuracy of answers provided by VBA staff to claimants and their attorneys.

Conclusion

Bergmann & Moore agrees VBA should collect data on the quality and timeliness of calls to and being returned by IRIS and AFCs. Furthermore, we urge VBA to improve access to AFCs, decrease the number of blocked calls to VBA's IRIS, and enter documents and status information in a timely manner. With this combination of practical solutions, VBA should be able to improve the delivery of benefits to Veterans as well as properly answer questions placed by Veterans to VBA's Call Centers.

Sincerely,

A handwritten signature in black ink that reads "Paul Sullivan". The signature is written in a cursive, flowing style.

PAUL SULLIVAN

Managing Director

Veteran Outreach & Public Affairs

cc: Honorable Eric Shinseki, Secretary of Veterans Affairs
Honorable Allison Hickey, Under Secretary for Benefits
Honorable Patty Murray, Chairman, Senate Veterans' Affairs Committee
Honorable Jeff Miller, Chairman, House Veterans' Affairs Committee