

Improving Services for Those Who Served: Practical Recommendations for the Department of Veterans Affairs' Disability Benefits Model

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The mission of the U.S. Department of Veterans Affairs (“VA”) is “[t]o care for him who shall have borne the battle, and for his widow, and his orphan” by providing services and benefits to America’s veterans. As part of its mission, the VA administers a complex disability benefits program intended to compensate those veterans whose service-related impairments prevent them from fully engaging in the workforce. But the current VA disability benefits model constrains both its capacity to provide required services and its ability to adapt to the changing needs of the constituency it serves. So too does the VA’s outmoded disability assessment model, which amounts to a “one-size-fits-all” evaluation that determines the severity of a veteran’s disability based solely on symptomatology, and not the veteran’s actual ability to function in the workplace.

This Article suggests that the VA should instead employ a more holistic, individualized approach to assisting veterans disabled by their service by accounting for both economic and quality of life factors when assessing disability, considering both finite and ongoing payment options when providing disability benefits, and emphasizing rehabilitation and recovery in addition to compensation when providing services to those who have served.

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TABLE OF CONTENTS

INTRODUCTION.....	1293
I. THE VA DISABILITY COMPENSATION MODEL.....	1295
A. OVERVIEW OF THE DISABILITY CLAIMS PROCESS	1295
B. BRIEF HISTORY OF THE VA'S DISABILITY BENEFITS MODEL ..	1297
C. VA CLAIMS ADJUDICATION.....	1299
1. <i>Post-2010 Changes to the VA Claims Process</i>	1299
II. OTHER DISABILITY COMPENSATION MODELS	1301
A. CANADA.....	1301
1. <i>Similarities Between the VA and Canadian Models</i>	1302
a. <i>Disability Award</i>	1302
b. <i>Compensation for Severe and Permanent Disability</i>	1303
c. <i>Burden of Proof</i>	1304
2. <i>Key Differences Between the American and Canadian Models</i>	1304
a. <i>Payment Options</i>	1304
b. <i>Finite Award for Certain Disabilities</i>	1305
c. <i>Taxation of Certain Benefits</i>	1306
B. DISABILITY COMPENSATION MODELS IN PRIVATE INDUSTRY..	1306
1. <i>Employer-Provided and Individually-Purchased Disability Insurance</i>	1306
C. FEDERAL WORKERS' COMPENSATION BENEFITS.....	1308
D. PARTIAL-PRIVATIZATION OF VA MEDICAL SERVICES AND A "VOUCHER PROGRAM" FOR VETERANS.....	1310
III. INCORPORATING FEASIBLE PROVISIONS INTO THE CURRENT VA MODEL	1311
A. PROVISIONS FROM THE CANADIAN MODEL	1311
1. <i>Canadian Model's Payment Options and Finite Award for Certain Disabilities</i>	1312
2. <i>Taxation of Certain Disability Benefits</i>	1313
B. REVISION OF THE VASRD TO INCLUDE MODERN CONCEPTS OF DISABILITY ASSESSMENT	1315
CONCLUSION	1317

INTRODUCTION

The Department of Veterans Affairs (“VA”) has been fighting an uphill battle in recent years to improve both its public image and the services it provides. From veteran suicides¹ and homelessness,² doctored waitlists and inefficient care at VA hospitals,³ boondoggle construction projects for VA medical facilities,⁴ and a disability claims backlog resulting in years-long waits for the adjudication of claims,⁵ the VA has been at the center of a political firestorm over the efficacy, solvency, and integrity of its services model. While specific proposals to improve the VA’s disability compensation model differ in methodology and scope,⁶

1. See Dave Philipps, *Congress Orders Defense Dept. to Study Combat’s Effects on Veteran Suicide Rates*, N.Y. TIMES, Dec. 19, 2015, at A13 (detailing studies regarding veteran suicides).

2. See Brian MacQuarrie, *Cities Across US Slash Homelessness for Veterans*, BOS. GLOBE (Mar. 14, 2016), <https://www.bostonglobe.com/metro/2016/03/13/cities-slash-homelessness-for-veterans/ImWmD8Oy7iH94ZFvgiZf5O/story.html> (detailing U.S. cities’ attempts to curb veteran homelessness; see also U.S. DEP’T OF VETERANS AFF., ANNUAL PERFORMANCE PLAN AND REPORT 20 (2016), <https://www.va.gov/budget/docs/VAapprFY2018.pdf> (noting that a Jan. 2015 joint estimate on veteran homelessness conducted by the U.S. Department on Housing and Urban Development (“HUD”) and the VA demonstrated a thirty-six percent decline in overall veteran homelessness since 2010)).

3. See Josh Hicks, *Inspector General’s Report Confirms Allegations at Phoenix VA Hospital*, WASH. POST (May 28, 2014), <https://www.washingtonpost.com/news/federal-eye/wp/2014/05/28/ig-report-confirms-allegations-at-phoenix-va-hospital> (discussing one VA health clinic’s “inappropriate scheduling practices.”); see also Sloan Gibson, Deputy Secretary, Veterans Affairs, Remarks at the Veterans of Foreign Wars Annual Convention (July 22, 2014) (characterizing the scandal as VA’s “most serious crisis in more than a generation.” While beyond the scope of this Article, the report lists specific measures taken in response to the scandal).

4. See, e.g., Emily Wax-Thibodeaux, *VA Building Projects Riddled With Mistakes and Cost Overruns*, WASH. POST (Apr. 13, 2015), https://www.washingtonpost.com/politics/va-building-projects-riddled-with-mistakes-and-cost-overruns/2015/04/13/e66279b4-d4b9-11e4-a62f-ee745911a4ff_story.html?tid=a_inl (outlining recent VA hospital building mistakes); Sloan D. Gibson, *Army Corps Identifies Need for “Transformative Change” in VA Construction Process*, U.S. DEP’T OF VETERANS AFF.: VANTAGE POINT (Sept. 3, 2015, 4:01 PM), <http://www.blogs.va.gov/VAntage/22620/army-corps-identifies-need-for-transformative-change-in-va-construction-process/> (detailing changes that need to be made to VA construction processes).

5. See, e.g., James Dao, *Veterans Wait for Benefits as Claims Pile Up*, N.Y. TIMES (Sept. 27, 2012), <http://www.nytimes.com/2012/09/28/us/veterans-wait-for-us-aid-amid-growing-backlog-of-claims.html> (profiling several veterans enduring long waits for medical coverage); U.S. DEP’T OF VETERANS AFF., DEPARTMENT OF VETERANS AFFAIRS (VA) STRATEGIC PLAN TO ELIMINATE THE COMPENSATION CLAIMS BACKLOG (2013), http://benefits.va.gov/transformation/docs/VA_Strategic_Plan_to_Eliminate_the_Compensation_Claims_Backlog.pdf (outlining the VA’s plan to deal with the problem).

6. See, e.g., Rory E. Riley, *Preservation, Modification, or Transformation? The Current State of the Department of Veterans Affairs Disability Benefits Adjudication Process and Why Congress Should Modify, Rather than Maintain or Completely Redesign, the Current System*, 18 FED. CIR. B.J. 1 (2009) (arguing against a complete overhaul of the VA benefits model, and instead, positing that improvements in the claims adjudication process and a focus on the backlog will sufficiently address problems with the current system); Rory E. Riley, *The Importance of Preserving the Pro-Claimant Policy Underlying the Veterans’ Benefits Scheme: A Comparative Analysis of the Administrative Structure of the Department of Veterans Affairs Disability Benefits System*, 2 VETERANS L. REV. 77 (2010) [hereinafter Riley, *The Importance of Preserving the Pro-Claimant Policy*] (discussing—and

one common thread connects them—the realization that the current system cannot adequately provide the services demanded of it, and some measure of change is necessary.

This Article discusses the VA's current disability compensation model,⁷ and posits whether solutions to its problems can be found by importing alternative practices from disability compensation plans in private industry, the public sector, and veterans' benefits models abroad. Part I of the Article analyzes the current VA benefits model and its problems, and discusses whether the model has sufficiently changed in response to recent controversies and recognized deficiencies. Part II analyzes the Canadian veterans' disability model⁸ and disability programs in the private and public sector to see if a better model exists. Finally, Part III proposes implementing specific provisions of the Canadian model and the World Health Organization's modern concept of disability

arguing against—two separate proposals by notable scholars to radically alter the VA disability benefits model by adopting claims filing procedures used by the Internal Revenue Service and the Social Security Administration); U.S. GOV'T ACCOUNTABILITY OFF., REPORT TO CONGRESSIONAL COMMITTEES: HIGH-RISK SERIES: AN UPDATE 235 (2013) (noting that “[f]ederal disability programs remain in need of modernization. Numerous federal programs provide a range of services and supports for people with disabilities—including forty-five employment-related programs—that together represent a patchwork of policies and programs without a unified strategy or set of national goals. Further, three of the largest federal disability programs—managed by the Social Security Administration (SSA) and Department of Veterans Affairs (VA)—rely to a great extent on out-of-date criteria in making disability benefit decisions. Although SSA and VA have taken concrete steps toward updating their criteria, these disability programs emphasize medical conditions in assessing an individual's work incapacity without adequate consideration of the work opportunities afforded by advances in medicine and technology and in changing job demands. Finally, federal disability benefit programs are experiencing growing disability claim workloads as the demand for benefits has increased in a difficult job market. Thus, challenges are likely to persist, despite concerted efforts to process more claims annually.”); Daniel L. Nagin, *Goals vs. Deadlines: Notes on the VA Disability Claims Backlog*, 10 UMass. L. REV. 50, 56 (2015) (proposing a “clear and enforceable deadline— somewhere between 90 and 125 days—for making initial eligibility determinations on claims for service-connected compensation”); Leo Shane III, *Senate Panel Advances Veterans Reform Plan—Including GI Bill Cuts*, MIL. TIMES (May 12, 2016), <http://www.militarytimes.com/story/veterans/2016/05/12/senatevetaffairs-omnibus-advances/84286650/> (discussing a “massive” omnibus bill to reform the VA, including “new assistance for homeless veterans, expansion of veterans eligible for education benefits, and improvements to health care programs”).

7. While the Article addresses criticism related to the VA's “too singular[.]” focus on disability compensation, to the detriment of its vocational rehabilitation program, an in-depth discussion of the VA's rehabilitation programs is beyond the scope of this Article. See U.S. GOV'T ACCOUNTABILITY OFF., VA DISABILITY COMPENSATION: ACTIONS NEEDED TO ADDRESS HURDLES FACING PROGRAM MODERNIZATION 6 (2012), <http://www.gao.gov/assets/650/647877.pdf>.

8. The Canadian system was chosen as a comparative model based on the scheme's similarities with the VA model's evidentiary standard in disability claims adjudication. Both models feature non-adversarial, claimant friendly burdens of proof, and that similarity increases the feasibility of incorporating provisions of the Canadian model into the VA framework. For an in-depth comparison between the VA's and the UK's model of veterans' disability benefits, see Rachael T. Brant, *Learning from an Ally: Can American Veterans Benefit From Lump Sum Payments and a Claim Submission Deadline?*, 6 VETERANS L. REV. 80 (2014).

assessment into the VA model. The provisions this Article suggests would help address recent criticism that the VA model is too focused on veterans' entitlement to compensation at the expense of rehabilitation and recovery, and would also address concerns over the VA's out-of-date disability assessment criteria.

I. THE VA DISABILITY COMPENSATION MODEL

A. OVERVIEW OF THE DISABILITY CLAIMS PROCESS

The VA administers disability compensation to veterans through the Veterans Benefits Administration ("VBA").⁹ Any veteran¹⁰ who believes that a current disability is related to her military service can submit a claim to the VA for disability benefits.¹¹ Veterans can submit claims online, through a VA-accredited representative, or in-person at a VA Regional Office ("VARO").¹² To qualify for compensation, veterans must submit proof of: (1) a current, diagnosed disability; (2) an event or injury in service; and (3) a medical nexus between the current, diagnosed disability and the event or injury in service.¹³ If a veteran can demonstrate all three, the VA will deem the disability "service connected," and the veteran will receive a monthly, tax-free disability payment for life.¹⁴

The VA disability claims process is non-adversarial, and the VA has a statutory duty to assist veterans in developing the evidence necessary to substantiate their claims.¹⁵ Thus, the standard of proof in VA disability claims is veteran-friendly by design, and an award of service connection for a claimed disability requires only that the weight of the evidence be in equipoise. In other words, if the evidence demonstrates that it is at least as likely as not that the veteran's disability is related to

9. *Compensation: How to Apply*, U.S. DEP'T OF VETERANS AFF., <http://www.benefits.va.gov/compensation/> (last visited Aug. 5, 2017). For the purposes of this Article, the acronym "VA" is used to refer to the VBA in the disability claims context.

10. The threshold determination of whether a former service member meets "veteran" status is governed by 38 U.S.C. § 101(2) (2006), and 38 C.F.R. § 3.1(d) (2014). In brief, a service member must have served on active duty or active duty for training under conditions "other than dishonorable" to attain veteran status for VA benefits purposes.

11. 38 U.S.C. §§ 1110, 1131 (2014); *Compensation: Disability Compensation*, U.S. DEP'T OF VETERANS AFF., <http://benefits.va.gov/compensation/types-disability.asp> (last visited Aug. 5, 2017). A detailed description of the VA disability claims process—including procedural rules related to filing requirements, timeliness, and adjudication of claims—is beyond the scope of this Article. What follows instead is a basic overview of the process. For a concise outline of the claims process, including filing requirements, see Riley, *The Importance of Preserving the Pro-Claimant Policy*, *supra* note 6, at 81–83.

12. U.S. DEP'T OF VETERANS AFF., *Compensation: Disability Compensation*, *supra* note 11.

13. *Id.*

14. *Id.*

15. *Henderson v. Shinseki*, 131 S. Ct. 1197, 1200 (2011) (citing 38 U.S.C. § 5103(a) (2006) which codified the Veterans Claims Assistance Act of 2000); *see also* 38 C.F.R. § 3.159 (2009) (detailing the VA's responsibility in assisting the development of claims).

her military service, the VA *must* afford the veteran the “benefit of the doubt” and find the disability service-connected.¹⁶ The same burden of proof attaches to claims for service connection of “secondary conditions” as well; that is, claims related to disabilities that are causally related to, or aggravated by, an already service-connected condition.¹⁷

If the VARO denies a veteran’s claim for service-connected disability benefits, or if the claim is granted but the veteran disagrees with the VA’s assigned disability “rating,”¹⁸ the veteran can file a Notice of Disagreement with the VARO.¹⁹ The VARO will then re-adjudicate the claim, and if it affirms denial, the veteran may certify an appeal to the Board of Veterans’ Appeals (“BVA”) in Washington, D.C.²⁰ Unlike claims adjudicated at the VARO level, appeals at the BVA are adjudicated solely by attorneys, and Veterans Law Judges (“VLJ”) render the decisions.²¹

The non-adversarial nature of the VA claims process extends to the rules of evidence on appellate review, where the BVA reviews claims *de novo*.²² Additionally, veterans may submit new and material evidence directly to the BVA to supplement the evidence considered at the VARO level.²³ If the record is underdeveloped (that is, lacking a contemporaneous VA medical examination or opinion, or missing pertinent service medical records or unit-specific military records confirming the occurrence of an alleged event), requires clarification, or correction of a procedural error—and therefore cannot support proper

16. 38 U.S.C. § 5107(b) (2014); *see also* *Shinseki*, 131 S. Ct. at 1201. For a detailed description of the VA’s standard of proof and “benefit of the doubt doctrine,” *see* Riley, *The Importance of Preserving the Pro-Claimant Policy*, *supra* note 6 at 89–91.

17. 38 C.F.R. § 3.310(a) (2015); *see also* *Ross v. Peake*, 21 Ct. Vet. App. 528, 532 (2008) (noting that § 38 C.F.R. 3.310(a) requires “direct and secondarily service-connected conditions to be afforded the same treatment for *all* purposes”). “Condition” and “disability” are used interchangeably for VA disability benefits purposes.

18. 38 U.S.C. § 1155 (2014) (providing that “ratings” be based on the “average impairment of earning capacity resulting from such injuries in civil occupations”); *see also* 38 C.F.R. §§ 4.1–4.150 (2015) (VA Schedule for Rating Disabilities (VASRD)). The VASRD assigns a percentage in increments of ten (from zero to one hundred) according to the severity of the disability. A rating of at least ten percent is required to receive compensation. Veterans with service-connected conditions can then file for an increased disability rating as their conditions worsen. The claims process for initial service connection and for increased disability ratings are identical.

19. 38 U.S.C. § 19.26 (2014).

20. 38 U.S.C. § 7105(b)(1) (2014); 38 C.F.R. § 20.302(a) (2015); *see also* *Shinseki*, 131 S. Ct. at 1200 (detailing the Veterans claims process). Problems specific to the BVA are beyond the scope of this Article. For a detailed discussion of current issues with the appeals process, *see* Mark Lancaster, *Fixing the Appeals Process at the Department of Veterans Affairs* (2014), http://luskin.ucla.edu/sites/default/files/14-VeteransAffairs_1.pdf.

21. *Board of Veterans Appeals*, U.S. DEP’T OF VETERANS AFF., <http://www.bva.va.gov/> (last visited Aug. 5, 2017).

22. 38 U.S.C. § 7104(a) (2014); *see also* *Shinseki*, 131 S. Ct. at 1200–01 (describing the non-adversarial nature of VA claims adjudication).

23. 38 U.S.C. § 7104(a); 38 C.F.R. § 20.1304(c) (2015).

appellate review—the BVA is required to remand the claim to the VARO for further development or correction.²⁴

At each step of the claims process, the veteran may seek outside assistance from a representative accredited by the VA to assist “in the preparation, presentation, and prosecution” of disability claims.²⁵ These representatives are usually aligned with a Veterans Service Organization (“VSO”),²⁶ but veterans may also seek representation from VA-accredited private attorneys. At the BVA level, the veteran has the opportunity to present written argument in support of her appeal, or the veteran may choose an in-person, teleconference, or travel board hearing and present oral arguments directly to the VLJ that will adjudicate the appeal.²⁷

The veteran may pursue one of several options if the BVA upholds the denial of the veteran’s claim. The veteran can: (1) file a motion with the BVA for reconsideration, or for revision based on clear and unmistakable error; (2) reopen the claim at the VARO with new and material evidence (which effectively starts the process over from square one); or (3) appeal to the United States Court of Appeals for Veterans Claims (“CAVC”).²⁸ Decisions by the CAVC “on certain issues of law” are reviewable by the United States Court of Appeals for the Federal Circuit.²⁹ The Federal Circuit’s decisions are reviewable by the United States Supreme Court if it accepts a writ of certiorari.³⁰

B. BRIEF HISTORY OF THE VA’S DISABILITY BENEFITS MODEL

In its current iteration, the VA disability benefits model traces to July 21, 1930, when President Herbert Hoover signed a congressionally authorized Executive Order consolidating the three existing veterans’ benefits agencies into one independent agency—the Veterans Administration.³¹ Among other duties, the order tasked the agency with handling veterans’ health services, disability compensation, life insurance, and military pensions.³² Three years later, President Roosevelt issued an Executive Order establishing the Board of Veterans’ Appeals

24. 38 C.F.R. § 19.9 (2015).

25. 38 U.S.C. §§ 5902, 5904 (2014); *see also* 38 C.F.R. §§ 3.103(e), 14.629 (2015).

26. VSOs include The American Legion, Disabled American Veterans, Veterans of Foreign Wars, and Iraq and Afghanistan Veterans of America, to name a few. *See* U.S. DEP’T OF VETERANS AFF., 2013/2014 DIRECTORY: VETERANS AND MILITARY SERVICE ORGANIZATIONS, http://www.va.gov/vso/VSO-Directory_2013-2014.pdf (last visited Aug. 5, 2017).

27. 38 U.S.C. § 7107(b) (2014); 38 C.F.R. §§ 3.103(c), 20.700 (2015).

28. 38 U.S.C. §§ 5108, 7111, 7266(a) (2014).

29. *Henderson v. Shinseki*, 131 S. Ct. 1197, 1201 (2011) (citing 38 U.S.C. § 7292 (2010)).

30. *Id.*

31. U.S. DEP’T OF VETERANS AFF., VA HISTORY IN BRIEF 12 (2006), http://www.va.gov/opa/publications/archives/docs/history_in_brief.pdf.

32. *Id.*

to help deal with the Veterans Administration's "gigantic caseload" and ensure "uniformity in its treatment of claims."³³ In 1988, the Veterans Administration obtained Cabinet status and the following year was renamed the Department of Veterans Affairs.³⁴ Also in 1988, Congress passed the Veterans Judicial Review Act, establishing an Article I court—the United States Court of Veterans Appeals (later renamed the United States Court of Appeals for Veterans Claims ("CAVC"))—tasked with the review of appeals from BVA decisions.³⁵

To assess the severity of service-connected disabilities, the VA uses the *Veterans Affairs Schedule for Rating Disabilities* ("VASRD"), a ratings system it created in 1945.³⁶ The VASRD assigns a rating percentage to medical conditions based on the "average impairments of earning capacity resulting from such injuries in civil occupations."³⁷ The VA disability model has always inferred a veteran's ability to work based solely on the severity of the veteran's "medical conditions and symptoms."³⁸ As a result, a key component of the criticism leveled at the VA disability model is that its concept of assessing disabilities is outdated because modern assessment must include considerations of a veteran's life in their work and other external factors, in addition to the medical factors. Furthermore, the U.S. Government has expressed concern that the VASRD has not kept pace with the latest medical research and that the VASRD has not reflected ongoing changes in the medical field.⁴⁰ As detailed in the report, the VASRD, but the full extent of the fundamental changes needed is unknown at this time.⁴¹

33. Daniel J. Gifford, *Adjudication in Independent Tribunals: The Role of an Alternative Agency Structure*, 66 NOTRE DAME L. REV. 965, 987 (1991).

34. VA HISTORY IN BRIEF, *supra* note 31, at 26.

35. *About the Court*, UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS, <https://www.uscourts.cavc.gov/about.php> (last visited Aug. 5, 2017); *see also* 38 U.S.C. § 7251 (2014).

36. *Web Automated Reference Material System: 38 CFR Book C, Schedule for Rating Disabilities*, U.S. DEP'T OF VETERANS AFF., <http://www.benefits.va.gov/warms/bookc.asp> (last visited Aug. 5, 2017).

37. 38 U.S.C. § 1155 (2012).

38. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 7, at 1.

39. *Id.*

40. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 7, at 5; *see* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 6 (discussing improving and modernizing federal disability programs).

41. As of December 7, 2016, the VA's Advisory Committee on Disability Compensation "expects all final rules to be complete in 2017 or 2018." *See* U.S. DEP'T OF VETERANS AFF., ADVISORY COMMITTEE ON DISABILITY COMPENSATION (2016), <https://www.va.gov/ADVISORY/docs/Minutes%20-%20ACDC%202016%20Dec%206-7.pdf>.

C. VA CLAIMS ADJUDICATION

Despite the controversies mentioned above, which relate to the VA's handling of veteran suicides and homelessness, and the well-publicized scandal over doctored waitlists and overburdened and understaffed medical facilities, perhaps no issue has received more attention in the political arena or the media than the backlog of VA disability claims. The controversy over the VA claims process has forced the VA to publicly acknowledge its deficiencies, and take action by implementing new procedures to facilitate the adjudication of claims.

1. *Post-2010 Changes to the VA Claims Process*

According to the VA, as of June 2016 there were 4.31 million veterans receiving disability compensation, an increase of over 1 million veterans since 2010.⁴² During that same period, the VA increased its number of employees in “pay status” by over 65,000.⁴³ Looking at the numbers alone, the VA's recent efforts to improve its services have produced significant results. For example, from July 2012 to March 2017, the number of pending claims⁴⁴ decreased by over 496,000.⁴⁵ Additionally, the claims backlog—representing initial claims (not appeals) that are over 125 days old—was reduced from over 611,000 claims to 100,402 from March 2013 to March 2017.⁴⁶

The VA attributes the above gains to its “Transformation Plan,” which it described in 2014 as:

[A] series of tightly integrated, people, process, and technology initiatives, which is critical in eliminating the claims backlog. These initiatives include a new organizational model for all 56 regional offices and shifting from a paper-based paradigm to a robust and intelligent digital operating environment using such applications as the Veterans Benefit Management System (VBMS).⁴⁷

More specifically, the VA's 2014 *Performance and Accountability Report* (hereinafter *2014 Report*) noted improved methods for processing

42. Compare U.S. DEP'T OF VETERANS AFF., VA BENEFITS & HEALTH CARE UTILIZATION (2010), <http://www.va.gov/vetdata/docs/pocketcards/fy2010q4.pdf>, with U.S. DEP'T OF VETERANS AFF., VA BENEFITS & HEALTH CARE UTILIZATION (2016), <http://www.va.gov/vetdata/docs/pocketcards/fy2016q4.pdf>.

43. *Id.*

44. The VA's definition of “pending claims” includes claims for disability (the sole focus of this Article), pension benefits, and dependency and indemnity for survivors that are awaiting decision at the VARO level. Claims on appeal are tracked separately. See *Veterans Benefits Administration Reports: Claims Inventory*, U.S. DEP'T OF VETERANS AFF., http://www.benefits.va.gov/reports/mmwr_va_claims_inventory.asp (last visited Aug. 5, 2017).

45. *Id.*

46. *Veterans Benefits Administration Reports: Claims Backlog*, U.S. DEP'T OF VETERANS AFF., http://www.benefits.va.gov/reports/mmwr_va_claims_backlog.asp (last visited Aug. 5, 2017).

47. U.S. DEP'T OF VETERANS AFF., 2014 PERFORMANCE AND ACCOUNTABILITY REPORT 21 (2014), http://www.benefits.va.gov/REPORTS/abr_archive.asp#apr.

claims that include “such initiatives as increased brokering of claims,⁴⁸ centralized mail, access to the Social Security Administration’s Government Services Online system, electronic service treatment records, and mandatory overtime” for claims adjudicators, electronic claims processing, and increased cooperation with VSOs.⁴⁹ The VA has also incorporated programs over the last few years to assist service members transitioning from active duty to veteran status in receiving VA disability benefits upon discharge from service.⁵⁰

According to the VA’s 2016 *Annual Performance Plan and Report* (hereinafter *2016 Report*), released in February 2016, the average lifespan of a disability claim in 2015—from initial filing to final VARO decision—was ninety-three days.⁵¹ This represented a reduction of six months in the average wait time since March 2013.⁵² The VA also noted that it processed 1.4 million claims in 2015, the highest total in the agency’s history.⁵³ In addition, the VA reported an eighty-eight percent reduction in the backlog of disability claims pending over 125 days.⁵⁴ While touting its gains in the *2016 Report*, the VA also acknowledged that its focus on eliminating the claims backlog had resulted in an increased number of claims on appeal.⁵⁵ As of July 2017, there were over 280,000 appeals pending at the BVA.⁵⁶

Despite processing more claims in 2015 than it had ever done previously in one year, the VA claimed an improvement in the quality of its adjudication between 2012 and 2015, demonstrated by an increased “accuracy” rate for its decisions.⁵⁷ The VA attributed its increase in

48. See *id.* at 98 (referring to “claims brokering” as “even[ing] out workloads across VA Benefit Offices”).

49. *Id.* at 160, 191.

50. See *id.* at 8 (discussing the “Joint VA/Department of Defense (DOD) Integrated Disability Evaluation System (IDES) Program,” which provides separating service members with disability evaluations prior to leaving service, and the “Benefits Delivery at Discharge” program which allows service members to submit disability claims while on active duty in order to receive benefits immediately at separation).

51. U.S. DEP’T OF VETERANS AFF., *supra* note 2, at 4.

52. *Id.* at 48.

53. *Id.*

54. *Id.*

55. *Id.* at 54 (noting that the “growing inventory” of claims at the BVA was a “direct result of [VA’s] record-breaking achievements in reducing the claims backlog”); see also Gregg Zoroya, *Report Cites VA Struggles with Benefits Paid to Veterans*, USA TODAY (July 14, 2014, 12:06 AM), <http://www.usatoday.com/story/news/nation/2014/07/14/va-backlogcommittee-hearing-veterans/12573043> (noting that while the VA has reduced the backlog of initial claims, pending appeals have increased eighteen percent since 2011).

56. U.S. DEP’T OF VETERANS AFF., MONDAY MORNING WORKLOAD REPORT, TRADITIONAL AGGREGATE, http://benefits.va.gov/REPORTS/detailed_claims_data.asp (last visited Aug. 5, 2017).

57. VA 2016 PERFORMANCE REPORT, *supra* note 2, at 49 (noting that claims accuracy had increased from 86% in 2012 to 90% in 2015); see also VA 2014 PERFORMANCE REPORT, *supra* note 47, at 64 (describing the VA’s Quality Assurance Program wherein assigned staff “conduct monthly Systematic

decisional accuracy to improved training methods for its claims adjudicators at the VARO level and increased employee oversight—including the formation in 2012 of “Quality Review Teams” assigned to all VAROs.⁵⁸

For all of the recent gains noted by the VA, the agency’s improved claims procedures do not address the key criticism leveled at the VA disability compensation model by the GAO; specifically, the VA’s disability assessment criteria still “emphasize[s] medical conditions in assessing an individual’s work incapacity without adequate consideration of the work opportunities afforded by advances in medicine, technology, and job demands.”⁵⁹ This criticism, and ways to remedy it, is explored in greater detail in Part III’s discussion of the VA’s ongoing revision of its *Schedule for Rating Disabilities*.

II. OTHER DISABILITY COMPENSATION MODELS

Part II of this Article examines disability benefits programs in the United States and Canada—in the private and public sector, respectively—to consider whether the VA can benefit from alternative, yet time-tested practices of other countries’ models.

A. CANADA

Canadian veterans receive disability compensation and other veterans’ benefits through Veterans Affairs Canada (“VAC”).⁶⁰ The last

Technical Accuracy Reviews (STAR) and other quality reviews to assess and measure national accuracy associated with disability and pension claims”).

58. See VA 2014 PERFORMANCE REPORT, *supra* note 47, at 68 (stating that Quality Review Teams at the VARO “evaluate individual employee-level accuracy and perform in-process reviews at the earliest possible stage in the claims process”); see also VA 2016 PERFORMANCE REPORT, *supra* note 2, at 50 (noting revisions to the quality assurance program in 2015 that reflected “industry-standard best practices in statistical sampling and estimation”).

59. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 6, at 235.

60. *Disability Benefits*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits> (last visited Aug. 5, 2017). In comparing the Canadian model with the VA, one must acknowledge differences that likely play a role in the overall design and specific provisions of the respective systems. Such differences include: (1) the veteran populations of Canada and the U.S., in relation to each country’s overall population, (2) the budget of each agency in relation to their country’s overall government spending, and (3) the amount spent per veteran. Addressing each difference in turn: (1) as of March 2014, Veterans Affairs Canada estimated the entire Canadian veteran population to be roughly 685,000; Canada’s total estimated population as of 2017 is roughly 36,500,000. Over 125,000 Canadian veterans were receiving disability compensation as of 2015. Just the Facts, VETERANS AFFAIRS CANADA (June 1, 2016), <http://www.veterans.gc.ca/eng/news/vac-responds/just-the-facts/comparing-disability-benefits-and-pensions>. *General Statistics*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/news/general-statistics> (last visited Aug. 5, 2017). In comparison, the VA projects the living U.S. veteran population to be approximately 20,000,000 as of 2017 out of a total population of over 324,000,000. Of the nearly 22 million veterans in the U.S. as of December 2015, over 4.5 million were in receipt of VA disability compensation. *National Center for*

major overhaul of the Canadian benefits model came in 2006, when Parliament passed the Canadian Forces Members and Veterans Re-establishment and Compensation Act, commonly referred to as the New Veterans Charter.⁶¹ The main intent of the legislation was to “foster the social and vocational re-establishment of veterans”⁶² by promoting “recovery and rehabilitation.”⁶³

I. *Similarities Between the VA and Canadian Models*

a. *Disability Award*

Like the VA model, Canada’s compensation scheme offers qualifying veterans a tax-free “disability award” for an injury or illness related to their military service.⁶⁴ The VAC benefit covers less severe,

Veterans Analysis and Statistics: General Population, U.S. DEP’T OF VETERANS AFF., http://www.va.gov/vetdata/Veteran_Population.asp (last visited Aug. 5, 2017); U.S. CENSUS BUREAU, <http://www.census.gov/popclock> (last visited Aug. 5, 2017); U.S. DEP’T VETERANS AFF., VETERANS BENEFITS ADMINISTRATION: ANNUAL BENEFITS REPORT FISCAL YEAR 2015 (2015), http://www.benefits.va.gov/REPORTS/abr/ABR-ALL_SECTIONS-FY15-12122016.pdf. (2) For fiscal year 2015, Veterans Affairs Canada reported expenditures of over \$3.5 billion in Canadian dollars (CAD) (roughly \$2.7 billion U.S.), while total government spending was \$280.4 billion (CAD) (roughly \$215 billion U.S.). Of the \$3.5 billion expended on veterans services, \$2.02 billion was spent on disability and death compensation. *Department Financial Statements 2014–2015*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/about-us/reports/departmental-financial-statements/2014-15> (last visited Aug. 5, 2017); *Annual Financial Report of the Government of Canada Fiscal Year 2014–2015*, DEP’T OF FIN. CAN., <http://www.fin.gc.ca/afr-rfa/2015/report-rapport-eng.asp> (last visited Aug. 5, 2017). In comparison, for fiscal year 2015 VA’s budget was \$163.97 billion, while overall government spending was nearly \$3.7 trillion. Out of the 2015 VA budget, \$60.21 billion was spent on disability compensation. U.S. DEP’T VETERANS AFF., VA BENEFITS & HEALTH CARE UTILIZATION (2016), <http://www.va.gov/vetdata/docs/pocketcards/fy2016q2.pdf>; *Budget and Economic Data*, CONGRESSIONAL BUDGET OFFICE, https://www.cbo.gov/about/products/budget_economic_data (last visited Aug. 5, 2017); U.S. DEP’T VETERANS AFF., COMPENSATION, <http://benefits.va.gov/REPORTS/abr/ABR-Compensation-FY15-05092016.pdf> (last visited Aug. 5, 2017). (3) Using the 2015 agency expenditures and veterans in receipt of disability compensation figures, Veterans Affairs Canada spent roughly \$2.02 billion (CAN) or \$1.6 billion (U.S.) for 125,000 veterans on disability compensation. Thus, \$12,800 (U.S.) was spent per veteran. *Id.*

61. Jean-Rodrigue Paré, *The New Veterans Charter: Background Paper*, LIBRARY OF PARLIAMENT (CAN.) 1 (PUB. NO. 2011-84-E, Nov. 3, 2011), <http://www.loppar.gc.ca/content/loppar/ResearchPublications/2011-84-e.pdf>; see also Canadian Forces Members and Veterans Re-establishment and Compensation Act, S.C. 2005, c.21 (Can.).

62. *Id.* at 1.

63. *Lump Sum Disability Award*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/news/vac-responds/just-the-facts/lump-sum> (last visited Aug. 5, 2017).

64. *Disability Award*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/disability-award> (last visited Aug. 5, 2017). Qualifying veterans must be diagnosed with a medical condition or disability, and must provide evidence demonstrating that the condition is related to their military service. Veterans in receipt of the disability award also qualify for rehabilitation services. In addition, qualifying veterans can also receive an Earnings Loss Benefit as part of the Canadian model’s rehabilitation services. The benefit is taxable, and paid monthly. It is intended to ensure that the income of veterans with service-related injuries does not fall below seventy-five percent of their gross military salary. See *Earnings Loss Benefit*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/services/transition/rehabilitation/earnings-loss> (last visited Aug. 5, 2017).

non-permanent conditions, and unlike the VA model, is solely intended to compensate veterans for non-economic losses (“pain and suffering”) caused by their service-related impairments.⁶⁵ VAC calculates the benefit amount based on the severity of the condition and its relation to the veteran’s service.⁶⁶ VAC assesses the severity of the veteran’s condition using the *Table of Disabilities*, which “considers the relative importance of certain body part/system to assess the level of impairment and the impact that impairment has on the individual’s quality of life.”⁶⁷

b. Compensation for Severe and Permanent Disability

Permanently disabled Canadian veterans can apply for a Career Impact Allowance (“CIA”) that covers a qualifying military service-related “severe and permanent impairment.”⁶⁸ VAC defines a “severe and permanent impairment” as one in which the veteran “permanently requires supervision, is severely and permanently limited in mobility or self-care, has conditions such as an amputation or a total and permanent loss of vision or hearing or speech, or a severe and permanent psychiatric condition.”⁶⁹ The CIA is paid monthly for the veteran’s lifetime, and like the VA disability benefit model, is based on loss of earning capacity.⁷⁰ The CIA is similar to the VA model’s “TDIU” benefit, which compensates veterans who are unable to work as a result of their service-connected disabilities, and pays them as if their disabilities were rated as totally disabling.⁷¹ As discussed below, the CIA benefit differs from the VA’s TDIU benefit in that the CIA benefit is taxed as income.⁷²

65. *Compare New Veterans Charter*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/news/vac-responds/just-the-facts/new-veterans-charter> (last visited Aug. 5, 2017), with 38 U.S.C. § 1155 (2012) (providing that VA disability ratings are solely based on economic considerations; specifically, the average impairment in earning capacity).

66. *Disability Award*, *supra* note 64.

67. *2006 Table of Disabilities*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/table-of-disabilities> (last visited Aug. 5, 2017).

68. *Career Impact Allowance*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/services/transition/rehabilitation/permanent-impairment-allowance> (last modified Apr. 5, 2017).

69. *Id.*

70. *Id.*

71. See 38 C.F.R. § 4.16 (2015). The TDIU benefit (also known as “IU”) pays veterans as if they are totally disabled even if the veteran’s individual rating does not equal one hundred. To qualify, the veteran must meet certain rating requirements (one disability rated as sixty percent disabling or more, or two or more disabilities with one rated as at least forty percent disabling with a combined rated of at least seventy percent) and be “unable to follow a substantially gainful occupation as a result of service-connected disabilities.”). As of December 31, 2015, 331,379 veterans were in receipt of IU benefits. See U.S. DEP’T VETERANS AFF., VA BENEFITS & HEALTH CARE UTILIZATION (2016) <http://www.va.gov/vetdata/docs/pocketcards/fy2016q2.pdf>.

72. *Career Impact Allowance*, *supra* note 68.

c. Burden of Proof

The burden of proof under the VAC model is also similar to the VA model. Both are non-adversarial, pro-claimant processes. Like the American model, the Canadian model requires that the adjudicator afford the veteran the “benefit of doubt” in weighing the evidence and draw “every reasonable inference” in favor of the veteran.⁷³ The VAC approach to evidence is intended to create “a liberal and purposive direction in recognition of the great moral debt owed” to Canada’s military veterans.⁷⁴

2. Key Differences Between the American and Canadian Models

Three key differences distinguish the American and Canadian disability compensation schemes: (1) a choice of payment options for the “disability award,” (2) a monetary cap on the amount of benefits awarded for non-permanent, and less severe disabilities, and (3) taxation of certain benefits.⁷⁵ A brief description of each provision, including discussion of positive and negative attributes, is included below. In Part III, I will address whether incorporating the three Canadian provisions into the American model would improve the VA’s current system, and if so, whether adopting such provisions is feasible.

a. Payment Options

Under the VAC model, veterans who qualify for a disability award can choose between three payment options: a lump-sum payment, an annual payment plan for a veteran-specified period of time, or a combination of the two.⁷⁶ Conversely, with the exception of retroactive benefits paid to a veteran based on the effective date of his claim,⁷⁷ all VA disability benefits are paid monthly.⁷⁸

Allowing veterans a measure of independence in the disbursement of their benefits is consistent with the intent behind Canada’s New Veterans Charter to emphasize recovery, rehabilitation, and re-integration into civilian society. On its face, the payment option gives veterans greater agency over their own benefits, which ostensibly allows them more freedom in planning their individual recovery and post-military lives. To help manage their award, Canadian veterans are

73. *Entitlement Eligibility Guidelines*, VETERANS AFF. CAN., <http://www.veterans.gc.ca/eng/services/after-injury/disability-benefits/benefits-determined/entitlement-eligibility-guidelines> (last modified Feb. 11, 2017).

74. *Id.*

75. See, e.g., *Lump Sum Disability Award*, *supra* note 63; *Career Impact Allowance*, *supra* note 68.

76. Paré, *supra* note 61, at 4.

77. See generally 38 CFR §3.400(b) (2015) (discussing VA determination of the effective date of a claim).

78. *Compensation: How to Apply*, *supra* note 9.

counseled to seek independent financial counseling and can apply for a stipend of up to \$500 to cover the cost of such advice.⁷⁹

b. Finite Award for Certain Disabilities

The second key difference between the Canadian and American models is that the VAC caps the total disability award payment for less severe or non-permanent impairments at just under \$360,000.⁸⁰ As noted above, the VAC bases the finite amount an individual veteran receives on the extent of the impairment and its relation to the veteran's military service.⁸¹ Conversely, the VA disburses disability benefits monthly for the veteran's lifetime, and bases the award on the extent to which the severity of the veteran's medical condition affects the average loss of earning capacity.⁸²

Because the VAC solely intends for its disability award to compensate veterans for pain and suffering—i.e., not to replace lost wages—the VAC evaluates the extent of any impairment by assessing quality of life factors, such as how the injury affects the veteran's personal relationships, mobility, and community and recreational activities,⁸³ as well as the medical impairment caused by the condition. This explicit consideration of non-economic quality of life factors appears to further the VAC's goal of focusing the Canadian benefits model on recovery and rehabilitation in two related ways: (1) it represents a debt owed—in clear, monetary terms—to the veteran for service and sacrifice, while (2) acknowledging that the veteran's condition is not so severe as to preclude eventual recovery and reintegration into the workforce. In other words, a VAC disability award compensates the veteran for loss of *quality of life* due to service-related disability—instead of compensating the veteran for perceived loss of *income* due to service-related disability. From a purely psychological standpoint, the finite award provides closure for less severely injured veterans, as well as the sense that their service-related medical condition does not necessarily impede their ability to earn an income. Simply put, the finite award enables non-permanently disabled veterans to move on with their lives and begin the process of rehabilitation.

79. *Lump Sum Disability Award*, *supra* note 63.

80. *Id.* (citing the 2017 rate).

81. *Disability Award*, *supra* note 64.

82. *See Compensation: How to Apply*, *supra* note 9; *see also* 38 U.S.C. § 1155 (2011).

83. U.S. DEP'T OF VETERANS AFF., 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES 169 (2008), http://www.va.gov/op3/docs/ProgramEvaluations/CompPaymentStudy/DS_VOLUME_IV.pdf.

c. Taxation of Certain Benefits

The Canadian and American disability compensation systems also differ in their tax treatment of paid benefits. The VAC model's CIA benefit (for severe and permanent disabilities) is taxable, whereas American veterans receive all VA disability compensation tax-free.⁸⁴ One immediate advantage to the Canadian system's taxation of the CIA benefit—from the government-provider's standpoint—is that a portion of the compensation scheme recirculates funds into the economy and thus, finances itself to some degree. The VAC justifies taxing the CIA benefit because the benefit is intended to replace lost income for veterans who can no longer work, therefore, the benefit should be taxed as income because it acts as wage replacement. The tax-free disability award, on the other hand, is direct compensation for pain and suffering. Because it has no relation to the individual veteran's ability to work, or to lost income resulting from her service-related injury, it would not be taxed as income.

B. DISABILITY COMPENSATION MODELS IN PRIVATE INDUSTRY⁸⁵

At the outset, it is difficult to see how the VA could incorporate aspects of the private insurance model without radically altering the pro-claimant, non-adversarial foundation of its disability compensation scheme. Therefore, absent a complete deconstruction of the VA model, the private insurance model offers no feasible, practical solutions to the VA's current issues. What follows is a brief overview of private disability insurance, highlighting key differences between private insurers and the VA.

I. Employer-Provided and Individually-Purchased Disability Insurance

Private disability insurance, whether employer-provided or individually-purchased, functions to replace a worker's lost income as a

84. Compare 38 U.S.C. § 5301(a)(1) (2012), and *Compensation: How to Apply*, *supra* note 9, with *Career Impact Allowance*, *supra* note 68. Additionally, the Canadian model taxes the Earnings Loss Benefit paid under its rehabilitation services program. See *Earnings Loss Benefit*, *supra* note 64.

85. This Article only addresses short and long-term private insurance plans, and does not address workers' compensation plans for private industry employees. Because such plans vary from state to state, the intricacies of individual state workers' compensation plans are beyond the scope of this Article. For a discussion on current statewide trends in the workers' compensation arena, see Michael Grabell & Howard Berkes, *The Demolition of Workers' Comp*, PROPUBLICA (Mar. 4, 2015), <https://www.propublica.org/article/the-demolition-of-workers-compensation>; see also, David B. Torrey & Lawrence D. McIntyre, *Recent Developments in Workers' Compensation and Employers' Liability Law*, 51 TORT TRIAL & INS. PRAC. L.J. 749 (2016). Additionally, this Article's discussion of private disability insurance does not address Accidental Death and Dismemberment plans. For a brief overview of such plans, see 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 120.

result of an illness or injury incurred outside of the workplace.⁸⁶ According to the United States Bureau of Labor Statistics (“BLS”), in 2014, thirty-nine percent of private industry employees had short-term disability insurance (providing coverage for a period of less than six months) and thirty-three percent had long-term insurance (providing coverage “for the length of the disability or until retirement”) provided through their employers.⁸⁷ Workers without access to employer-provided plans, or those who choose not participate in such plans, can purchase disability insurance directly from insurers. Individually-purchased private disability insurance is subject, like any other private insurance program, to underwriting.⁸⁸ But unlike workers’ compensation, these private insurance plans cover disabilities that are not work-related.⁸⁹

Short and long-term disability plans operate like other employer-provided plans, in that some plans are completely subsidized by the employer, while others require some measure of employee contribution.⁹⁰ As the name suggests, individually purchased private disability insurance is similar to other private insurance plans; the insured worker purchases it directly.⁹¹ Like VA disability benefits, private disability insurance can be used in conjunction with government-provided disability compensation such as Social Security Disability Insurance (“SSDI”), which is administered by the Social Security Administration.⁹² However, unlike VA disability compensation, the amount of the private disability payment is “usually reduced” by the amount of the SSDI benefit.⁹³ Furthermore, because private disability programs are intended to replace lost income, the benefit expires once an individual reaches Social Security full retirement age.⁹⁴

86. 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 115.

87. Kristen Monaco, *Disability Insurance Plans: Trends in Employee Access and Employer Costs*, U.S. BUREAU OF LAB. STAT.: 4 BEYOND THE NUMBERS (Feb. 24, 2015), <https://www.bls.gov/opub/btn/volume-4/disability-insurance-plans.htm>.

88. 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 132 (describing underwriting as “the process an insurance company uses to evaluate an individual’s application for insurance” and to determine whether to provide coverage and if so, for what amount).

89. Monaco, *supra* note 87.

90. *See id.* (noting that the overwhelming majority of employer-provided disability insurance requires no employee contribution).

91. 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 133.

92. For an in-depth comparative analysis of the disability compensation model administered by the Social Security Administration and the VA’s benefits model, see Riley, *The Importance of Preserving the Pro-Claimant Policy*, *supra* note 6.

93. Monaco, *supra* note 87, at 8; *see also* 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 118 (noting that unlike private disability insurance, VA benefits are not “offset against other income”).

94. 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 129.

Private disability insurance and the VA compensation model also differ in that private insurers view disabilities and resulting benefits, even those considered long-term, as finite.⁹⁵ As a result, in any disability case, the goal of the private insurer is to seek “resolution of the disability,” so that benefits can cease.⁹⁶ Conversely, VA disability compensation is paid for the life of the veteran, absent a finding of fraud or clear and unmistakable error on the part of VA in granting compensation.⁹⁷ Additionally, private insurers assess a claimant’s disability purely in terms of occupational impairment versus actual physical or mental impairment, which forms the basis of VA disability assessment.⁹⁸

C. FEDERAL WORKERS’ COMPENSATION BENEFITS

Federal civilian employees who are injured on the job, or incur an illness or disease in the performance of their duties, may qualify for workers’ compensation.⁹⁹ The United States Department of Labor’s Office of Workers’ Compensation Programs (“OWCP”) administers the program, and the Division of Federal Employees’ Compensation (“DFEC”) handles general employees.¹⁰⁰ Like the VA model, the DFEC program provides medical benefits, compensation for temporary total disability, compensation for permanent disability, and compensation for death.¹⁰¹ The requirements for compensation are also similar to the VA model, and require that an applicant first demonstrate qualifying status (in this case, a civil employee), and then provide evidence that: (1) an injury or illness occurred on the job; and (2) that the applicant’s current disability is causally related to that injury or illness.¹⁰² Additionally, like the VA model, permanent injuries are evaluated, and compensation is assigned, based on a schedule of impairment ratings.¹⁰³

95. *Id.* at 10.

96. *Id.* at 10.

97. 38 U.S.C. §§ 6103(a), (c) (2014); 38 C.F.R. § 3.901(b) (2015). Disability ratings can also be reduced in certain circumstances. *See* 38 C.F.R. §§ 3.105(e)–(g), 3.344, 3.665(d) (pertaining to incarcerated veterans), 4.1 (2015); *see also* Brown v. Brown, 5 Ct. App. Vet. 413, 420 (1993) (requiring that reduction of VA disability ratings be based on review of the entire record).

98. 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 116 (noting that for private disability insurers, the “fundamental question is ‘can you work?’ rather than ‘do you have a physical limitation?’”).

99. *Office of Workers’ Compensation Programs (OWCP)*, U.S. DEP’T OF LAB., <https://www.dol.gov/owcp/owcpabot.htm> (last visited Aug. 5, 2017); *see also* Federal Employees’ Compensation Act, 5 U.S.C. §§ 8101–8193 (defining employee).

100. *Division of Federal Employees’ Compensation (DFEC)*, U.S. DEP’T OF LAB., <https://www.dol.gov/owcp/dfec/regs/compliance/ca-11.htm> (last visited Aug. 5, 2017). Separate programs are available for Energy Employees, Longshore and Harbor Workers, and Coal Miners.

101. *Id.*

102. *Id.*

103. *Division of Federal Employees’ Compensation (DFEC): Chapter 3-0700, Schedule Awards*, U.S. DEP’T OF LAB., <https://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/FECA-PT3/#30700e1> (noting that since 2009, the OWCP has used the Sixth Edition of the American Medical Association’s

Unlike the VA disability model, however, the DFEC program has strict filing deadlines and a statute of limitations of three years following the injury or illness.¹⁰⁴ Furthermore, while the OWCP's regulations require it to assist the claimant by providing her with the information necessary to develop the claim, and by requesting evidence sufficient to establish the claim,¹⁰⁵ the burden of proof rests with the claimant to demonstrate by a preponderance of evidence the elements necessary to support her claim.¹⁰⁶ Thus, there is no "benefit of the doubt rule" as applies in VA disability cases.¹⁰⁷ Additionally, unlike the DFEC program, the VA does not base its disability benefits assessment on the individual's lost earnings, but instead, on the severity of the medical condition.¹⁰⁸ Therefore, a veteran's employment status and income are immaterial.¹⁰⁹ The differences between the current VA model and the OWCP model—particularly regarding the heightened burden of proof on the claimant in the latter—make it difficult to see how the VA model could feasibly incorporate any of the OWCP's provisions without fundamentally altering its non-adversarial nature.¹¹⁰ It is therefore unlikely the federal workers' compensation scheme administered by OWCP offers any practical alternatives to the VA model.

Guides to the Evaluation of Permanent Impairment. The OWCP states that the Sixth Edition "implements a paradigm shift in the way impairment evaluations are conducted. The stated vision of the Sixth Edition is based on five axioms, including: (1) Adoption of terminology and conceptual framework of disablement outlined by the World Health Organization's (WHO's) International Classification of Functioning, Disability, and Health (ICF); (2) Becoming more diagnosis-based and basing the diagnoses in evidence; (3) optimizing rater reliability through simplicity, ease of application, and following precedent; (4) Rating percentages are functionally based to the fullest extent possible; and (5) Stressing conceptual methodological congruity within and between organ rating systems.").

104. *Id.* (noting that despite the three-year statute of limitations, compensation may still be paid if the applicant provided written notice of the injury within 30 days, or the applicant's supervisor had actual knowledge of the injury within 30 days of occurrence). For a discussion on the feasibility of incorporating statutes of limitations into the VA disability compensation mode, see Brant, *Learning from an Ally*, *supra* note 8, at 96–99.

105. *Division of Federal Employees' Compensation (DFEC): Chapter 2-0800, Initial Development of Claims*, <https://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/FECA-PT2/group1.htm#20800> (last visited Aug. 5, 2017).

106. *See id.*; *see also* *Dir. v. Greenwich Collieries*, 512 U.S. 267, 278–79 (1994) (noting that OWCP programs fall under the Administrative Procedures Act (APA), and under *Steadman v. SEC*, 450 U.S. 91 (1981), § 7(c) of the APA requires a claimant to meet her burden proof by a preponderance of the evidence).

107. *See* Riley, *The Importance of Preserving the Pro-Claimant Policy*, *supra* note 6, at 89–91 (discussing the Benefit of the Doubt Doctrine).

108. *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 7, (discussing recommendations to modify the medical severity focus to include a veteran's ability to function in the workplace).

109. *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 7, at 3 (noting that veterans are eligible for VA disability compensation regardless of employment status and income).

110. For a discussion on incorporating a statute of limitations into the VA's disability benefits model, see Brant, *Learning from an Ally*, *supra* note 8, at 99 (arguing that a time limit for initial filing of claims could be achieved without undue negative effect on claimants if coupled with a lump-sum payment option).

D. PARTIAL-PRIVATIZATION OF VA MEDICAL SERVICES AND A “VOUCHER PROGRAM” FOR VETERANS

One controversial proposal for overhauling the current VA services model, which has garnered increased attention in recent years, calls for partially privatizing the VA and providing veterans with healthcare vouchers that they could redeem for services at private hospitals.¹¹¹ Under such a scheme, a qualifying veteran would receive an annual stipend for healthcare. Conceivably, the number of vouchers a veteran would receive would be tied to his specific healthcare needs. As to be expected, support for such a proposal is strictly delineated along political lines.¹¹²

While not as drastic a measure as privatizing some elements of the services the VA provides, the Veterans Access, Choice, and Accountability Act of 2014 does allow qualifying veterans to obtain VA-subsidized health care from private providers.¹¹³ The Act appears to recognize a key component of the argument set forth by proponents of a voucher program—that partial privatization of VA could reduce the wait time for veterans’ health services by giving veterans the option of using private providers¹¹⁴—but it is difficult to see how such a program would affect the disability claims backlog or other issues related to the current compensation scheme. Simply put, a veteran seeking compensation for an injury related to service would still be required to file a disability claim *with* the VA, and that claim would still need to be adjudicated *by* the VA. Thus, it is unlikely that a voucher program could have practical application or any impact on the disability compensation context.

111. See, e.g., Reid J. Epstein, *Jeb Bush Calls for Privatizing Elements of Veterans Health Care*, WALL STREET J.: WASH. WIRE BLOG (Apr. 8, 2015, 1:27 PM), <http://blogs.wsj.com/washwire/2015/04/08/jeb-bush-calls-for-privatizing-veterans-health-care/>; Paul Krugman, *Vouchers for Veterans*, N.Y. TIMES (Nov. 13, 2011), <http://www.nytimes.com/2011/11/14/opinion/krugman-vouchers-for-veterans-and-other-bad-ideas.html>. But cf. Veterans Access, Choice, and Accountability Act, Pub. L. No. 113–146 (2014) (providing that qualifying veterans may receive VA-subsidized care from non-VA providers. Under VACAA, veterans may seek treatment from non-VA providers if they live over 40 miles from a VA facility or face wait times of over 30 days for a VA appointment).

112. Leo Shane III, *Vets Activists Gearing Up for 2016 Fight*, MIL. TIMES (July 15, 2015), <http://www.militarytimes.com/story/military/benefits/veterans/2015/07/15/veterans-issues-2016-early/29922689>.

113. Veterans Access, Choice, and Accountability Act, Pub. L. No. 113–146, 128 Stat. 1754, 1755–56 (2014).

114. Gabrielle Levy, *Trump Floats VA Privatization Despite Opposition of Veterans’ Groups*, U.S. NEWS (Dec. 29, 2016), <https://www.usnews.com/news/national-news/articles/2016-12-29/trump-floats-va-privatization-despite-opposition-of-veterans-groups>.

III. INCORPORATING FEASIBLE PROVISIONS INTO THE CURRENT VA MODEL

A. PROVISIONS FROM THE CANADIAN MODEL

When comparing the Canadian veterans disability benefits model to the American disability benefits model, one striking difference between the two systems bears noting: unlike the United States, Canada has a single-payer healthcare system. The extent to which this variance in healthcare access affects each disability compensation scheme is beyond the scope of this Article; however, it is important to keep in mind when addressing the feasibility of incorporating practices from the Canadian model into the VA system.

Perhaps the absence of government-subsidized healthcare informs the American model's uniquely pro-claimant and non-adversarial nature. A common-law moral obligation to provide healthcare benefits to veterans underlies the American model, and the government does not provide such healthcare otherwise; thus, the burden of establishing eligibility for veterans' benefits should not be too heavy for the veteran to bear. Yet, the Canadian model utilizes the same evidentiary standards. Furthermore, a similar sense of moral obligation and duty informs both the American and Canadian models.¹¹⁵ That said, despite the similarities between the evidentiary standard in the Canadian and American systems, the VAC caps its disability award to Canadian veterans with less severe, non-permanent impairments at a finite amount¹¹⁶—something the VA does not do for even the least severe service-connected impairments. One possible explanation is that Canadian veterans, like all Canadian citizens, receive free health care, obviating the need for a purely “charitable”—and possibly paternalistic—benefits compensation model.

The abstract impact of single-payer healthcare aside, the United States and Canada actually spend *proportionally the same amount* on veterans' disability compensation, given the number of veterans each system serves.¹¹⁷ While the Canadian benefits model—and the New

115. See Richard E. Levy, *Of Two Minds: Charitable and Social Insurance Models in the Veterans Benefits System*, 13 KAN. J.L. & PUB. POL'Y 303, 304–07 (2004) (comparing the “charity” model of government benefits derived from common law that underlies our veterans benefits system (where benefits are distributed based on “a sense of moral obligation”), with the “social insurance” model that pertains to government benefits systems like Social Security, Medicare and Medicaid, and Welfare (in which benefits are “quasi-contractual” obligations “whose distribution is governed by comprehensive legal standards and procedures.”)); see also *Entitlement Eligibility Guidelines*, *supra* note 73 (attributing the pro-claimant, “liberal” evidentiary standard in veterans' benefits claims to the “great moral debt owed” to veterans).

116. *Lump Sum Disability Award*, *supra* note 63.

117. See *supra* note 60 and accompanying text (noting that there are roughly thirty-two percent more veterans in the United States than Canada, and the VA spent roughly thirty percent more on disability compensation in 2015).

Veterans Charter that underlies it—has received criticism,¹¹⁸ VAC has avoided the kind of high-profile, systemic snafus that have plagued the VA in recent years. Perhaps this is because the Canadian veterans services model, unlike the American one, does not require a vast network of veteran specific hospitals and providers requiring oversight and management by the Government. Because all Canadian citizens receive government-subsided healthcare independent of any veteran specific benefits, VAC may focus on rehabilitation programs and the provision of disability benefits to qualifying veterans without worrying about the administration of veteran-specific providers.

*I. Canadian Model's Payment Options and Finite Award for Certain Disabilities*¹¹⁹

As noted above, VAC offers veterans a lump-sum payment option for less severe, or non-permanent disabilities, characterizing the payment as a disability award.¹²⁰ At the outset, if the VA were to incorporate such a practice, it would have to shift the basis of its current rating criteria (focusing solely on the average loss in earning capacity due to the medical condition)¹²¹ to one that included consideration—like the Canadian model's *Table of Disabilities*—of non-economic factors like pain and suffering for certain disabilities.¹²² Such an undertaking would undoubtedly be complex, and would require fundamental revision of the VASRD to include assessments for quality of life and other non-economic factors in conjunction with medical impairment.¹²³

118. See *The New Veterans Charter: Moving Forward: Report of the Standing Committee on Veterans Affairs*, HOUSE OF COMMONS (Can.) (June 2014), <http://www.parl.gc.ca/content/hoc/Committee/412/ACVA/Reports/RP6635229/acvarp03/acvarp03-e.pdf> (providing fourteen recommendations to improve the New Veterans Charter, including making the Earnings Loss Benefit non-taxable, increasing the lump-sum Disability Award payment, and improving transition of medically separated veterans from active duty to civilian life).

119. For a similar discussion regarding the UK veterans' benefits model and its lump-sum payment provision, see Brant, *supra* note 8.

120. *Lump Sum Disability Award*, *supra* note 63. Additionally, the OWCP has a lump-sum payment option for federal workers' compensation claims. *Division of Federal Employees' Compensation (DFEC): Chapter 2-0800, Initial Development of Claims*, *supra* note 105. However, under 5 U.S.C. § 8107 (2016), the option is limited to cases where the OWCP determines a lump-sum payment is "in the employee's best interest."

121. 38 U.S.C. § 1155 (2011).

122. See 2006 *Table of Disabilities*, *supra* note 67 (displaying a table of disabilities); see also Brant, *supra* note 8, at 103–04 (discussing the complexity of incorporating a lump-sum payment option into the VA benefits model due to the current rating criteria's focus on economic v. non-economic losses); ERIC CHRISTENSEN ET AL., FINAL REPORT FOR THE VETERANS DISABILITY BENEFITS COMMISSION: COMPENSATION, SURVEY RESULTS, AND SELECTED TOPICS 156 (2007) (noting that the potential benefits to both veterans and the VA of a lump-sum program are tied to whether the payment is optional, what disabilities would be included, and how VA would handle claims for increased ratings if a disability worsened after the lump-sum payment).

123. See discussion *infra* Part III.B.

One obvious advantage to a lump-sum payment option with a finite award for certain, less severe disabilities—from the perspective of the efficient administration of claims—is that a lump-sum payment would obviate the need to file a claim for an increased disability rating, and would eventually make such claims obsolete. Instead, a veteran who files a claim and receives service in connection with a disability would receive a monetary amount to compensate for pain, suffering, and their effects on quality of life, and that compensation would foreclose any further claims for that particular disability. If the veteran’s disability also resulted in verified loss of income, the veteran could file a claim for a modified TDIU payment, perhaps revised to resemble the Earnings Loss Benefit available under the Canadian model.¹²⁴

Veterans would also potentially benefit from a lump-sum payment option. Such payments “can provide resources to compensate for additional costs experienced by the veteran during the acute phase of the injury or illness.”¹²⁵ Thus, veterans would have more money at their immediate disposal to facilitate their own recovery from less severe conditions, or those that require only short-term care.

The most apparent potential disadvantages to lump-sum payments include the risk of financial mismanagement by the veteran and the risk that the disability will worsen, which would render the lump-sum payment inadequate. Indeed, VAC initially faced resistance when it introduced the lump-sum option.¹²⁶ However, the agency was able to overcome that resistance by reframing the lump-sum disability award as part of a “package” of benefits that included “rehabilitation services,” and civilian re-integration and job placement assistance.¹²⁷ For a lump-sum option to succeed, the VA would have to follow the Canadian model and package the lump-sum payment with social, vocational, and medical rehabilitation assistance, as well as financial counseling. Such a program would go a long way toward addressing GAO criticism that the current VA model emphasizes entitlement to compensation over rehabilitation.¹²⁸

2. *Taxation of Certain Disability Benefits*

At the outset, it appears the taxation provisions of the Canadian model are antithetical to the “charity” premise¹²⁹ that animates the American model. As such, to incorporate the kind of taxation provision

124. *Disability Award*, *supra* note 64.

125. Brant, *supra* note 8, at 104.

126. See generally *The New Veterans Charter*, *supra* note 118.

127. 4 A STUDY OF COMPENSATION PAYMENTS FOR SERVICE-CONNECTED DISABILITIES, *supra* note 83, at 172.

128. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 7, at 30–31.

129. See Levy, *supra* note 115, at 304–05, 323 (comparing the charitable and social insurance models).

used in the Canadian model, the VA would have to model its entire services system after Canada's New Veterans Charter. Given the size of the VA, and the number of veterans it serves in relation to the Canadian model,¹³⁰ that kind of radical, fundamental change appears infeasible, or at least unrealistic in the short-term.

As a purely academic exercise, however, a legitimate justification exists for incorporating a taxation provision into the VA's TDIU¹³¹ benefit. Similar to the way the VAC taxes its CIA benefit, the justification lies in the uniqueness of the TDIU benefit in relation to the rest of the VA disability compensation scheme. Specifically, receipt of TDIU is tied to a veteran's unemployability based on the severity of his service-connected disability or disabilities.¹³² Like the Canadian model's CIA benefit, TDIU is intended to compensate a veteran for being unable to work *solely due to service-related disability*.¹³³ On the other hand, a veteran's receipt of basic VA disability compensation relies not on the veteran's employment status, but on the fact that the veteran's service resulted in injury or illness. The logic behind taxing the TDIU benefit is that the veteran would be taxed on the wages he or she would earn if the veteran were able to work, so the TDIU benefit should be taxed as income because it is being paid in lieu of income.

While the VA could conceivably incorporate the Canadian model's lump-sum payment option and finite award for certain disabilities without radically altering its existing model, any serious proposal to reform the current American model to include the taxation of benefits would likely be extremely unpopular. Taxing disability benefits, especially those paid to veterans based on disabilities connected to their active duty service, seems untenable from both a political and moral standpoint—especially given the “charity” premise and moral obligation that underlies the American model. Social Security benefits have long been considered the untouchable “third rail” of American politics,¹³⁴ but perhaps veterans' disability benefits are even more sacrosanct because a unique “moral obligation” to compensate those who served underlies the entire system's existence.¹³⁵ Thus, any discussion of reforming the VA

130. See *supra* note 60 and accompanying text.

131. See 38 C.F.R. § 4.16 (2011).

132. *Id.*

133. *Id.*

134. See William Safire, *Third Rail*, N.Y. TIMES MAG. (Feb. 18, 2007), <http://www.nytimes.com/2007/02/18/magazine/18wwlnsafire.t.html> (discussing the origins of the term “third rail” to reference Social Security benefits); see also Michael Hiltzik, *Still the Third Rail? Social Security, Medicare Mostly Unharmful in Budget Deal*, L.A. TIMES (Oct. 27, 2015, 10:42 AM), <http://www.latimes.com/business/hiltzik/la-fi-mh-social-security-medicare-20151027-column.html> (referring to social security as the “third rail of American politics”).

135. See Levy, *supra* note 115, at 304–05 (comparing the charitable and social insurance models).

disability compensation model that includes taxation of benefits would likely be a political nonstarter.

B. REVISION OF THE VASRD TO INCLUDE MODERN CONCEPTS OF DISABILITY ASSESSMENT

Since 2009, the VA has been in the process of revising the entire VASRD for the first time since 1945.¹³⁶ The VA projects to complete the revision by “2017 or 2018.”¹³⁷ As noted in a 2012 GAO report, the modification will update both the criteria used to assess individual medical conditions and the “earnings loss information.”¹³⁸

According to the GAO, the VA is actively considering whether to modify its assessment of disabilities to include consideration of a “veteran’s ability to function in the workplace,” versus the current VASRD’s sole reliance on the “medical severity” of the disability.¹³⁹ Such modification would be more in-line with current World Health Organization (“WHO”) standards related to disability assessment, and would recognize the distinction between “impairment” and “disability” noted in the sixth edition of the AMA’s *Guides*, which is used in the federal workers’ compensation arena.¹⁴⁰

The WHO’s modern concept of disability “takes into account the interaction between an individual’s medical condition or impairment and intervening factors, such as [the individual’s] physical and social environment,” and focuses on the individual’s quality of life and functional ability, not just the medical condition itself.¹⁴¹ As a result, the WHO framework allows for a more accurate, personalized assessment of the true extent of a disability caused by an individual’s medical condition.

136. U.S. DEP’T OF VETERANS AFF., RETROSPECTIVE PLAN UPDATE—JULY 2015 (2015), http://www.va.gov/ORPM/docs/RegMgmt_VA_EOI3563_VA_OIRA_Status_Report_201507.pdf.

137. U.S. DEP’T OF VETERANS AFF., ADVISORY COMMITTEE ON DISABILITY COMPENSATION, *supra* note 41, at 3.

138. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 7, at 7.

139. *Id.* at 10.

140. *Id.* at 6 n.11 (noting that “[a]ll 191 World Health Organization member states” endorse the modern concept of disability assessment); *see also* OWCP, *supra* note 99 (noting that impairment is a “medical concept,” whereas disability is an “economic concept which reflects a claimant’s inability to earn wages comparable to those received before the injury”). For criticism of the sixth edition of the AMA *Guides*, see *Written Statement Before the Subcomm. on Workforce Protections of the Comm. on Education and Labor*, 111th Cong. 5 (2010), http://edworkforce.house.gov/uploadedfiles/111710_spieler.pdf (statement of Emily A. Spieler, J.D.) (stating that the current version of the *Guides*, though it purports to incorporate the WHO framework, does not actually do so, and is not useful in rating disabilities because it only considers impairment—functional loss based on a medical condition—not disability, which considers economic and non-economic factors related to the condition’s impact on the individual’s quality of life). This criticism is similar to the GAO’s criticism of the current version of the VASRD.

141. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 7, at 6–7. Of note, the WHO approach is similar to the Canadian model’s disability assessment reflected in the *Table of Disabilities*, which considers the impairment’s impact on the veteran’s quality of life. 2006 *Table of Disabilities*, *supra* note 67.

Just as no two people are truly identical even if they share the same physical characteristics, no two disabilities are identical even if they share the same underlying diagnosis. Conversely, the VASRD's current methodology for physical disabilities¹⁴² amounts to a "one disability fits all" approach that only assesses the condition itself—not the condition's real impact on the veteran's overall ability to function in the social or employment context.

Incorporating the WHO's disability assessment framework into the VASRD's assessment of physical conditions would benefit the VA, and the veterans it serves by: (1) providing more individualized care and rehabilitation opportunities for service-connected veterans through a better understanding of the disabling effects of the individual veteran's condition; (2) better allocating resources by compensating disabled veterans based on real need and functional loss; and (3) reducing the number of claims challenging the accuracy of initial rating decisions, by providing a more realistic assessment of an individual's functional ability at the outset.¹⁴³ Adopting the WHO disability framework would also provide a more seamless connection between the VA and the civilian medical community. This is especially important where a veteran is relying on private medical evidence to support a disability claim.

Two legitimate concerns face such an approach: (1) how administratively difficult it would be to implement such a widespread, comprehensive change; and (2) how feasible it would be to adjudicate claims where a disability is perhaps beyond the expertise of a sole physician.¹⁴⁴ As a result, incorporating the broader disability framework used by the WHO to assess physical disabilities could result in more complicated, time consuming VA medical evaluations from multiple specialists, slowing down the already tedious and much-maligned claims process. That said, such concerns could be mitigated by incorporating general quality of life factors into the VASRD that would not require the expertise of multiple specialists. The Canadian model's *Table of Disabilities* would serve as a useful guide in implementing such factors.¹⁴⁵

Another potential argument against adopting the WHO disability framework is its relative lack of utility in the current VA benefits context. Specifically, because eligibility for VA disability compensation exists regardless of a veteran's employment status—unlike for a federal

142. Current VASRD criteria for mental disorders does consider ability to function in social and employment settings. See 38 CFR §§ 4.125–4.130 (2015).

143. While there is no guarantee that adopting the WHO's disability framework would reduce the number of claims challenging initial rating decisions, it seems reasonable that a veteran would be less prone to disagree with the VA's rating if its assessment were based on a more complete picture of the veteran's overall condition.

144. See Spieler, *supra* note 140, at 14 (noting that "physicians lack the necessary expertise to assess non-medical issues," which is required in order to truly evaluate disability).

145. 2006 *Table of Disabilities*, *supra* note 67.

workers' compensation claimant¹⁴⁶—an expanded disability assessment model might not even be necessary to better serve the VA's mission. In other words, because a veteran's employment status or income does not affect his or her eligibility for benefits, why should VA's assessment of physical disabilities include consideration of the veteran's ability to function in the workplace or social settings? Instead, it appears sufficient to consider only the actual physical impairment based on the severity of the medical condition and its related symptoms in determining the veteran's overall "disability."

The response to such an argument would likely echo the criticism of the current VA model voiced by the GAO, and emphasize the need for the VA to shift its current focus from entitlement-based compensation, to a model that focused instead on individualized care and rehabilitation.¹⁴⁷ Despite the potential drawbacks—both practical and policy-based—of incorporating the kind of broader disability assessment framework advocated by the WHO, such a model would ultimately improve the efficacy of VA's disability compensation program for the reasons stated above. Working toward a more accurate disability assessment model, and a more individualized and needs-based approach to compensation, is a worthwhile endeavor that will benefit both the VA and the veterans it serves in the long run.

CONCLUSION

The sheer size of the VA, the number of veterans it must serve, and the nature of its disability compensation scheme—particularly its statutory duty to assist claimants¹⁴⁸—render the agency difficult to manage even in the best of times. After sixteen years of war, and with a still-active deployment schedule for many service members, these are not the best of times. By its own account, the VA has made active strides to meet current demands and address acknowledged deficiencies in the disability claims process, but the system must be prepared to meet the demands that will be placed on it in the near future by veterans of the Iraq and Afghanistan campaigns, and by an aging population of Vietnam-era veterans.¹⁴⁹

New realities and the increased demand for services that follow will require proactive solutions if the VA is to meet its stated mission to truly care for those who have "borne the battle."¹⁵⁰ Incorporating the WHO's

146. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 7, at 3.

147. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 7, at 28, 43–44.

148. 38 U.S.C. § 5103 (2012).

149. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 7, at 1.

150. *Mission, Vision, Core Values & Goals: About VA*, U.S. DEP'T OF VETERANS AFF., http://www.va.gov/about_va/mission.asp (last visited Aug. 5, 2017); *see also* U.S. DEP'T OF VETERANS AFF., *THE ORIGIN OF THE VA MOTTO: LINCOLN'S SECOND INAUGURAL ADDRESS*,

broader, more individualized disability assessment model that factors in non-economic, quality of life factors would improve the accuracy of VA rating decisions while also better allocating funds to veterans based on individualized need. Similarly, incorporating the Canadian model's provisions consisting of payment options and finite awards for less severe disabilities would foster a greater emphasis on recovery and rehabilitation, and would give veterans more independence and agency over their individual recovery plans. Ultimately, it is imperative that any reform of the VA disability benefits model maintains the pro-claimant, non-adversarial nature that is the defining characteristic of the program. Deserving veterans should not be made to shoulder an increased burden in order to receive the benefits they have earned through service and sacrifice.

<http://www.va.gov/opa/publications/celebrate/vamotto.pdf> (last visited Aug. 5, 2017); Riley, *The Importance of Preserving the Pro-Claimant Policy*, *supra* note 6, at 78.