



DEPARTMENT OF VETERANS AFFAIRS
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VETERANS BENEFITS ADMINISTRATION

VBA's Compensation Service
Did Not Fully Accommodate
Veterans with Visual
Impairments

REVIEW

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Executive Summary

According to VA, more than one million veterans have low vision, which can cause a loss of ability to perform necessary daily activities, such as reading, and cannot be corrected with eyeglasses. Roughly 130,000 are legally blind. VA expects this population to increase as more veterans develop vision loss from age-related diseases such as macular degeneration.¹ When the Veterans Benefits Administration (VBA) communicates with veterans regarding compensation for the effects of disabilities caused by diseases or injuries incurred or aggravated during active military service, it primarily communicates in writing—creating a potential problem for veterans who are visually impaired.

Federal law requires that visually impaired veterans have “meaningful access” to federal programs, including benefit programs operated by VBA. Meaningful access can include providing auxiliary aids and services to facilitate communication. In 1973, Congress enacted the Rehabilitation Act—the first major statute to protect the rights of individuals with disabilities—to ensure “that members of the disabled community could live independently and fully participate in society.”² In 1978, Congress amended the Rehabilitation Act to prohibit discrimination by “any Executive agency.”³

Given the challenge of providing veterans who are visually impaired with meaningful access to VBA’s programs, the VA Office of Inspector General (OIG) conducted this review to determine whether the Compensation Service—the office responsible for administering the disability compensation benefits program—complies with accessibility requirements for communicating benefits-related information to veterans with visual impairments.⁴

What the Review Found

The OIG found that VBA’s Compensation Service did not comply with section 504 of the Rehabilitation Act, despite having known since 2011 that its written products were not in compliance with the act. The Compensation Service accommodates only a small fraction of visually impaired veterans in the compensation claims process. By using VA’s reported data on

¹ “About Blind Rehabilitation Service,” VA Office of Blind Rehabilitative Services, accessed March 22, 2022, https://www.rehab.va.gov/PROSTHETICS/blindrehab/BRS_Coordinated_Care.asp; VA, “Annual eye exams essential to Veterans’ vision and eye health,” news release, August 10, 2021, <https://www.va.gov/opa/pressrel/includes/viewPDF.cfm?id=5702>. The review team did not validate these figures.

² The Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504 (1973); *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1259 (D.C. Cir. 2008).

³ Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, § 504, 92 Stat. 2955 (1978). Appendix A provides a timeline of legal mandates and other governing authorities.

⁴ VA Functional Organization Manual, ver. 6, “Compensation Service,” September 1, 2020.

more than one million veterans with low vision, as well as 130,000 who are legally blind, the review team determined that veterans with visual impairments could be excluded from accommodations by the Compensation Service's criteria despite the fact their impairment cannot be corrected with eyeglasses.⁵ The team also found that even legally blind veterans who meet the criteria are not accommodated through the entire claims process. In fact, accommodations are not made for the visually impaired veterans through the critical evidence-gathering phase of the process, and it is only when their claim has been decided that they are accommodated with enlarged text on the decision letter.⁶ Finally, although VBA's Adjudication Procedures Manual instructs claims processors to contact veterans with visual impairments by telephone to discuss the contents of decision notices, approximately 87 percent of claims showed no documentation of processors making such calls. These veterans may not have been made aware of adverse claims decisions or their rights to challenge such decisions.

The following example demonstrates how not providing accommodations may have serious consequences for veterans with visual impairments.

Example

A legally blind World War II veteran filed a claim for VBA benefits due to his visual impairment. After determining his military medical records were destroyed in the 1973 fire at the National Personnel Records Center, a claims processor sent him a letter requesting additional information to assist in locating medical records from his military service. Claims processors are not required to accommodate the evidence-gathering phase of the process and they did not enlarge the text of this letter nor attempt to contact the veteran over the phone to request the missing evidence. The veteran did not respond to the letter and VBA denied his claim in November 2019, based on his "failure to furnish the evidence we requested on September 5, 2019." The claims processor did not make any attempts to call the veteran to explain this decision.

These problems occurred, in part, because VBA failed to heed the guidance of VA's Office of General Counsel from over 10 years ago that stated many of VA's products were not in compliance with section 504 accessibility requirements.⁷ The Office of General Counsel offered suggestions such as providing alternative methods of communication to individuals with low vision, such as braille and navigable compact discs. Although the Office of General Counsel recirculated the memo in 2018, the Compensation Service still did not implement changes. According to the executive director of the Compensation Service, this was applicable for all

⁵ VA Manual 21-1, part 6, sub. 1, chap. 1, sec. b, topic 2, "Special Requirements for Visually Impaired Claimants," October 7, 2021. Appendixes B and C describe the review scope and methodology and sampling methodology.

⁶ Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, § 504.

⁷ VA Office of General Counsel memo, "Compliance with the Rehabilitation Act," December 29, 2011.

VBA business lines, not specific to the Compensation Service. Compliance with accessibility requirements was not funded, nor was there a contract in place that would support the effort.⁸

In 2017 and 2018, when the Compensation Service developed its own guidance surrounding accommodations for the visually impaired, it failed to coordinate its development with the Office of General Counsel, which is the sole authority for “all interpretative legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law.”⁹ It also did not coordinate with the Department of Justice’s Office of Civil Rights. Since 1980, any regulation or policy guidance related to equal accessibility has been subject to approval by the Department of Justice.¹⁰ All federal agencies must obtain approval from the Department of Justice prior to implementing accessibility guidance.¹¹

When asked, the Compensation Service’s executive director told the OIG that she believed that none of VA’s statutes or regulations required the agency to provide accommodations for veterans with visual impairments. This is erroneous, as section 504 of the Rehabilitation Act as well as VA’s implementing regulations found at 38 C.F.R. Part 15 unequivocally impose a responsibility upon VA to accommodate qualified individuals.¹²

In January 2020, VA’s Office of Resolution Management and the Office of Human Resources and Administration issued procedures in the VA handbook for implementing accessibility requirements to include assigning accessibility coordinators, publicizing their names to VA employees, and conducting a self-evaluation of policies to ensure compliance.¹³ The Compensation Service’s senior principal advisor informed the review team that “[w]e have NO involvement with Section 504 compliance.” Therefore, the Compensation Service did not assign coordinators or conduct the self-evaluation. As a result, VA claims processors cannot look to accessibility coordinators to assist in completing their duties, such as contacting veterans with visual impairments, which can result in veterans not receiving the required level of service.

The OIG concluded that VBA’s Compensation Service has not complied with section 504 of the Rehabilitation Act to provide meaningful access to its programs for veterans who are visually impaired. The Compensation Service’s continued failure to coordinate with VA’s Office of General Counsel; the Office of Resolution Management, Diversity and Inclusion; and the Department of Justice’s Office of Civil Rights, along with its failure to comply with VA-wide

⁸ The scope of this review is limited to one VBA business line, Compensation Service, because it has the responsibility of updating the Adjudication Procedures Manual that includes instructions for claims processors on how to accommodate veterans with low vision.

⁹ 38 C.F.R. § 14.500.

¹⁰ Exec. Order No. 12250, 45 Fed. Reg. 72995 (November 2, 1980).

¹¹ Exec. Order No. 12250.

¹² The Rehabilitation Act of 1973; 29 U.S.C. § 794(a); 38 C.F.R. Part 15.

¹³ VA Handbook 5975.6, Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973–Nondiscrimination Based on Disability in Federally Conducted Programs or Activities, January 23, 2020.

accessibility implementation requirements, will continue to make it more difficult for veterans with visual impairments and qualified individuals to participate fully in the disability compensation program.

What the OIG Recommended

The OIG made five recommendations to the under secretary for benefits.¹⁴ The first recommendation was to update the process for developing, approving, and issuing guidance for accommodating veterans with visual impairments. The OIG also recommended updating the Adjudication Procedures Manual to comply with federal regulations and VA policies. VBA should also develop and implement a quality assurance mechanism to ensure compliance with accessibility requirements, including telephone calls to veterans with visual impairments. The OIG further recommended VBA assign accessibility coordinators, publicize their names, and conduct a self-evaluation of policies as outlined in VA accessibility requirements. Finally, VBA should coordinate a process to ensure veterans with visual impairments are informed of the availability of accommodations, regardless of their level of disability.

VA Comments and OIG Response

The senior advisor for policy, performing the delegable duties of the under secretary for benefits, concurred with all the recommendations and provided responsive action plans. The senior advisor noted that VBA continues to have concerns with VBA consulting directly with the Department of Justice Civil Rights Division. Further, the senior advisor stated the deputy assistant secretary for resolution management serves as VA's liaison to the Department of Justice Civil Rights Division. VBA therefore considers consultation with the Office of General Counsel and Office of Resolution Management, Diversity and Inclusion sufficient to meet the intent of the OIG's recommendations. The senior advisor's comments appear in appendix D.

The action plans provided were responsive to each recommendation. The OIG will monitor VBA's implementation of planned actions and will close the recommendations when satisfied that sufficient progress has been made to address the intent of the recommendations and issues identified. The OIG acknowledges the senior advisor's concerns and recognizes that VA's Office of Resolution Management, Diversity and Inclusion serves as a liaison. Nonetheless, Compensation Service should communicate with the Office of Resolution Management,

¹⁴ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

Diversity and Inclusion to ensure that guidance for accommodating veterans with visual impairments is approved by the Department of Justice Civil Rights Division.



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Introduction

The VA Office of Inspector General (OIG) conducted this review to determine whether the Veterans Benefits Administration's (VBA) Compensation Service—the office responsible for administering the disability compensation benefits program—provided veterans with visual impairments “meaningful access” to disability compensation programs and activities.¹⁵ Meaningful access may include providing auxiliary aids and services to facilitate communication. The review was initiated due to concerns that VBA's Compensation Service does not fully accommodate veterans with visual impairments during the disability compensation claims process.

One root of these concerns is that in 2011, VA's Office of General Counsel sent a memorandum to VA leaders stating that VA administrations should develop policies to comply with the Rehabilitation Act to avoid time-consuming and costly litigation.¹⁶ Suggestions in the memorandum included providing alternative methods of communication to individuals with low vision, such as braille and navigable compact discs.

Despite being aware of the Office of General Counsel's concerns of noncompliance with the Rehabilitation Act since at least 2011, the Compensation Service did not ensure that its policies and actions regarding visually impaired veterans complied with federal accessibility requirements, as required.¹⁷

Federal Accessibility Requirements

This report focuses on three governing authorities that outline VBA's responsibilities when communicating with veterans with visual impairments: the Rehabilitation Act of 1973, 38 C.F.R. Part 15, and the Americans with Disabilities Act Amendments Act of 2008.¹⁸

Congress enacted the Rehabilitation Act of 1973 to ensure “that members of the disabled community could live independently and fully participate in society.”¹⁹ This legislation was the “first major federal statute designed to protect the rights of and provide assistance to” individuals with disabilities.²⁰

¹⁵ The Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504 (1973); *Alexander v. Choate*, 469 U.S. 287 (1985); VA Functional Organization Manual, ver. 6, “Compensation Service,” September 1, 2020.

¹⁶ VA Office of General Counsel memo, “Compliance with the Rehabilitation Act,” December 29, 2011.

¹⁷ 38 C.F.R. § 14.500; Exec. Order No. 12250, 45 Fed. Reg. 72995 (November 2, 1980); VA Directive 5975, *Diversity and Inclusion*, April 29, 2021.

¹⁸ The Rehabilitation Act of 1973; 38 C.F.R. Part 15; Americans with Disabilities Act Amendments Act of 2008, Pub. L. No. 110-325 (2008). Appendix A provides a timeline of legal mandates and other governing authorities.

¹⁹ The Rehabilitation Act of 1973; *American Council of the Blind v. Paulson*, 525 F.3d 1256, 1259 (D.C. Cir. 2008).

²⁰ *Smith v. Barton*, 914 F.2d 1330, 1338 (9th Cir. 1990).

In 1978, Congress amended the Rehabilitation Act, including section 504, to prohibit discrimination by “any Executive agency.”²¹ Accordingly, section 504 of the Rehabilitation Act guarantees “meaningful access” to federal programs or activities.²² Addressing accessibility, the amended section 504 provided that

No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance **or under any program or activity conducted by any Executive agency.**²³

The amendments to section 504 of the Rehabilitation Act further required that the heads of executive agencies issue regulations in furtherance of the law.²⁴

VA regulations implementing the Rehabilitation Act are found at 38 C.F.R. Part 15. Pursuant to these regulations, VA is prohibited from “[d]eny[ing] a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service.”²⁵ Additionally, the implementing regulations require VA to “furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.”²⁶

The Americans with Disabilities Act Amendments Act of 2008, which applies to section 504 of the Rehabilitation Act, required flexibility and broad construction in determining who is considered disabled for coverage and protection purposes.²⁷ Pursuant to the legislative changes, section 504 of the Rehabilitation Act may apply to an individual who has a physical or mental impairment that substantially limits the ability of the individual to perform a major life activity, such as seeing, as compared to most people in the general population. The determination of whether an individual has a physical or mental impairment that substantially limits a major life activity (and therefore is considered disabled for section 504 purposes) should be made on a case-by-case basis.²⁸

²¹ Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, § 504, 92 Stat. 2955 (1978).

²² Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, § 504; Alexander v. Choate.

²³ 29 U.S.C. § 794(a) (bold emphasis added).

²⁴ 29 U.S.C. § 794(a).

²⁵ 38 C.F.R. § 15.130.

²⁶ 38 C.F.R. § 15.160(a)(1).

²⁷ The Rehabilitation Act of 1973; Americans with Disabilities Act Amendments Act of 2008.

²⁸ Americans with Disabilities Act Amendments Act of 2008; 38 C.F.R. § 15.160(a)(1)(i).

Disability Compensation Claims Process

As a federal program, VBA's disability compensation program is governed by section 504 of the Rehabilitation Act.²⁹ The disability claims process consists of several stages, or phases, including the gathering of evidence, the decision-making phase, and the processing of the decision. During these stages, claims processors assist veterans, engage in written correspondence to collect evidence, and provide other information concerning the claims process. Veterans may, for example, receive letters from VBA

- requesting a consent form to allow VBA to obtain private medical records on behalf of the veteran,
- explaining what additional information could assist in supporting a claim for benefits, and
- notifying them of a claims decision.

VBA's Adjudication Procedures Manual (hereafter referred to as the "manual") includes instructions for preparing decision notices for veterans with visual impairments as defined by the Compensation Service.³⁰ According to the manual provisions, VBA claims processors must prepare a decision notice using 18-point font for veterans with visual impairment that is at least 70 percent disabling or who have expressly requested that VA accommodate their visual impairment. Furthermore, "once the decision notice is submitted for mailing, a claims processor must make a minimum of three attempts to contact the veteran by telephone to explain the substance of the decision." If the claims processor is unsuccessful in contacting the veteran, a contact note must be placed in the veteran's claims record.³¹

VBA's Definition of a Veteran with Visual Impairment

VBA assigns disability ratings that vary according to the degree (evaluation) of disability. Disabilities range from 0 percent to 100 percent, in increments of 10 percent. The more severe the impairment, the higher the percentage. Visual acuity of 20/200 in both eyes correlates to a VBA disability evaluation of 70 percent.³² Veterans with visual impairment assigned a disability rating of at least 70 percent disabling is eligible for their record to have a "blind corporate flash"

²⁹ 29 U.S.C. § 794(a).

³⁰ VA Manual 21-1, part 6, sub. 1, chap. 1, sec. b, topic 2, "Special Requirements for Visually Impaired Claimants," October 7, 2021.

³¹ VA Manual 21-1, "Special Requirements for Visually Impaired Claimants."

³² 38 C.F.R. § 4.79.

indicator to alert claims processors that accommodations are necessary.³³ The visual impairment does not have to be related to the veteran's military service to warrant accommodation. In December 2017, the Compensation Service updated its manual to allow veterans, regardless of their level of disability, to request accommodation for visual impairment.³⁴

Common Types of Visual Impairment

Eye conditions cause different types of impairments that cannot be accommodated only by increasing the font size of decision notices. For example, glaucoma often results in tunnel vision, so enlarged font may not accommodate a veteran with glaucoma because the field of vision is reduced.³⁵ While enlarged font and telephone calls are required to notify veterans of their final decision, there is no provision to accommodate these veterans during the evidence-gathering or any other phase of the claims process.³⁶ Also, depending on the impairment, an enlarged font may or may not be sufficient for the veteran to be accommodated fully. Figure 1 shows how four common eye conditions may hinder a veteran's ability to read communications from VBA. Changes in font size will not address these common eye conditions.

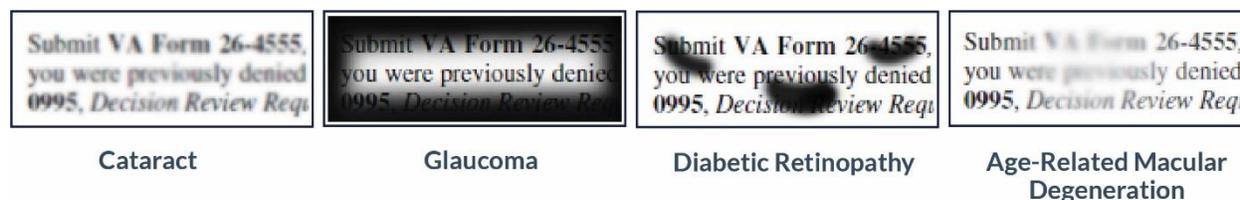


Figure 1. Examples of what individuals with common eye disorders and diseases see. Source: Adapted by the VA OIG from “Common Eye Disorders and Diseases,” Centers for Disease Control and Prevention, to show how individuals with visual impairments see the printed word. <https://www.cdc.gov/visionhealth/basics/ced/index.html> accessed March 23, 2022.

Without primary consideration of the specific accommodation necessary to the individual veteran with visual impairments, the Compensation Service is not providing these veterans with meaningful access to benefits, as required by law.³⁷ Example 1 demonstrates how not considering the veteran's specific needs may have serious consequences for veterans with visual impairments.

³³ VA Manual 21-1, “Special Requirements for Visually Impaired Claimants.” VBA employs a variety of data indicators that are added to veterans’ electronic records. Corporate flashes are claimant-specific indicators that represent an attribute, fact, or status that is unlikely to change.

³⁴ VA Manual 21-1, “Special Requirements for Visually Impaired Claimants.”

³⁵ “Glaucoma,” Mayo Clinic, accessed June 28, 2022, <https://www.mayoclinic.org/diseases-conditions/glaucoma/symptoms-causes/syc-20372839>.

³⁶ VA Manual 21-1, “Special Requirements for Visually Impaired Claimants.”

³⁷ 38 C.F.R. § 15.160(a)(1)(i).

Example 1

An August 2020 law change eased the requirements for veterans to receive money for home adaptation grants for blind veterans to make their homes more accessible.³⁸ To promote this new benefit, VBA sent letters to potentially eligible, service-connected blind veterans. One of these eligibility letters was sent to a legally blind veteran diagnosed with cataracts, diabetic retinopathy, and macular degeneration. In the team's review of the veteran's VBA claims records, it did not find any attempts by VBA to adjust the eligibility letter to accommodate the veteran's visual impairments.

³⁸ The Ryan Kules and Paul Benne Specially Adaptive Housing Improvement Act of 2019, Pub. L. No. 116-154, § 2 (2019).

Results and Recommendations

Finding: The Compensation Service Did Not Fully Accommodate Veterans with Visual Impairments by Ensuring Meaningful Access to Its Disability Programs and Services

The OIG determined that VBA's Compensation Service did not ensure veterans with visual impairments had meaningful access to disability compensation program services and activities.³⁹ The Compensation Service does provide decision notices in enlarged font and requires claims processors to follow up with telephone calls. However, VBA's criteria for issuing decision letters with enlarged font is restrictive and does not comply with section 504's broad definition and construction of disability.⁴⁰ Even veterans with visual impairments who meet VBA's definition of legally blind may not receive full accommodations. Compensation Service did not ensure that claims processors complied with its manual's instructions to contact veterans with visual impairments by telephone to discuss the contents of decision notices.⁴¹ Consequently, some veterans may not have been able to properly interpret a notification of adverse claims decisions or their rights to challenge such decisions.

This occurred in part because VBA failed to heed observations and advice provided by VA's Office of General Counsel more than 10 years ago regarding section 504 accessibility requirements. VBA's continued failure to coordinate with VA's Office of General Counsel, the Office of Resolution Management, Diversity and Inclusion, and the Department of Justice's Office of Civil Rights, along with its failure to comply with VA-wide accessibility implementation requirements, such as assigning accessibility coordinators, potentially hinders qualified veterans in their efforts to participate fully in the disability compensation program.⁴²

What the OIG Did

To determine whether VBA's Compensation Service complied with accessibility requirements for communicating benefits-related information to veterans with visual impairments to ensure meaningful access to the disability compensation program, the team reviewed applicable laws, regulations, policies, and procedural guidance. The team reviewed a statistically selected sample of 100 claims VBA completed for veterans with identified visual impairments from

³⁹ Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, § 504.

⁴⁰ VA Manual 21-1, "Special Requirements for Visually Impaired Claimants"; Americans with Disabilities Act Amendments Act of 2008.

⁴¹ VA Manual 21-1, "Special Requirements for Visually Impaired Claimants."

⁴² 38 C.F.R. § 14.500; Exec. Order No. 12250; VA Directive 5975; VA Handbook 5975.6, Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973—Nondiscrimination Based on Disability in Federally Conducted Programs or Activities, January 23, 2020.

October 1, 2019, through July 31, 2021, for which decision notices were sent. To gain an understanding of the Compensation Service's guidance for communicating with veterans with visual impairments, the team assessed compliance with applicable laws, VA regulations, and accessibility policies. The team also interviewed staff with veterans service organizations, program officials with the Compensation Service, and 23 randomly selected claims processors and managers across 18 VA regional offices.⁴³

This finding is based on the following determinations:

- The Compensation Service criteria for determining accommodation entitlement for veterans with visual impairments are restrictive.
- Despite awareness of noncompliance, the Compensation Service did not fully accommodate veterans with visual impairments.
- The Compensation Service did not consult with appropriate entities before issuing accommodation guidance.
- The Compensation Service did not accommodate veterans with visual impairments at every stage of the claims process.
- The Compensation Service did not always completely provide accommodations even when it satisfied some of its own requirements.
- The Compensation Service was unaware of VA-wide accessibility requirements.

The Compensation Service Criteria for Determining Accommodation Entitlement for Veterans with Visual Impairments Are Restrictive

Since 2017, the Compensation Service's claims processors have only been required to make accommodations to veterans with visual impairments evaluated at the 70 percent level or higher or those who specifically requested an accommodation. These accommodations include using an enlarged font for decision letters and follow-up telephone calls. Veterans with a visual impairment assigned a disability rating of at least 70 percent disabling are eligible for their record to have a "blind corporate flash" indicator to alert claims processors that accommodations are necessary.⁴⁴

According to VA data, more than one million veterans have low vision, which can cause a loss of ability to perform necessary daily activities, such as reading, and cannot be corrected with eyeglasses. About 130,000 veterans are legally blind. VA expects this population to increase as

⁴³ Appendixes B and C describe the review scope and methodology and sampling methodology.

⁴⁴ VA Manual 21-1, "Special Requirements for Visually Impaired Claimants"; 38 C.F.R. § 4.79. VBA employs a variety of data indicators that are added to veterans' electronic records.

more veterans develop vision loss from age-related diseases such as macular degeneration.⁴⁵ Based on these data, the Compensation Service's definition for veterans with visual impairments could exclude veterans who may need accommodations to participate in the disability compensation program.

Prior to the passage of the 2008 Americans with Disabilities Act Amendments Act, federal courts very strictly applied the law, routinely finding that individuals failed to meet the definition of "disability."⁴⁶ This resulted in findings that the 1990 Americans with Disabilities Act did not protect a wide range of individuals.⁴⁷ To address the difficulties with individuals qualifying for protection under the 1990 Americans with Disabilities Act, Congress passed the Americans with Disabilities Act Amendments Act in 2008. The act, which applies to section 504 of the Rehabilitation Act, requires a more flexible and broadly construed definition of the term "disability."⁴⁸

The Compensation Service's accommodation criteria, however, are too restrictive and do not satisfy the intent of section 504 of the Rehabilitation Act.⁴⁹ Pursuant to section 504, the Compensation Service should consider a veteran's disability status on a case-by-case basis to determine whether the visual impairment substantially limits the ability of the individual to perform a major life activity, such as seeing, reading, or communicating.⁵⁰ Section 504 employs a broader definition for defining disability and, therefore, determining eligibility for the accommodations set forth in the VBA manual. By relying on more restrictive criteria, however, the Compensation Service may have denied veterans with visual impairments access to its disability compensation program and activities.

Emails obtained by the review team during the review confirmed that in August 2017, the chief of the Compensation Service Policy Staff acknowledged that VBA's restrictive definition excluded veterans who may have needed accommodations to read letters regarding their benefits. In one email, the chief stated, "However, I will say that you can be rated below 70% ... and be what would be considered visually impaired." In December 2017, the Compensation Service updated its manual to allow veterans with visual impairments to request accommodations regardless of the level of disability.⁵¹

⁴⁵ "About Blind Rehabilitation Service," VA Office of Blind Rehabilitative Services, https://www.rehab.va.gov/PROSTHETICS/blindrehab/BRS_Coordinated_Care.asp, accessed March 22, 2022; VA, "Annual eye exams essential to Veterans' vision and eye health," news release, August 10, 2021, <https://www.va.gov/opa/pressrel/includes/viewPDF.cfm?id=5702>. The review team did not validate these figures.

⁴⁶ Americans with Disabilities Act Amendments Act of 2008.

⁴⁷ Americans with Disabilities Act of 1990, Pub. L. No.101-336 (1990).

⁴⁸ The Rehabilitation Act of 1973.

⁴⁹ The Rehabilitation Act of 1973.

⁵⁰ 38 C.F.R. § 15.160(a)(1)(i); Americans with Disabilities Act Amendments Act of 2008.

⁵¹ VA Manual 21-1, "Special Requirements for Visually Impaired Claimants."

When interviewed by the review team, an attorney from the Department of Justice Civil Rights Division—the office responsible for reviewing and approving federal agency accessibility regulations and policies—agreed that VBA's requirements were too restrictive. Responding to a question about whether VBA's criteria are consistent with section 504 [accessibility] requirements, the attorney described the Compensation Service's definition as too rigid and explained that claimants should not have to “hit a certain number” in order to be eligible for accommodations. According to the law, the determining requirement is whether the visual impairment substantially limits the ability of the individual to perform a major life activity, such as seeing, reading, or communicating.⁵²

Despite Awareness of Noncompliance, the Compensation Service Did Not Fully Accommodate Veterans with Visual Impairments

The section 504 accessibility concerns are not new to the Compensation Service and its officials, yet they have not made necessary adjustments to comply with section 504 of the Rehabilitation Act. Consequently, veterans with visual impairments may not have meaningful access to disability compensation programs and activities.

In December 2011, the Office of General Counsel provided a memorandum to VA under secretaries and other key officials, notifying them that “immediate action is required in order to comply with the Rehabilitation Act.”⁵³ The memorandum noted that “certain VA communications to claimants and beneficiaries were not compliant;” there were areas of concern regarding the ability of claimants or beneficiaries with disabilities to access, read, and understand benefit decisions and particular form letters used to communicate about programs and benefits. While urging VBA and other administrations to develop policies and procedures that complied with the Rehabilitation Act, the General Counsel also recommended considering alternate formats, such as braille and navigable compact disc, and advising claimants and beneficiaries of their right to ask for an alternate format.

In response to the 2011 memorandum, VBA formed a workgroup consisting of members of multiple services that provided a draft document dated September 2013, with goals and objectives to comply with accessibility requirements and meet the Office of General Counsel's recommendations.⁵⁴ However, the workgroup's recommendations for alternate formats were not implemented by the Compensation Service.

⁵² Americans with Disabilities Act Amendments Act of 2008.

⁵³ VA Office of General Counsel memo, “Compliance with the Rehabilitation Act.”

⁵⁴ VBA, “Communicating with the Visually Impaired,” September 2013. The services included Pension and Fiduciary; Loan Guaranty; Insurance; Education; Vocational Rehabilitation and Employment; and Compensation Service. Note: The document provided to the team was unsigned and labeled as a draft.

During a March 2018 congressional hearing, a member of one of the subcommittees asked VBA leaders about compliance with accessibility requirements for veterans with visual impairments.⁵⁵ This prompted the Office of General Counsel to recirculate its 2011 memorandum to VBA officials; still, no changes were implemented. According to the executive director of the Compensation Service, this was applicable for all VBA business lines, not specific to the Compensation Service. The executive director stated, however, that compliance with accessibility requirements was not funded and there was not a contract in place that would support the effort.

The Compensation Service Did Not Consult with Appropriate Entities before Issuing Accommodation Guidance

The Compensation Service did not consult with the Office of General Counsel; the Office of Resolution Management, Diversity and Inclusion; or the Department of Justice's Office of Civil Rights to ensure that veterans with visual impairments were afforded equal access to the disability program and activities guaranteed by section 504 of the Rehabilitation Act, as required.⁵⁶ Compensation Service leaders failed to appropriately consult with these entities even though each has a specific responsibility with respect to ensuring adherence to law.

VA's Office of General Counsel is the sole authority for "all interpretative legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law."⁵⁷ The Office of General Counsel underscored the significance of its role as VA's legal officer when, in a 2017 memorandum, under secretaries, assistant secretaries, and other key VA officials received the instruction that "no VA employee outside of OGC [Office of General Counsel] [may] provide legal advice involving the construction or application of statutes, regulations, case law, or other legal authorities."⁵⁸ In addition, the Department of Justice's Civil Rights Division is responsible for reviewing and approving federal agency accessibility guidance to ensure consistency with section 504 of the Rehabilitation Act and other nondiscrimination laws.⁵⁹ The deputy assistant secretary for resolution management serves as VA's liaison to the Department of Justice's Office of Civil Rights.⁶⁰

⁵⁵ Joint Hearing on U.S. Department of Veterans Affairs FY2019 [fiscal year 2019] Budget: Veterans Benefits Administration and the Board of Veterans Appeals, Before the Subcommittee on Economic Opportunity and Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans' Affairs, 115th Cong. (March 15, 2018).

⁵⁶ 38 C.F.R. § 14.500; VA Directive 5975; Exec. Order No. 12250.

⁵⁷ 38 C.F.R. § 14.500.

⁵⁸ VA Office of General Counsel memo, "Exclusive Authorities of the VA Office of General Counsel," October 20, 2017.

⁵⁹ Exec. Order No. 12250.

⁶⁰ VA Handbook 5975.6.

The Compensation Service issued guidance without consulting with the Office of General Counsel and the Department of Justice Civil Rights Division.⁶¹ Table 1 provides an overview of relevant guidance the Compensation Service issued.

Table 1. The Compensation Service's Relevant Guidance Changes Related to Veterans with Visual Impairments

Date	Guidance
May 17, 2017	Required font size of enlarged notification letters be increased from 14 to 18 point.
December 12, 2017	Defined "visually impaired veteran" as meeting the 70 percent disability level and also added a provision to allow veterans to request accommodations.
December 14, 2018	Exempted text in the sidebar of notification letters from meeting the 18-point requirement, allowing it to remain in 8-point font.*

Source: VA OIG analysis of the Compensation Service's documentation for substantive manual changes for decision notice preparation for veterans with visual impairments.

** Sidebar refers to information provided on the right margins of the first page of notification letters, such as a list of the enclosures and contact information.*

The Compensation Service's executive director informed the review team that Compensation Service staff consults with the Office of General Counsel when they need "to resolve a conflict in interpretation of legal matters or gauge potential litigation risks." The executive director told the team that she believed that none of VA's statutes or regulations required the agency to provide accommodations for veterans with visual impairments. This is erroneous, as section 504 of the Rehabilitation Act as well as VA's implementing regulations found at 38 C.F.R. Part 15 unequivocally impose a responsibility upon VA to accommodate qualified individuals.⁶² Further, the Office of General Counsel's memorandum (first issued in 2011 and then recirculated seven years later) plainly warned that certain VA communications to veterans were noncompliant with federal accessibility requirements.⁶³

Since 1980, all federal agencies must obtain approval from the Department of Justice prior to implementing accessibility guidance.⁶⁴ The review team identified multiple memorandums from

⁶¹ 38 C.F.R. § 14.500; Exec. Order No. 12250.

⁶² The Rehabilitation Act of 1973; 29 U.S.C. § 794(a); 38 C.F.R. Part 15.

⁶³ VA Office of General Counsel memo, "Compliance with the Rehabilitation Act."

⁶⁴ Exec. Order No. 12250.

the Department of Justice to federal agencies from 2018 through 2021.⁶⁵ These memorandums explained the importance of the executive order and emphasized that coordination with the Department of Justice's Civil Rights Division was essential to ensure clear and consistent government-wide implementation by federal agencies. According to an attorney from the Department of Justice's Civil Rights Division, the Compensation Service's failure to coordinate with the division resulted in the Compensation Service establishing accessibility criteria that are narrow and inconsistent with section 504 of the Rehabilitation Act.

The Compensation Service provided documentation of its process to develop, approve, and issue guidance for communicating with veterans with visual impairments. The review team determined this document did not include coordination with the Office of General Counsel; Office of Resolution Management, Diversity and Inclusion; and Department of Justice Civil Rights Division, as required.⁶⁶ Figure 2 illustrates the process the Compensation Service should follow to develop, approve, and issue guidance for communicating with veterans with visual impairments.

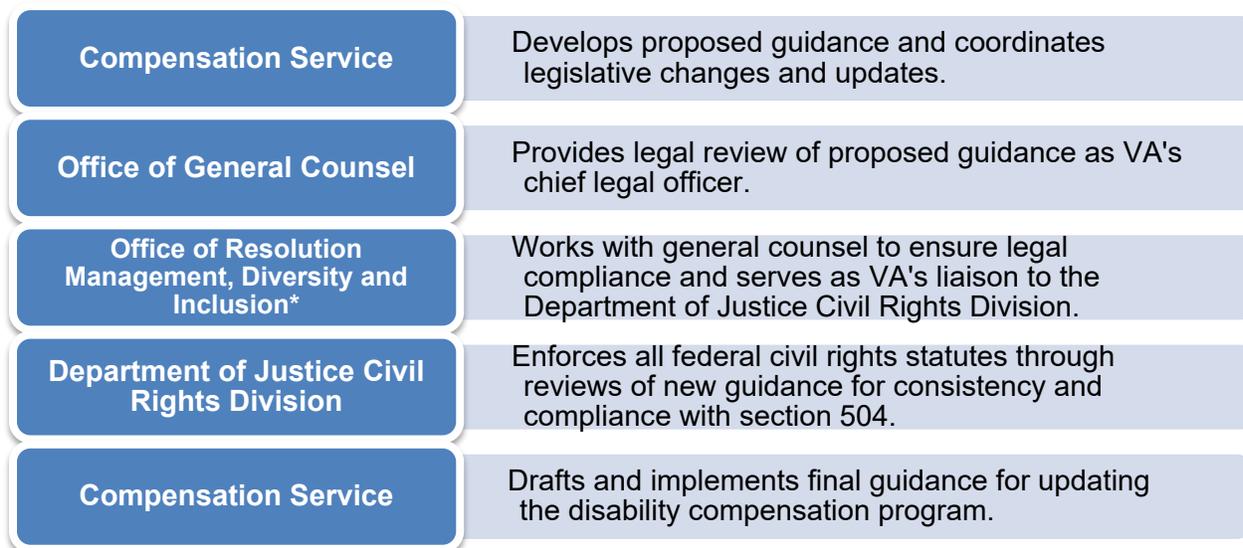


Figure 2. VA's process for how program offices should implement accessibility guidance for people with conditions covered by section 504 of the Rehabilitation Act of 1973.

Source: VA OIG analysis of VA regulations and directives, and Department of Justice memorandums.

*Effective April 29, 2021.

⁶⁵ U.S. Department of Justice Civil Rights Division memo, "Clearance Requirements for Title VI, Title IX, Section 504 and Related Nondiscrimination Regulations and Policy Guidance Documents," April 24, 2018; U.S. Department of Justice Civil Rights Division memo, "Reminder of Clearance Requirements for Title VI, Title IX, Section 504 and Related Nondiscrimination Regulations and Policy Guidance Documents," August 19, 2020; U.S. Department of Justice Civil Rights Division memo, "Executive Order 12250 Clearance Requirements and Coordination for Nondiscrimination Regulations and Policy Guidance Documents and Related Executive Orders," February 10, 2021.

⁶⁶ 38 C.F.R. § 14.500; Exec. Order No. 12250; VA Directive 5975.

The Compensation Service Did Not Accommodate Veterans with Visual Impairments at Every Stage of the Claims Process

VBA primarily communicates with veterans in writing. For example, when veterans are seeking compensation benefits, they may receive letters asking them to submit information or documents to support their claim for benefits, such as medical records or additional information about their military service. Some letters include specific response timelines during which veterans must provide information, sometimes in as few as 15 days.⁶⁷ When a veteran does not respond to one of these letters within the specified time frame, the claims processors may deny the veteran's claim.⁶⁸ Missed deadlines for responding to VBA letters seeking veterans' information for determining ongoing eligibility could result in the reduction or termination of benefits.⁶⁹

Despite the critical nature of these letters, such as seeking additional evidence to support claims, claims processors are not required to make accommodations for veterans with visual impairments at any stage in the process other than the decision notices. Proposals to reduce benefits are also sent as letters with no related accommodations. Without accommodations for all letters sent to veterans with visual impairments, the Compensation Service is not providing these veterans with equal access to benefits, as required by law. Example 2 demonstrates how not providing accommodations may have serious consequences for veterans with visual impairments.

Example 2

A legally blind World War II veteran filed a claim for VBA benefits due to his visual impairment. After determining his military medical records were destroyed in the 1973 fire at the National Personnel Records Center, a claims processor sent him a letter requesting additional information to assist in locating medical records from his military service. Claims processors are not required to accommodate the evidence-gathering phase of the claims process; therefore, they did not enlarge the text of this letter and did not attempt to call the veteran to request the missing evidence. The veteran did not respond to the letter and VBA denied his claim in November 2019, based on his "failure to furnish the evidence we requested on September 5, 2019." The claims processor did not make any attempts to call the veteran to explain this decision.

⁶⁷ VA Manual 21-1, part 3, sub. 2, chap. 3, sec. 1, topic e, "RO [Regional Office] Procedures for Requesting Medical Records," July 31, 2020.

⁶⁸ VA Manual 21-1, part 6, sub. 1, chap. 1, sec. a, topic 4, sub. a, "Handling a Claimant's Failure to Submit Evidence VA Requested," April 24, 2020.

⁶⁹ VA Manual 21-1, "Handling a Claimant's Failure to Submit Evidence VA Requested"; VA Manual 21-1, part 10, sub. 2, chap. 3, sec. b, topic 2, sub. a, "Receipt of Insufficient Evidence or No Response Within 60 Days," February 19, 2019.

The Compensation Service's own Quality Assurance team concurred with the review team's assessment of this case. The executive director of Compensation Service reported initiating a process to update additional correspondence to print in enlarged font. The Compensation Service provided documentation to the team in May 2022 reporting the system was updated to allow claims processors to generate letters with increased font size for veterans with visual impairments. The team did not assess this change because it had a planned implementation date of September 2022, which was after the team performed the review.

The Compensation Service Did Not Always Completely Provide Accommodations Even When It Satisfied Some of Its Own Requirements

The OIG team reviewed 100 decision notices sent to veterans with visual impairments for claims completed from October 1, 2019, through July 31, 2021, to determine whether the Compensation Service provided enlarged text in decision notices and ensured claims processors made required telephone calls. When a claims processor successfully reaches a veteran over the phone, the processor is required to document the call by uploading a form to the veteran's electronic claims record. If a claims processor cannot reach a veteran over the phone, the processor must make three attempts and document them by adding notes to the veteran's electronic record.⁷⁰

The review team estimated that 99 percent of decision notices sent to veterans with visual impairments had enlarged text. However, the team also estimated that 87 percent of decisions have no documented attempts to call veterans to inform them of the decisions. When asked, some claims processors stated they did not make calls because they thought it was someone else's responsibility. As stated earlier, an enlarged font may not be sufficient to accommodate all visual impairments, and without calls or alternative formats, these veterans may not be aware of the substance of their decision notice.

The review team also found that while VBA has two quality assurance programs, national and local, it did not use either program to verify whether VBA personnel made or documented the required calls to veterans with visual impairments. When interviewed, the Compensation Service's quality assurance officer stated they did not know why VBA personnel failed to document call attempts. However, the quality assurance officer explained the lack of a phone call did not reflect an error because it did not change the outcome of the veteran's entitlement to benefits. Most quality review specialists the team interviewed agreed with this viewpoint, noting that the quality assurance checklist did not include provisions to ensure the required telephone calls were made to veterans with visual impairments.

⁷⁰ VA Manual 21-1, "Special Requirements for Visually Impaired Claimants."

The Compensation Service Was Unaware of VA-Wide Accessibility Requirements

VA regulations require the Compensation Service, which is responsible for the disability compensation program, to “take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public,” and “furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.”⁷¹ Additionally, the regulation states: “In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.”⁷² For example, auxiliary aids useful for persons with impaired vision include readers, braille materials, audio recordings, and other similar services and devices.⁷³

In January 2020, VA’s Office of Resolution Management and the Office of Human Resources and Administration issued procedures in the VA handbook for implementing accessibility requirements.⁷⁴ The guidance required VA program offices, including the Compensation Service, to

- assign accessibility coordinators by April 2020;
- publicize the names of the coordinators to VA employees through email announcements, posters, and public websites; and
- conduct a self-evaluation of policies, practices, and effectiveness, and ensure compliance with accessibility requirements within one year.⁷⁵

Accessibility coordinators are responsible for handling all requests from beneficiaries of VA programs and activities applicable to access, auxiliary aids, services, and external complaints. They serve as points of contact at the various administrations, staff offices, and facilities. In determining reasonable access, coordinators must give primary consideration to the type of accommodation requested by individuals with disabilities.

However, the Compensation Service’s senior principal advisor informed the review team that that “[w]e have NO involvement with Section 504 compliance.” Therefore, the Compensation Service did not assign coordinators or conduct the self-evaluation. As a result, VA claims processors cannot look to accessibility coordinators to assist them to effectively accommodate

⁷¹ 38 C.F.R. § 15.160(a); 38 C.F.R. § 15.160(a)(1)(i).

⁷² 38 C.F.R. § 15.102; 38 C.F.R. § 15.160(a); 38 C.F.R. § 15.160(a)(1)(i).

⁷³ 38 C.F.R. § 15.103.

⁷⁴ VA Handbook 5975.6.

⁷⁵ Accessibility coordinators handle all requests from beneficiaries of VA programs and activities applicable to access, auxiliary aids, and services.

veterans with visual impairments. Additionally, by not conducting a self-evaluation of policies and practices, the Compensation Service missed the opportunity to identify and correct noncompliance with accessibility requirements.

To assess additional VA-wide accessibility accommodations for veterans with visual impairment, the review team examined application forms for disability compensation, the text of standardized letters sent to veterans seeking benefits, and available VA public websites. None of these provided information to veterans on how to request an accommodation for visual impairment.

Conclusion

By not taking the appropriate steps to ensure compliance with federal regulations, the Compensation Service may have denied veterans with visual impairments meaningful access to the disability compensation program. The Compensation Service's criteria for providing accommodations for veterans with visual impairments excluded veterans who may need accommodations to participate in the disability compensation program.

Despite being aware its written products had been at odds with the Rehabilitation Act since 2011, VBA's Compensation Service has not implemented policies and procedures to fully accommodate veterans with visual impairments. The Compensation Service also has not coordinated with entities as required prior to issuing accommodation guidance to ensure its manual is consistent with accessibility requirements.

Even when the Compensation Service did provide some accommodations, such as enlarged font and telephone calls, it only did so for final decision notices. It did not accommodate critical stages of the claims process, such as explaining to veterans the evidence and information necessary to support their claims, despite the critical nature of benefits-related correspondence. The Compensation Service does not provide additional alternate formats of communications (except for enlarged font and telephone calls for final decision letters), as suggested by VA's own Office of General Counsel. Additionally, the review team estimates 87 percent of final decision notices did not have documentation of the required telephone contact.

The OIG determined the Compensation Service is not ensuring meaningful access for veterans with visual impairments to the entire claims process, all programs, and activities. Until the Compensation Service complies with its legal obligation to accommodate veterans with visual impairments, these veterans will continue to not have meaningful access to benefits and services.

Recommendations 1–5

The OIG made the following recommendations to the under secretary for benefits:⁷⁶

1. Update the process for developing, approving, and issuing guidance for accommodating veterans with visual impairments to include steps for consulting with the Office of General Counsel; Office of Resolution Management, Diversity and Inclusion; and the Department of Justice Civil Rights Division.
2. Coordinate with the Office of General Counsel; Office of Resolution Management, Diversity and Inclusion; and the Department of Justice Civil Rights Division to bring the existing Veterans Benefits Administration's Adjudication Procedures Manual for accommodating veterans with visual impairments into compliance with 38 C.F.R. § 14.500, VA Directive 5975, and Executive Order 12250.
3. Develop and implement a quality assurance mechanism to ensure compliance with accessibility requirements, including mandated telephone calls to veterans with visual impairments.
4. Assign accessibility coordinators, publicize their names, and conduct a self-evaluation of policies as outlined in VA accessibility requirements.
5. Coordinate a process to ensure veterans with visual impairments are informed of the availability of accommodations, regardless of their level of disability.

VA Management Comments

The senior advisor for policy, performing the delegable duties of the under secretary for benefits, concurred with all the recommendations and provided responsive action plans. The senior advisor noted that VBA continues to have concerns with VBA consulting directly with the Department of Justice Civil Rights Division. Further, the senior advisor stated the deputy assistant secretary for resolution management serves as VA's liaison to the Department of Justice Civil Rights Division. VBA therefore considers consultation with the Office of General Counsel and Office of Resolution Management, Diversity and Inclusion sufficient to meet the intent of the OIG's recommendations. The full text of the senior advisor's comments appears in appendix D.

A summary of VBA's responses to the recommendations follows:

- **Recommendation 1.** With a target completion date of February 1, 2023, VBA will update the process for developing, approving, and issuing guidance for accommodating veterans with visual impairments to include steps for consulting with the Office of

⁷⁶ The recommendations addressed to the under secretary for benefits are directed to anyone in an acting status or performing the delegable duties of the position.

General Counsel and Office of Resolution Management, Diversity and Inclusion to satisfy this recommendation.

- **Recommendation 2.** With a target completion date of April 1, 2023, VBA will make the necessary changes to VBA's Adjudication Procedures Manual for accommodating veterans with visual impairments in consultation with the Office of General Counsel and Office of Resolution Management, Diversity and Inclusion to satisfy this recommendation.
- **Recommendation 3.** With a target completion date to be determined contingent on completion of the manual changes outlined in recommendation 2, VBA is prepared to make the necessary changes to the quality assurance process and checklist to ensure compliance with accessibility requirements, including mandated telephone calls to veterans with visual impairments.
- **Recommendation 4.** With a target completion date of May 31, 2023, VBA will ensure accessibility coordinators are assigned and publicized, and conduct a self-evaluation of policies as outlined in VA accessibility requirements.
- **Recommendation 5.** With a target completion date of May 31, 2023, VBA will take the appropriate action necessary to ensure veterans with visual impairments are informed of the availability of accommodations, regardless of their level of disability.

OIG Response

The action plans provided were responsive to each recommendation. The OIG will monitor VBA's implementation of planned actions and will close the recommendations when satisfied that sufficient progress has been made to address the intent of the recommendations and issues identified. The OIG acknowledges the senior advisor's concerns and recognizes that VA's Office of Resolution Management, Diversity and Inclusion serves as a liaison. Nonetheless, Compensation Service should communicate with Office of Resolution Management, Diversity and Inclusion to ensure that guidance for accommodating veterans with visual impairments is approved by the Department of Justice Civil Rights Division.

Appendix A: Legal Mandates and Other Governing Authorities

Table A.1 provides an overview of legal mandates and other governing authorities related to providing accommodations for veterans with visual impairments.

Table A.1. Timeline of Governing Authorities Related to Accommodations for Veterans with Visual Impairments

Year	Source	Summary
1973	The Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504 (1973)	This act requires federally funded programs and entities to ensure that disabled individuals have equal access to programs and activities provided by a department or agency.
1977	38 C.F.R. § 14.500, Functions and Responsibilities of General Counsel	This VA regulation states the Office of General Counsel is responsible for all interpretive legal advice involving construction or application of laws and assistance required to implement laws administered by VA.
1978	Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. No. 95-602, § 504, 92 Stat. 2955 (Nov. 6, 1978)	In 1978, Congress amends the Rehabilitation Act, including section 504, to prohibit discrimination by any executive agency. It also requires that the heads of executive agencies issue regulations in furtherance of the law. Accordingly, each federal agency issues, administers, and enforces its own set of section 504 regulations tailored to its programs.
1980	Executive Order No. 12250, 45 Fed. Reg. 72995 (November 2, 1980), Leadership and Coordination of Nondiscrimination Laws	This order requires all federal agencies to obtain approval from the Department of Justice prior to implementing section 504 accessibility guidance.
1988	38 C.F.R. Part 15, Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Veterans Affairs	This VA regulation codifies section 504 of The Rehabilitation Act of 1973.
1990	Americans with Disabilities Act of 1990, Pub. L. No. 101-336 (1990)	This act establishes a clear and comprehensive prohibition of discrimination on the basis of disability.
2008	Americans with Disabilities Act Amendments Act of 2008, Pub. L. No. 110-325, § 4 (2008)	This act updates the Americans with Disabilities Act of 1990 and broadens the definition of disability for section 504 of the Rehabilitation Act of 1973.

Year	Source	Summary
2011	Office of General Counsel Memorandum to VA under secretaries, Chairman of Board of Veterans Appeals, and deputy assistant secretary for resolution management, regarding Compliance with the Rehabilitation Act	This memorandum states VA administrations should develop policies to comply with the Rehabilitation Act to avoid time-consuming and costly litigation. Suggestions included providing alternative methods of communication to individuals with low vision, such as braille and navigable compact discs. In 2018, this memorandum was recirculated by the Office of General Counsel because a congressperson raised concerns about accessibility requirements for veterans with visual impairments to VA's Office of Information and Technology.
2013	Business Requirements Documents, Communicating with the Visually Impaired <i>This is a draft document that was not approved.</i>	This draft document is created by a VBA workgroup to address recommendations made in the Office of General Counsel's 2011 Memorandum regarding compliance with the Rehabilitation Act.
2017	Office of General Counsel Memorandum to VA under secretaries, assistant secretaries, and other key officials, regarding Exclusive Authorities of the VA of Office of General Counsel	This memorandum states the Office of General Counsel is exclusively responsible for all interpretive legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law, and all legal services, advice, and assistance required to implement any law administered by VA.
2017	VA Manual 21-1, "Special Requirements for Visually Impaired Veterans"	May 17, 2017: This manual update changes the required decision notification letter font size from 14-point to 18-point. December 12, 2017: This update defines a visually impaired veteran as an individual with a visual impairment assigned a disability rating of 70 percent or higher or who has requested accommodations.
2018	VA Manual 21-1, Special Requirements for Visually Impaired Veterans	This manual update exempts text in the sidebar of notification letters from the 18-point font size requirement, allowing it to remain in an 8-point font size.
2020	VA Handbook 5975.6, Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973– Nondiscrimination Based on Disability in Federally Conducted Programs or Activities	This handbook provides guidance on VA's implementation of policy and procedures pertaining to section 504 of the Rehabilitation Act of 1973. (See figure A.1. on the next page.)

Year	Source	Summary
2021	VA Directive 5975, Diversity and Inclusion	This directive updates VA's diversity and inclusion policies, program requirements, and responsibilities for VA's diversity and inclusion programs. It assigns the responsibility of oversight of the section 504 Program under the Rehabilitation Act of 1973 to VA's Office of Resolution Management, Diversity and Inclusion.

Source: VA OIG analysis.

Note: Joint Hearing on U.S. Department of Veterans Affairs FY2019 [fiscal year 2019] Budget: Veterans Benefits Administration and the Board of Veterans Appeals, Before the Subcommittee on Economic Opportunity and Subcommittee on Disability Assistance and Memorial Affairs, House Committee on Veterans' Affairs, 115th Cong. (March 15, 2018).

Figure A.1 shows accessible alternate formats, assistive aids, and devices for persons who are blind or have low vision.

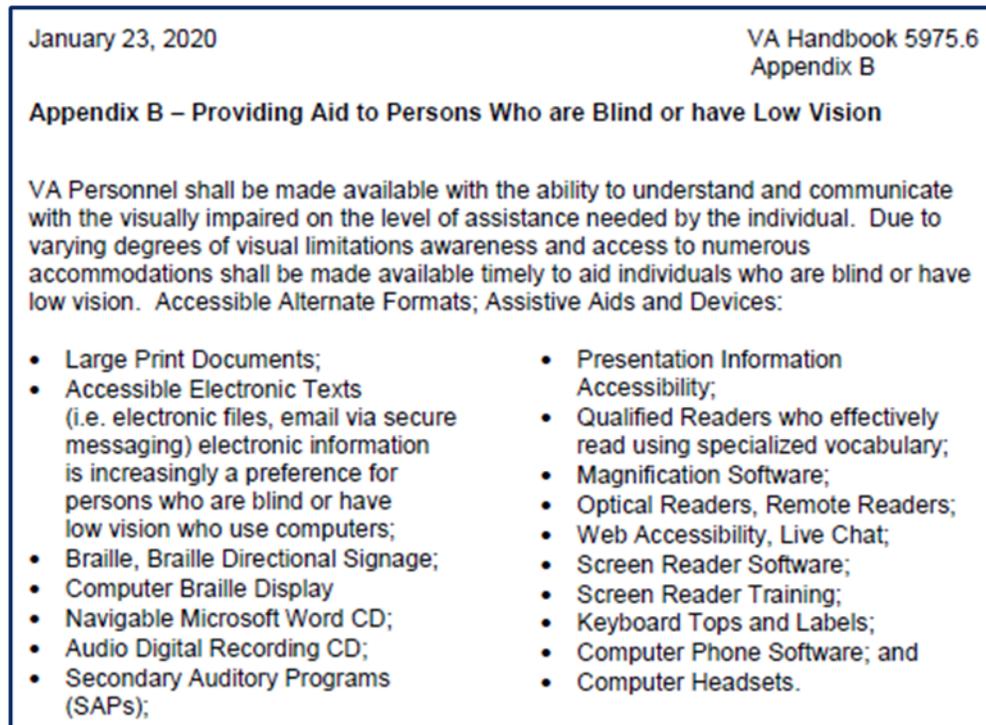


Figure A.1. Screenshot of accessible alternate formats, assistive aids, and devices for persons who are blind or have low vision.

Source: VA Handbook 5975.6, Compliance Procedures Implementing Section 504 of the Rehabilitation Act of 1973–Nondiscrimination Based on Disability in Federally Conducted Programs or Activities, January 23, 2020.

Appendix B: Scope and Methodology

Scope

The review team conducted its work from August 2021 through August 2022. The team focused on a universe of 1,700 processed claims from October 1, 2019, to July 31, 2021, that resulted in a decision notice where the record had a “blind corporate flash.”⁷⁷

Methodology

To accomplish the review objectives, the team considered applicable laws, regulations, policies, procedures, and guidelines for veterans with the “blind corporate flash” during claims processing. The team reviewed a statistically valid, randomized sample of 100 records with the “blind corporate flash” which had decision notices.

The review team interviewed VBA officials, managers, claims processors, quality review specialists, and other staff from VA’s central office and 18 VA regional offices. The team also spoke with staff at the Department of Justice Civil Rights Team, the Blinded Veterans Association, and Disabled American Veterans.

The team used VBA’s electronic systems, including the Veterans Benefits Management System and Share application, to review the sampled veterans’ electronic records and relevant documentation to assess whether VBA claims processors followed the proper notification procedures for veterans identified with the “blind corporate flash.”

Fraud Assessment

The review team assessed the risk that fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, significant within the context of the audit objectives, could occur during this review. The team exercised due diligence in staying alert to any fraud indicators, including reviewing OIG hotline complaints for indicators. The OIG did not identify any instances of fraud or potential fraud during this review.

Data Reliability

The review team used computer-processed data from the VBA data repository called Tableau. To test for reliability, the team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The team also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the team compared the data

⁷⁷ VBA employs a variety of data indicators that are added to veterans’ electronic records. Corporate flashes are claimant-specific indicators which represent an attribute, fact, or status that is unlikely to change.

received (veterans' first and last names, file numbers, dates of claims, "blind corporate flash," end product codes, and end product closed dates) to the Veterans Benefits Management System records reviewed. The team determined that the data were sufficient for the review's objective.

Government Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*.

Appendix C: Statistical Sampling Methodology

Approach

To accomplish the objective, the team reviewed a statistical sample of veterans' records with a claim processed from October 1, 2019, through July 31, 2021, for which a decision notice was sent. The team used statistical sampling to quantify the extent of records where VA employees processed claims for veterans whose record had a "blind corporate flash."

Population

The review population included 1,700 veterans' records with a "blind corporate flash" and a claim processed from October 1, 2019, through July 31, 2021. The team estimated the population to be 1,604 veterans. The difference between the review population and the estimated population occurred because the team excluded six records that did not meet the project scope requirements. Because the excluded sample records represent others in the original review population that may also be out of scope, the team estimated that 1,604 records were eligible for this review.

Sampling Design

The review team selected a statistical random sample of 100 records from the population of records with "blind corporate flashes" and a claim processed from October 1, 2019, through July 31, 2021.

Weights

Samples were weighted to represent the population from which they were drawn, and the weights were used in the estimate calculations. For example, the team calculated the error rate estimates by first summing the sampling weights for all sample records that contained the given error, then dividing that value by the sum of the weights for all sample records.

Projections and Margins of Error

The projection is an estimate of the population value based on the sample. The associated margin of error and confidence interval show the precision of the estimate. If the OIG repeated this audit with multiple sets of samples, the confidence intervals would differ for each sample but would include the true population value 90 percent of the time.

The OIG statistician employed statistical analysis software to calculate estimates, margins of error, and confidence intervals that account for the complexity of the sample design.

The sample size was determined after reviewing the expected precision of the projections based on the sample size, potential error rate, and logistical concerns of the sample review. While precision improves with larger samples, the rate of improvement decreases significantly as more

records are added to the sample review. Figure C.1 shows the effect of progressively larger sample sizes on the margin of error.

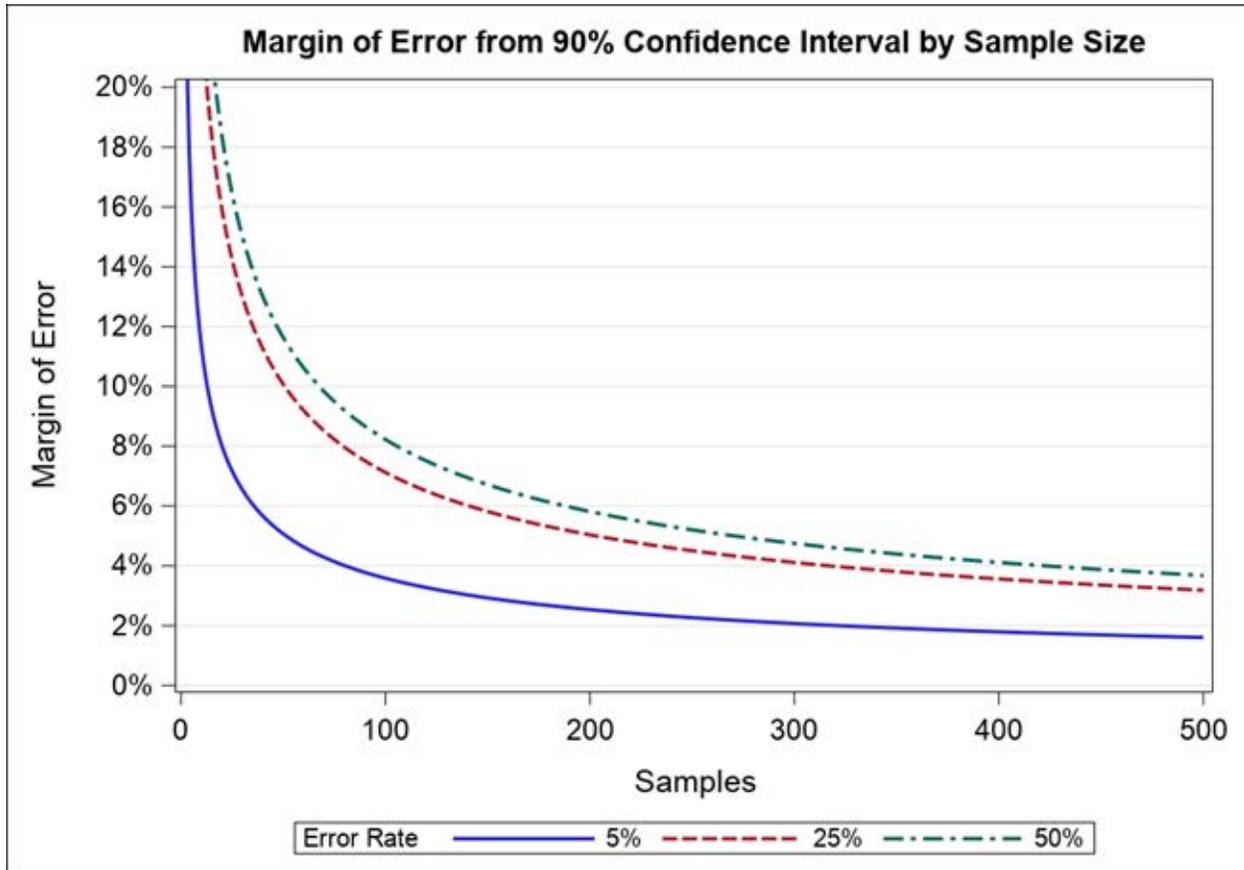


Figure C.1. Effect of sample size on margin of error.

Source: VA OIG statistician's analysis.

Projections

Table C.1. details the review team's projections.

Table C.1. Statistical Projections Summary for Claims Reviewed

Estimate name	Estimate number	90 percent confidence interval			Sample size
		Margin of error	Lower limit	Upper limit	
No documentation of phone calls	87	5	82	92	100
Increased font on decision notices	99	2	97	100	100

Source: VA OIG statistician's projection of estimated populations based on claims review data.

Appendix D: VA Management Comments

Department of Veterans Affairs Memorandum

Date: October 21, 2022

From: Under Secretary for Benefits (20)

Subj: Office of Inspector General Draft Report: Veterans Benefits Administration's Compensation Service Did Not Fully Accommodate Veterans with Visual Impairments [Project No. 2021-03063-AE-0145] (VIEWS 07664381)

To: Assistant Inspector General for Audits and Evaluations (52)

1. Thank you for the opportunity to review and comment on the Office of Inspector General (OIG) draft report Veterans Benefits Administration's Compensation Service Did Not Fully Accommodate Veterans with Visual Impairments. The Veterans Benefits Administration provides the attached response to the draft report.

The OIG removed point of contact information prior to publication.

(Original signed by)

Joshua Jacobs

Senior Advisor for Policy, Performing the Delegable Duties of the Under Secretary for Benefits

Attachment

Veterans Benefits Administration (VBA)

Comments on OIG Draft Report

Veterans Benefits Administration's Compensation Service Did Not Fully Accommodate Veterans with Visual Impairments

The Veterans Benefits Administration provides the following comment:

As discussed during the exit briefing, VBA continues to have concerns with OIG recommending VBA consult directly with the Department of Justice Civil Rights Division. As noted in OIG's report, the Deputy Assistant Secretary for Resolution Management serves as VA's liaison to the Department of Justice Civil Rights Division. As such, VBA considers consultation with the Office of General Counsel and Office of Resolution Management, Diversity, and Inclusion sufficient to meet the intent of OIG's recommendations.

The following comments are submitted in response to the recommendations in the OIG draft report:

Recommendation 1: The Under Secretary for Benefits should update the process for developing, approving, and issuing guidance for accommodating veterans with visual impairments to include steps for consulting with the Office of General Counsel; Office of Resolution Management, Diversity, and Inclusion; and the Department of Justice Civil Rights Division.

VBA Response: Concur. The Veterans Benefits Administration (VBA) will update the process for developing, approving, and issuing guidance for accommodating Veterans with visual impairments to include steps for consulting with the Office of General Counsel (OGC) and Office of Resolution Management, Diversity, and Inclusion (ORMDI) to satisfy this recommendation.

Target Completion Date: February 1, 2023

Recommendation 2: The Under Secretary for Benefits should coordinate with the Office of General Counsel; Office of Resolution Management, Diversity, and Inclusion; and the Department of Justice Civil Rights Division to bring existing Veterans Benefits Administration's Adjudication Procedures Manual for accommodating veterans with visual impairments into compliance with 38 C.F.R. § 14.500, VA Directive 5975, and Executive Order 12250.

VBA Response: Concur.

Target Completion Date: April 1, 2023

Recommendation 3: The Under Secretary for Benefits should develop and implement a quality assurance mechanism to ensure compliance with accessibility requirements, including mandated telephone calls to veterans with visual impairments.

VBA Response: Concur. VBA is prepared to make the necessary changes to the quality assurance process and checklist to ensure compliance with accessibility requirements, including mandated telephone calls to veterans with visual impairments. As these changes are contingent on completion of the manual changes outlined in recommendation 2, the target completion date cannot be determined at this time.

Target Completion Date: To Be Determined

Recommendation 4: The Under Secretary for Benefits should assign accessibility coordinators, publicize their names, and conduct a self-evaluation of policies as outlined in VA accessibility requirements.

VBA Response: Concur. VBA will ensure accessibility coordinators are assigned and publicized, and conduct a self-evaluation of policies as outlined in VA accessibility requirements.

Target Completion Date: May 31, 2023

Recommendation 5: The Under Secretary for Benefits should coordinate a process to ensure veterans with visual impairments are informed of the availability of accommodations, regardless of their level of disability.

VBA Response: Concur. VBA will take the appropriate action necessary to ensure Veterans with visual impairments are informed of the availability of accommodations, regardless of their level of disability.

Target Completion Date: May 31, 2023

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OIG Contact and Staff Acknowledgments

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