Benefit Programs

In addition to providing health care to millions of veterans, the Department of Veterans Affairs (VA) is the primary federal agency providing a variety of benefits to our nation's veterans. These include, but are not limited to, disability compensation, dependency and indemnity compensation, pensions, education benefits, home loans, ancillary benefits for service-connected disabled veterans, life insurance, and burial benefits.

Disability compensation payments are intended to provide relief for some of the economic and other losses veterans experience as a result of service-connected diseases and injuries. When service members die on active duty, or veterans' lives are cut short as a result of a service-connected cause or following a substantial period of total service-connected disability, eligible family members may receive dependency and indemnity compensation. Different from disability compensation, veterans' pensions provide some measure of financial support for disadvantaged veterans of wartime service who are totally disabled and unable to work as a result of nonservice-connected causes, or who have reached the age of 65; death pensions are paid to eligible survivors of these wartime veterans who have extremely low income.[1] Burial benefits assist families in meeting the costs of veterans' funerals and burials and provide for burial flags and headstones or grave markers. Other special allowances are provided for select groups of veterans and dependents (e.g., children of Vietnam veterans who suffer from spina bifida).

In recognition of the disadvantages that veterans endure from the interruption of their civilian lives to perform military service, Congress authorized certain benefits to aid veterans in their readjustment to civilian life. These readjustment benefits provide financial assistance to veterans who choose to participate in education or vocational rehabilitation programs and to seriously disabled veterans for acquiring specially adapted housing and automobiles. Educational benefits are also available for children and spouses of veterans who are permanently and totally disabled or die as a result of a service-connected disability.

Under its home loan program, VA guarantees home loans for veterans, certain surviving spouses, certain service members, and eligible reservists and National Guard personnel. VA also makes direct loans to supplement specially adapted housing grants, as well as direct housing loans to Native Americans living on trust lands.

Under several different plans, VA offers limited life insurance to eligible disabled veterans. Mortgage life insurance protects the families of veterans who have received specially adapted housing grants.

(Continued)

[1] Improved Death Pension Rate Table. http://www.vba.va.gov/bln/21/Rates/pen02.htm.

These programs have been adopted by Congress, as representatives of a grateful nation, to recognize the sacrifices of those who served our nation in both peace and war. The veterans service organizations comprising *The Independent Budget* have worked tirelessly to ensure that veterans and their families are not forgotten once the last soldier, sailor, airman, or marine returns home or is laid to rest in a distant land.

This is why *The Independent Budget* veterans service organizations (IBVSOs) work with Congress and the Administration to ensure that these carefully crafted benefit programs provide for the needs of our nation's veterans. We have identified areas in which adjustments are needed so that the programs better serve veterans or meet changing circumstances.

Unfortunately, the government's continued inaction to regularly adjust benefit rates or to tie them to realistic annual cost-of-living adjustments threatens the effectiveness of other veterans' benefits. Annual COLAs do not take into account the rising cost of necessities, such as food and energy, thereby increasing disabled veterans' inability to meet basic needs.

Veterans' programs must remain a national priority, being viewed in context of the service of the men and women who have sacrificed so much for this great nation. In addition to maintaining and protecting existing veterans' programs, Congress must ensure that these programs are modified and improved as necessary. In order to maintain or increase their effectiveness, the IBVSOs offer a series of recommendations in this section of *The Independent Budget*.

COMPENSATION FOR QUALITY OF LIFE AND NONECONOMIC LOSS:

In conjunction with the ongoing update and revision of the Rating Schedule, the Department of Veterans Affairs should develop and implement a system to compensate service-connected disabled veterans for loss of quality of life and noneconomic loss.

The Institute of Medicine (IOM) Committee on Medical Evaluation of Veterans for Disability Compensation published a report, "A 21st Century System for Evaluating Veterans for Disability Benefits," in 2007 recommending that the current VA disability compensation system be expanded to include compensation for nonwork disability (also referred to as "noneconomic loss") and loss of quality of life.[2] The report touched upon several systems that could be used to measure and compensate for loss of quality of life, including the World Health Organization–devised International Classification of Functioning, Disability, and Health; the Canadian Veterans' Affairs disability compensation program; and the Australian Department of Veterans' Affairs disability compensation program.[3]

The IOM distinguished between the purpose of disability benefits and the operational basis for those benefits.[4] The report grouped the operational measures used for compensating disabilities into seven categories and subcategories:

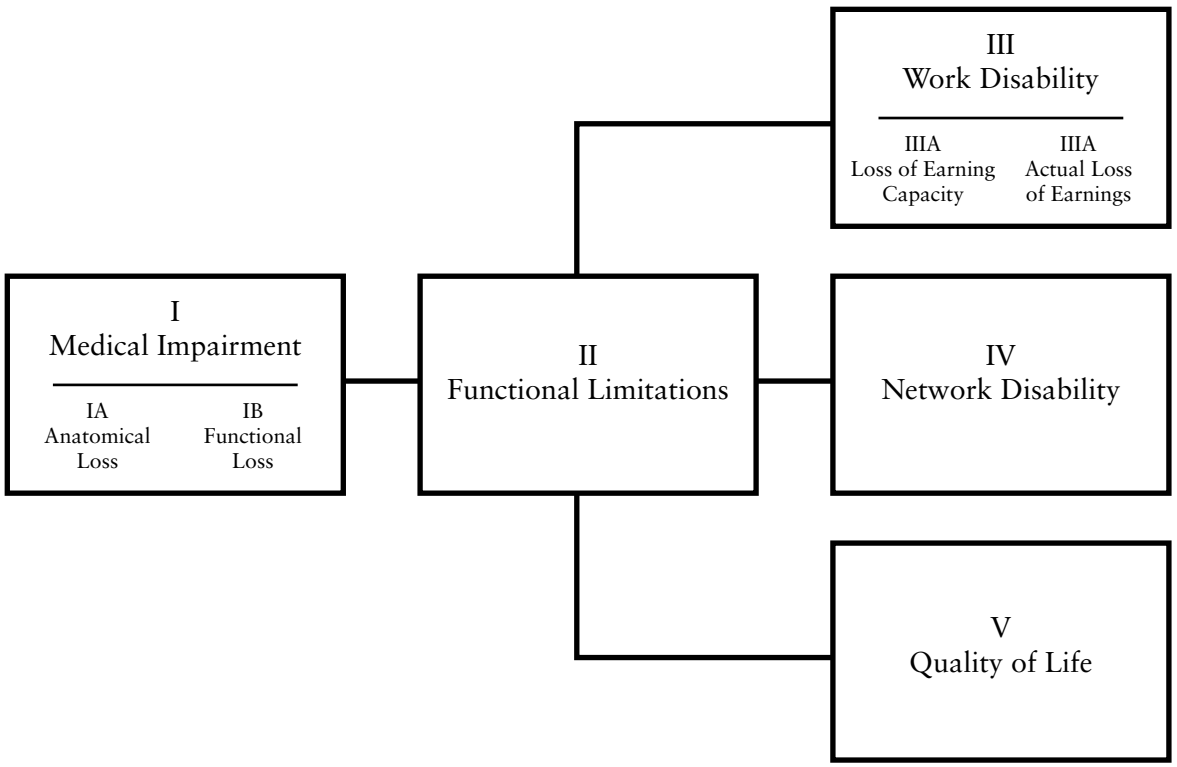
> IA. Medical impairment: anatomical loss refers to impairment ratings that are based on anatomical loss, such as amputation of the leg.
>
> IB. Medical impairment: functional loss refers to impairment ratings that are based on the extent of functional loss, such as loss of motion of the wrist.
>
> II. Limitations in the activities of daily living refers to limitations on the ability to engage in the activities of daily living, such as bending, kneeling, or stooping, resulting from the impairment, and to participate in usual life activities, such as socializing and maintaining family relationships.
>
> IIIA. Work disability: loss of earning capacity refers to the presumed loss of earning capacity resulting from the impairment and limitations in the activities of daily living.
>
> IIIB. Work disability: actual loss of earnings refers to the actual loss of earnings resulting from the impairment and limitations in the activities of daily living.
>
> IV. Nonwork disability refers to limitations on the ability to engage in usual life activities other than work. This includes ability to engage in activities of daily living, such as bending, kneeling, or stooping, resulting from the impairment, and to participate in usual life activities, such as reading, learning, socializing, engaging in recreation, and maintaining family relationships.
>
> V. Loss of quality of life refers to the loss of physical, psychological, social, and economic well-being in one's life.[5]

The report organized these categories into the relationship shown in figure 1.

Under the current VA disability compensation system, the purpose of the compensation is to make up for average loss of earning capacity (IIIA), whereas the operational basis of the compensation is usually based on medical impairment (IA and IB).[6] Neither of these models generally incorporates noneconomic loss or quality of life into the final disability ratings, though special monthly compensation does in some limited cases. The IOM report stated:

> In practice, Congress and VA have implicitly recognized consequences in addition to work disability of impairments suffered by veterans in the Rating Schedule and other ways. Modern concepts of disability include work disability, nonwork disability, and quality of life (QOL)…" [and that] "This is an unduly restrictive rationale for the program and is inconsistent with current models of disability."[7]

Graph 1. IOM Disability Model



The Congressionally mandated Veterans Disability Benefits Commission (VDBC), established by the "National Defense Authorization Act of 2004" (P.L. 108–136), spent more than two years examining how the Rating Schedule might be modernized and updated. Reflecting the recommendations of a comprehensive study of the disability rating system by the IOM, the VDBC in its final report issued in 2007 recommended:

> The veterans disability compensation program should compensate for three consequences of service-connected injuries and diseases: work disability, loss of ability to engage in usual life activities other than work, and loss of quality of life.[8]

The IOM report, the VDBC (and an associated Center for Naval Analysis study), and the Dole-Shalala Commission (President's Commission on Care for America's Returning Wounded Warriors) all agreed that the current benefits system should be reformed to include noneconomic loss and quality of life as factors in compensation.

Recommendations:

Congress should amend Title 38, United States Code, to clarify that disability compensation, in addition to providing compensation to service-connected disabled veterans for their average loss of earnings capacity, must also include compensation for their noneconomic loss and for loss of their quality of life.

Congress and VA should determine the most practical and equitable manner in which to provide compensation for noneconomic loss and loss of quality of life and move expeditiously to implement this updated disability compensation program.

[2] Committee on Medical Evaluation of Veterans for Disability Compensation, Institute of Medicine of the National Academies, "A 21st Century System for Evaluating Veterans for Disability Benefits (2007)."
[3] Ibid., 78–81.
[4] Ibid., 116.
[5] Ibid., 116–17 (emphasis in original).
[6] Ibid., 117, fig.4–1.
[7] Ibid., 117–18.
[8] Veterans' Disability Benefits Commission, "Honoring The Call To Duty: Veterans' Disability Benefits in the 21st Century (2007)," 3.

UPDATING AND REVISING THE RATING SCHEDULE:

As the Veterans Benefits Administration continues working to update and revise the* VA Schedule for Rating Disabilities*, it should continue to seek broad input and must ensure that the proposed rules follow both the letter and spirit of the law establishing disability compensation.

The amount of disability compensation paid to a service-connected disabled veteran is determined according to the *VA Schedule for Rating Disabilities* (VASRD), which is divided into 15 body systems with more than 700 diagnostic codes found in 38 C.F.R. Part 4. In 2007, both the Congressionally mandated Veterans Disability Benefits Commission (VDBC), established by the "National Defense Authorization Act of 2004" (P.L. 108–136), as well as the IOM Committee on Medical Evaluation of Veterans for Disability Compensation in its report "A 21st Century System for Evaluating Veterans for Disability Benefits," recommended that VA regularly update the VASRD to reflect the most up-to-date understanding of disabilities and how disabilities affect veterans' earnings capacity.

In line with these recommendations, the Veterans Benefits Administration (VBA) is currently engaged in the process of updating all 15 of the body systems. Additionally, it has committed to review and update the entire VASRD every five years.

To help implement the recommendations of the VDBC, Congress established the Advisory Committee on Disability Compensation (ACDC) in P.L. 110–389 to advise the Secretary on "…the effectiveness of the schedule for rating disabilities…and…provide ongoing advice on the most appropriate means of responding to the needs of veterans relating to disability compensation in the future." In its 2009 "Interim Report" and its first "Biennial Report" dated July 27, 2010, the Advisory Committee recommended that the VBA follow a coordinated and inclusive process while reviewing and updating the *Schedule for Rating Disabilities*. Specifically, the ACDC recommended that veterans service organization (VSO) stakeholders be consulted several times throughout the review and revision process, both before and after any proposed rule is published for public comment.

While the VBA has held a number of public forums and made some other good faith efforts to include greater VSO participation, the process itself does not allow input during the crucial decision-making period. Because these public forums were conducted at the very beginning of the Rating Schedule review process, VSOs were not able to provide informed comment because the VBA had not yet undertaken review or research activities. Consequently, VSO and other stakeholder involvement ended before the actual revision process began. As a result, while the public forums may be part of the official record, it is unclear whether any of the working group members actually heard that input. As the ACDC noted, it would have been helpful to include the experience and expertise of VSOs during its deliberations on revising the VASRD.

In particular, *The Independent Budget* veterans service organizations (IBVSOs) are concerned about potential changes to the mental disorders rating table that have been discussed and may be proposed to create an entirely new methodology for rating mental health disorders, such as post-traumatic stress disorder. By statute, the rating schedule is based on "average impairments of earning capacity", not actual earnings loss, a very different concept. While 38 CFR 4.10 addresses "functional impairment," it does so in the context of "function under the ordinary conditions of daily life including employment," which therefore includes non-employment functional impairment. Their proposal would only measure work impairment.

This proposal was written subsequent to the 2010 forum; no VSOs or other stakeholders participated in its development. More recently, the VBA has refused to disclose the new methodology prior to publication as a proposed regulation. These developments run counter to the Administration's standing Executive Order on transparency in government. In part, the Executive Order provides a gateway to "ensure the public trust and establish a system of transparency, public participation, and collaboration." We believe, especially in this sensitive area of mental health disability, that openness strengthens the process and includes a wide range of expertise that is available across different sectors of society.

Whether dramatic changes will in fact be proposed for the mental disorders or other sections of the VASRD remains to be seen, but the IBVSOs strongly believe that our collective experience assisting veterans who suffer from such disabilities in filing claims could have been useful as the VBA was seeking to develop new draft rules for changing the VASRD.

While the VBA has the regulatory authority to update and revise the VASRD, considering the limited transparency of the process, Congress should closely examine any changes being proposed. Most important, Congress must ensure that revisions adhere strictly to the law, which requires that the levels of disability compensation are based on the principle of the "average loss of earnings capacity."

In addition, because the VBA is committed to a continuing review and revision of the Rating Schedule, it would also be beneficial to conduct reviews of the revision process so that future body system Rating Schedule updates can benefit from lessons learned during prior updates.

Recommendations:

The Veterans Benefits Administration (VBA) should involve veterans service organizations throughout the process of reviewing and revising each body system in the Rating Schedule, not only at the beginning and end of its deliberative process.

Congress should carefully review any proposed rules that would change the *VA Schedule for Rating Disabilities*, particularly if such rules would change the basic nature of veterans disability compensation.

The VBA should conduct regular after-action reviews of the Rating Schedule update process, with veterans service organization participation so that it may apply "lessons learned" to future body system updates.

ANNUAL COST-OF-LIVING ADJUSTMENT:

Congress should provide a cost-of-living adjustment for compensation and dependency and indemnity compensation benefits in a manner which fully replaces the erosion of value due to inflation.

Congress has authorized the adjustment of compensation and dependency and indemnity compensation (DIC) by the same percent as Social Security is increased. Increases in Social Security are based on the Consumer Price Index (CPI). Due to the lack of increase in the CPI in recent years, veterans with service-connected disabilities and survivors of those who died from service-connected causes have not received an increase in compensation or DIC since December 1, 2008.

Disability compensation is paid to the men and women who returned home from military service with the residuals of disease or injury incurred coincident with their service. Compensation was designed to replace the earnings capacity lost because of service-connected disabilities.

Dependency and indemnity compensation is paid to the surviving spouse and minor or school age children of a service member who died on active duty or a veteran who died from a service-connected disability.

Inflation erodes the value of these benefits. Under current law, the government monitors inflation throughout the year and, if inflation occurred, increases compensation and DIC by the same percentage as Social Security is raised for the following year. This procedure makes beneficiaries whole for the new year but does not reimburse them for the lost value of their benefits for the year in which inflation occurred.

To fully compensate veterans and their survivors for the loss of value because of inflation, benefits would have to be adjusted retroactively.

Veterans' and Survivors' Benefits Payment Rounded Down

In 1990, Congress, in an omnibus reconciliation act, mandated that veterans' and survivors' benefit payments be rounded down to the next lower whole dollar. While this policy was initially limited to a few years, Congress eventually made it permanent.

Rounding down veterans' and survivors' benefit payments to the next lower whole dollar reduces the payments by up to $12 per year. Each year's COLA is calculated on the rounded down amount of the previous year's payments. While not significant in the short run, the cumulative effect over time results in a significant loss to beneficiaries.

For example, a veteran totally disabled from service-connected disabilities would have received $809 per month in 1994. Today that benefit is worth $2,673 per month. However, had that veteran received the full COLA each year as shown in the CPI, that benefit would now be $2,710.[9] A reduction of $37 per month means that the veteran receives $444 less each year.

The cumulative effect of this provision of the law effectively levies a tax on totally disabled veterans, costing them hundreds of dollars per year.

Recommendations:

Congress should make cost-of-living adjustments retroactive to the beginning of the year in which the inflation occurred. This change would ensure that veterans and survivors receive the full value of the benefit provided them to offset the loss of earnings capacity due to service-connected disabilities for veterans or the loss of a spouse or parent due to death caused in or by military service.

Congress should repeal the current policy of rounding down veterans' and survivors' benefits payments.

[9] This amount was calculated using the Bureau of Labor Statistics CPI calculator found at http://www.bls.gov/data/inflation_calculator.htm.

STANDARD FOR SERVICE CONNECTION:

Standards for determining service connection should remain grounded in current law.

Disability compensation is the basic entitlement for a veteran that exists if the veteran is disabled as the result of a personal injury or disease (including aggravation of a condition existing prior to service) while in active service if the injury or the disease was incurred or aggravated in line of duty.[10]

Periodically a committee, commission, government agency, or Member of Congress suggests or proposes that military service should be treated as if it were a day job: if a service member happens to get sick or injured while working a shift, he or she may be eligible, after discharge, for medical treatment and, perhaps, compensation from the Department of Veterans Affairs. Conversely, if a service member is injured before or after work, or becomes ill from a disease that isn't obviously related to military service, he or she would not be eligible for service connection at all. Further, medical care would be the responsibility of the veteran alone.

The military does not distinguish between "on duty" and "off duty." A service member on active duty is always at the disposal of military authority and is, to all intents, on call 24 hours a day, 365 days a year. A soldier, on leave, can be playing with her children in the morning and be ordered back to base, to be deployed, that same afternoon. A ship returning from a six-month tour in the Persian Gulf can be turned around in mid-ocean to undertake a new mission that will keep its crew away from home for weeks or months. The ground crews that prepared planes used to attack targets in Iraq, Afghanistan, and Libya worked not just from 9 to 5, but anytime they were needed, day or night. No one asks them if they can work overtime; they are ordered to report and work as long as required to get the job done. Unlike a day job, they cannot quit. Servicemen and -women are there when needed, every day. And far too often they are put at risk of injury, disease, or death in defense of all Americans.

Congress created the Veterans' Disability Benefits Commission to carry out a study of "the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service…." After more than 30 months of hearings, study, analysis, and debate, the commission unanimously endorsed the current standard for determining service connection.[11]

Current law requires only that an injury or disease be incurred coincident with active military service. There is no requirement that a veteran prove a causal connection between military service and a disability for which service connection is sought.

The Independent Budget veterans service organizations believe current standards defining service connection for veterans' disabilities and deaths are practical, sound, equitable, and time-tested. We urge Congress to reject any revision to this long-standing policy.

Recommendation:

Congress should reject suggestions from any source that would change the terms of service connection for veterans' disabilities and death.

[10] Title 38 C.F.R. 2.4(b)(1).
[11] Veterans' Disability Benefits Commission, "Honoring the Call to Duty: Veterans Benefits in the 21st Century," (October, 2007), p. 98, section 1.2.B.

STANDARD FOR DETERMINING COMBAT-VETERAN STATUS:

Evidentiary standards for establishing a disability should be relaxed if the event causing disability occurs while serving in an active combat zone.

One need only watch the evening news to recognize that a combat zone is often a uniquely hazardous place to serve. Seemingly minor injuries are often overlooked while medical treatment is focused on those more seriously injured. Further, many combat service members tend to trivialize their own injuries when in the presence of more severely injured comrades. The result is that many injuries occurring in combat zones go unreported and unrecorded.

In recent years *The Independent Budget* veterans service organizations (IBVSOs) have asked Congress to expand the provisions of 38 U.S.C. 1154 to any veteran who served in a combat zone in order to both ease the evidentiary burden on veterans and reduce time-consuming development required of the Department of Veterans Affairs so that veterans could more readily obtain service connection for certain disabilities related to service, especially post-traumatic stress disorder (PTSD).

In 2010 VA validated this recommendation when it amended 38 C.F.R. 3.304 to eliminate—

> …the requirement for corroborating that the claimed in-service stressor occurred if a stressor claimed by a veteran is related to the veteran's fear of hostile military or terrorist activity and a VA psychiatrist or psychologist, or a psychiatrist or psychologist with whom VA has contracted, confirms that the claimed stressor is adequate to support a diagnosis of PTSD and that the veteran's symptoms are related to the claimed stressor, provided that the claimed stressor is consistent with the places, types, and circumstances of the veteran's service.[12]

This change effectively removed the single largest barrier to the proper and timely adjudication of claims involving PTSD incurred while in combat.

Unfortunately, this regulation is not without a major flaw. VA requires that the claimed stressor can only be confirmed by either a "VA psychiatrist or psychologist, or a psychologist with whom VA has contracted." While the IBVSOs recognize that VA mental health professionals have, by necessity, developed an expertise in treating veterans with PTSD, the requirement

that only they have the capability to confirm that a veteran suffers from PTSD and that the stressor is related to military service is both wrong and wasteful of scarce mental health resources.

An additional anomaly is this: the regulation states that a psychiatrist contracted to perform compensation examinations is able to diagnose PTSD and confirm the relationship of the stressor to service. However, the Veterans Benefits Administration would apparently not accept a diagnosis and confirmation if that same psychiatrist contractor diagnoses and treats a veteran in his or her private practice. This does not pass the test of common sense.

Finally, refusing to accept a diagnosis and confirmation from a private psychiatrist or psychologist is wasteful of scarce government resources. The savings to VA would be substantial if the acceptance of information from private health-care professionals allowed VA to avoid scheduling unnecessary examinations.

Recommendations:

VA should amend 38 C.F.R. 3.304 to allow veterans to submit, and VA to accept, the diagnosis of post-traumatic stress disorder (PTSD) by a qualified private clinician along with confirmation that the stressor is directly related to PTSD and military service.

In the alternative, Congress should mandate a study by VA to determine how often VA examiners have confirmed a diagnosis of PTSD and confirmation of an in-service stressor in cases where veterans previously submitted private medical evidence that contained a diagnosis of PTSD and confirmation of an in-service stressor.

[12] *Federal Register* 75, no. 133 (July 13, 2010), 39843.

CONCURRENT RECEIPT OF COMPENSATION AND MILITARY LONGEVITY RETIRED PAY:

All military retirees should be permitted to receive military longevity retired pay and VA disability compensation concurrently.

Many veterans retired from the armed forces based on longevity of service must forfeit a portion of their retired pay, earned through faithful performance of military service, before they receive VA compensation for service-connected disabilities. This is inequitable—military retired pay is earned by virtue of a veteran's career of service on behalf of the nation, careers of usually more than 20 years.

Entitlement to compensation, on the other hand, is paid solely because of disability resulting from military service, regardless of the length of service. Most nondisabled military retirees pursue second careers after serving in order to supplement their income, thereby justly enjoying a full reward for completion of a military career with the added reward of full civilian employment income. In contrast, military retirees with service-connected disabilities do not enjoy the same full earning potential. Their earning potential is reduced commensurate with the degree of service-connected disability.

In order to place all disabled longevity military retirees on equal footing with nondisabled military retirees, there should be no offset between full military retired pay and VA disability compensation. To the extent that military retired pay and VA disability compensation offset each other, the disabled military retiree is treated less fairly than is a nondisabled military retiree by not accounting for the loss in earning capacity. Moreover, a disabled veteran who does not retire from military service but elects instead to pursue a civilian career after completing a service obligation can receive full VA disability compensation and full civilian retired pay—including retirement from any federal civil service position. A veteran

who honorably served and retired after 20 or more years who suffers from service-connected disabilities should not be penalized for becoming disabled in service to America.

A longevity-retired disabled veteran should not suffer a financial penalty for choosing a military career over a civilian career, especially when, in all likelihood, a civilian career would have involved fewer sacrifices and quite likely greater monetary rewards. Disability compensation to a disabled veteran should not be offset against military longevity retired pay. While Congress has made progress in recent years in correcting this injustice, current law still provides that service-connected veterans rated less than 50 percent who retire from the armed forces on length of service may not receive disability compensation from VA in addition to full military retired pay. *The Independent Budget* veterans service organizations believe the time has come to finally remove this prohibition completely.

Recommendation:

Congress should enact legislation to repeal the inequitable requirement that veterans' military longevity retired pay be offset by an amount equal to their disability compensation if rated less than 50 percent.

Mental Health Rating Criteria:

Compensation for service-connected mental disorders should be adjusted to accurately reflect the effects those disabilities have on earnings capacity as required by law.

Federal law requires that compensation be set, as nearly as is practicable, at such a level as to offset the average impairment to earnings capacity caused by a service-connect disability.[13]

Studies published in 2007[14] and 2008[15] found that veterans with service-connected psychiatric conditions suffered, on average, substantially greater earnings loss at all levels than was reflected by the evaluation assigned by the Department of Veterans Affairs.

Since 2010, VA has been rewriting the section of the *Schedule for Rating Disabilities* that deals with mental disorders. VA must ensure that veterans with psychiatric problems related to service are equitably and appropriately evaluated and compensated.

To ensure that the revisions accurately reflect the intent of the law and substantially address the disparities found by the cited studies, *The Independent Budget* veterans service organizations strongly recommend that VA conduct extensive testing of the revised criteria against cases rated under the existing criteria prior to publication of a proposed revision. The test should include both the new rating criteria and revised disability examination protocols. It is only through such testing, the results of which can be used to support the proposed revisions, that veterans can be assured that the new criteria correct past inequities.

Recommendation:

VA's revision of the Mental Disorders section of the *Schedule for Rating Disabilities* must accurately reflect the severe impact that psychiatric disabilities have on veterans' average earning capacity.

[13] 38 U.S.C. 1155.
[14] The CNA Corporation, Final Report for the Veterans Disability Benefits Commission: Compensation Survey Results and Selected Topics (2007), pp. 4, 16, 194.
[15] EconSys., A Study of Compensation Payments for Service-Connected Disabilities, Vol III (2008), pp. 162–69, 180.

MORE EQUITABLE RULES FOR SERVICE CONNECTION OF HEARING LOSS AND TINNITUS:

For combat veterans and those with military occupations that typically involved acoustic trauma, service connection for hearing loss or tinnitus should be presumed.

Many veterans exposed to acoustic trauma during service now suffer from hearing loss and/or tinnitus. Too often, they are unable to *prove* that their hearing problems began in or were caused by military service, often because of inadequate in-service testing procedures, lax examination practices, or poor recordkeeping. The presumption requested herein would resolve this long-standing injustice.

The Institute of Medicine (IOM) issued a report in September 2005 titled "Noise and Military Service: Implications for Hearing Loss and Tinnitus." The IOM found that patterns of hearing loss consistent with noise exposure can be seen in cross-sectional studies of military personnel. Because noise exposure is endemic to military service, the total number of veterans who experience noise-induced hearing loss as a result of military service may be substantial.

Hearing loss and tinnitus are common among combat, combat arms, combat support, and combat service support veterans. These veterans are typically exposed to prolonged, frequent, and exceptionally loud noises from such sources as gunfire, tanks and artillery, explosive devices, and aircraft. Exposure to acoustic trauma is a well-known cause of hearing loss and tinnitus. Yet many combat veterans are not able to document their in-service acoustic trauma, nor can they prove their hearing loss or tinnitus is due to military service. World War II veterans are particularly at a disadvantage because testing by spoken voice and whispered voice was universally insufficient to detect all but the most severe hearing loss.

Further, certain noncombat jobs are known to involve work around extremely loud machinery. Prolonged exposure to noise from tanks, trucks and engines, and other machinery on ships, for instance, can cause hearing loss and/or tinnitus.

Audiometric testing in the service was insufficient; therefore testing records are lacking for a variety of reasons. Congress has made special provisions for other deserving groups of veterans whose claims are unusually difficult to establish because of circumstances beyond their control. Congress should do the same for veterans exposed to acoustic trauma, including combat veterans. Congress should instruct VA to develop a list of military occupations that are known to expose service members to noise. VA should be required to presume noise exposure for anyone who worked in one of those military occupations and grant service connection for those who now experience documented hearing loss or tinnitus. Further, this presumption should be expanded to anyone who is shown to have been in combat.

Recommendation:

Congress should create a presumption of service-connected disability for combat veterans and veterans whose military duties exposed them to high levels of noise and who subsequently suffer from tinnitus or hearing loss.

COMPENSABLE DISABILITY RATING FOR HEARING LOSS NECESSITATING A HEARING AID:

The* VA Schedule for Rating Disabilities *should provide a minimum 10 percent disability rating for hearing loss that requires use of a hearing aid.

The *VA Schedule for Rating Disabilities* contained in 38 C.F.R., Part IV does not provide a compensable rating for hearing loss at certain levels severe enough to require the use of hearing aids. The minimum disability rating for any hearing loss severe enough to require use of a hearing aid should be 10 percent, and the schedule should be amended accordingly.

A disability severe enough to require use of a prosthetic device should be compensable. Beyond the functional impairment and the disadvantages of artificial hearing restoration, hearing aids negatively affect the wearer's physical appearance, similar to scars or deformities that result in cosmetic defects. Also, it is a general principle of VA disability compensation that ratings are not offset by the function artificially restored by a prosthetic device.

For example, a veteran receives full compensation for amputation of a lower extremity although he or she may be able to ambulate with a prosthetic limb. Additionally, a review of 38 C.F.R., Part 4 *Schedule for Rating Disabilities*, shows that all disabilities, whose treatment warrants an appliance, device, implant, or prosthetic, other than hearing loss with hearing aids, receives a compensable rating.

Assigning a compensable rating for medically directed hearing aids would be consistent with minimum ratings provided throughout the Rating Schedule. Such a change would be equitable and fair.

Recommendation:

VA should amend its *Schedule for Rating Disabilities* to provide a minimum 10 percent disability rating for any hearing loss medically requiring a hearing aid.

TEMPORARY TOTAL COMPENSATION AWARDS:

Congress should exempt temporary awards of total disability compensation from delayed payment dates.

An inequity exists in current law controlling the beginning date for payment of increased compensation based on periods of incapacity due to hospitalization or convalescence. Hospitalization exceeding 21 days for a service-connected disability entitles the veteran to a temporary total disability rating of 100 percent. This rating is effective the first day of hospitalization and continues to the last day of the month of discharge from the hospital. Similarly, where surgery for a service-connected disability necessitates at least one month's convalescence or causes complications, or where immobilization of a major joint by cast is necessary, a temporary 100 percent disability rating is awarded, effective on the date of hospital admission or outpatient visit.

The effective date of temporary total disability ratings corresponds to the beginning date of hospitalization or treatment. Title 38, United States Code, section 5111(c)(2) provides that, in cases where the hospitalization or treatment commences and terminates within the same calendar month, the increase shall commence on the first day of that month. However, in cases where the hospitalization or treatment commences in one month and terminates in a subsequent month, section 5111 delays the effective date for payment purposes until the first day of the month following the effective date of the increased rating. In many cases this delay in payment causes undue financial hardship on veterans and their families. Disabled veterans, particularly those who are unable to work as

a result of hospitalization or period of convalescence, rely heavily on this temporary total compensation to replace the income lost during the period of hospitalization or convalescence. Veterans with a period of hospitalization or convalescence beginning in one month and ending in a different month are left with their temporary total disability compensation being unnecessarily delayed by at least one month. This practice is unfair in comparison to veterans whose hospitalization or convalescence begins and ends within the same month.

Recommendation:

Congress should amend Title 38, United States Code, section 5111 to authorize increased disability compensation based on a temporary total rating for hospitalization or convalescence that commences in one calendar month and continues beyond that month to be effective, for payment purposes, on the date of admission to the hospital or on the date of treatment, surgery, or other circumstances necessitating convalescence.

AGENT ORANGE IN KOREA:

Extend the presumptive service-connection end-date for Korea veterans who served on the Korean demilitarized zone.

The delineating dates for presumptive service connection due to exposure to herbicides (Agent Orange) in Korea should be established in the same manner as they are for Vietnam veterans. If a veteran served on the Korean demilitarized zone (DMZ) north of the Imjin River at any time after Agent Orange was applied, then presumptive service connection should be granted for the conditions contained in 38 C.F.R. section 3.309(e).

Currently, the Department of Veterans Affairs recognizes that certain military personnel who were assigned to units operating in or near the DMZ in Korea from April 1968 to August 1971 are presumed to have been exposed to herbicides.[16] Veterans with qualifying service in Korea may be granted service connection on a presumptive basis if they suffer from one or more of the disabilities enumerated in 38 C.F.R. 3.309(e).

The ending date of August 1971 was established by P.L. 108–183 and is found in 38 U.S.C. 1821. While *The Independent Budget* veterans service organizations applaud the action of Congress and VA to extend the ending date for this presumption of exposure from 1969 to 1971, we do not believe that it is sufficient to recognize the length of time that dioxin remains in the soil and potentially harmful to U.S. military personnel.

The Environmental Protection Agency reports that "the persistence half-life of TCDD [tetrachlorodibenzodioxin] on soil surfaces may vary from less than 1 year to 3 years, but half-lives in soil interiors may be as long as 12 years. Screening studies have shown that TCDD is generally resistant to biodegradation."[17]

Research has shown that the dioxin in Agent Orange has a half-life of one to three years in surface soil, and *up to 12 years in interior soil.* "The toxicity of dioxin is such that it is capable of killing newborn mammals and fish at levels as small as 5 parts per trillion (or one ounce in 6 million tons). Its toxic properties are enhanced by the fact that it can enter the body through the skin, the lungs, or through the mouth."[18] The dioxin on the Korean DMZ did not lose its efficacy on August 1, 1969, but continued to be absorbed into the bodies of the troops who were operating north of the Imjin River, and wreaks havoc on those veterans today just as it does to Vietnam veterans.

Recommendation:

Congress should change the dates of eligibility for Korea veterans who served in the Korean demilitarized zone at any time starting from April 1968.

[16] Title 38 C.F.R., section 3.307(a)(6)(iv).
[17] Technical Factsheet on DIOXIN 3,7,8–TCDD) (2,3,7,8–TCDD). http://www.epa.gov/ogwdw/pdfs/factsheets/soc/tech/dioxin.pdf, p. 2.
[18] http://www.vn-agentorange.org/newsletters.html.

PENSION FOR NONSERVICE-CONNECTED DISABILITY:

Congress should extend basic eligibility for nonservice-connected pension benefits to veterans who served in combat environments, regardless of whether a period of war was defined.

Pension is payable to a veteran who is 65 years of age or older or who is permanently and totally disabled as a result of nonservice-connected disabilities, and who has at least one day's service during a period of war and has a low income.[19]

Although Congress has the sole authority to make declarations of war, the President, as Commander in Chief, may send servicemen and -women into hostile situations at any time to defend American interests. While some of these incidents occur during periods of war (e.g., Somalia, '92–'95) many other military actions take place during periods of "peace" (e.g., Granada, '83; Lebanon, '82–'87; Panama, '89). Even the Mayaguez Incident, May 12–15, 1975, falls outside the official dates of the Vietnam War, which ended May 7, 1975.

It is quite apparent that the sole service criteria for eligibility to pension, at least one day of service during a period of war, too narrowly defines military activity in the last century. Expeditionary medals, combat badges, and the like can better serve the purpose of defining combat or warlike conditions when Congress fails to declare war and when the President neglects to proclaim a period of war for veterans' benefits purposes.

Congress should change the law to allow that the receipt of hostile fire pay, an expeditionary medal, campaign medal, combat action ribbon, or similar military decoration will qualify an individual for pension benefits. This action would ensure that veterans who served during periods of peace but who were placed in hostile situations are eligible for nonservice-connected pension.

Recommendation:

Congress should change the law to authorize eligibility to nonservice-connected pension for veterans who have been awarded the Armed Forces Expeditionary Medal, Purple Heart, Combat Infantryman's Badge, or similar medal or badge for participation in military operations that fall outside officially designated periods of war.

[19] The requirements for pension, along with applicable definitions, are found throughout Title 38 United States Code (e.g., sections 101 (15, 1521, 1501)).

INCREASE OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES OF SERVICE MEMBERS:

The current rate of compensation paid to the survivors of deceased service members is inadequate and inequitable.

Under current law the surviving spouse of a veteran who had a total disability rating and died after at least an eight-year period following such rating is entitled to the basic rate of dependency and indemnity compensation. The same spouse will also receive additional payments based on the veteran's eight-year period of total disability prior to death. However, surviving spouses of military service members who die on active duty receive only the basic rate of dependency and indemnity compensation.

Insofar as dependency and indemnity compensation payments were intended to provide surviving spouses with the means to maintain some semblance of economic stability after losing their loved one, the rate of payment for in-service deaths and certain service-related deaths occurring after service should not differ. Surviving spouses, regardless of the status of their sponsors at the time of death, face the same financial hardships once the deceased sponsor's income no longer exists.

Recommendation:

Congress should authorize dependency and indemnity compensation eligibility at increased rates to survivors of service members who died on active duty at the same rate paid to the eligible survivors of totally disabled service-connected veterans.

REPEAL OF OFFSET AGAINST THE SURVIVOR BENEFIT PLAN:

The current requirement that the amount of an annuity under the Survivor Benefit Plan be reduced on account of and by an amount equal to dependency and indemnity compensation is inequitable.

A veteran disabled in military service is compensated for the effects of service-connected disability. When a veteran dies of service-connected causes, or following a substantial period of total disability from service-connected causes, eligible survivors or dependents receive dependency and indemnity compensation (DIC) from the Department of Veterans Affairs. This benefit indemnifies survivors, in part, for the losses associated with the veteran's death from service-connected causes or after a period of time when the veteran was unable, because of total disability, to accumulate an estate for inheritance by survivors.

Career members of the armed forces earn entitlement to retired pay after 20 or more years of service. Survivors of military retirees have no entitlement to any portion of the veteran's military retirement pay after his or her death, unlike many retirement plans in the private sector. Under the Survivor Benefit Plan (SBP), deductions are made from the veteran's military retirement pay to purchase a survivor's annuity. This is not a gratuitous benefit.

Upon the veteran's death, the annuity is paid monthly to eligible beneficiaries under the plan. If the veteran died from other than service-connected causes or was not totally disabled by service-connected disability for the required time preceding death, beneficiaries receive full SBP payments. However, if the veteran's death was a result of military service or after the requisite period of total service-connected disability, the SBP annuity is reduced by an amount equal to the DIC payment. When the monthly DIC rate is equal to or greater than the monthly SBP annuity, beneficiaries lose all entitlement to the SBP annuity.

The Independent Budget veterans service organizations believe this offset is inequitable because no duplication of benefits is involved. Payments under the SBP and DIC programs are made for different purposes. Under the SBP, coverage is purchased by a veteran and at the time of death, paid to his or her surviving beneficiary. On the other hand, DIC is a special indemnity compensation paid to the survivor of a service member who dies while serving in the military, or a veteran who dies from service-connected disabilities. In such cases DIC should be added to the SBP, not substituted for it. Surviving spouses of federal civilian retirees who are veterans are eligible for DIC without losing any of their purchased federal civilian survivor benefits. The offset penalizes survivors of military retirees whose deaths are under circumstances warranting indemnification from the government separate from the annuity funded by premiums paid by the veteran from his or her retired pay.

Recommendation:

Congress should repeal the offset between dependency and indemnity compensation and the Survivor Benefit Plan.

RETENTION OF REMARRIED SURVIVORS' BENEFITS AT AGE 55:

Congress should lower the age required for remarried survivors of veterans who have died from service-connected disabilities to be eligible for restoration of dependency and indemnity compensation to conform with the requirements of other federal programs.

Current law permits the Department of Veterans Affairs to reinstate dependency and indemnity compensation (DIC) benefits to remarried survivors of veterans if the remarriage occurs at age 57 or older, or if survivors who have already remarried apply for reinstatement of DIC at age 57. Although *The Independent Budget* veterans service organizations appreciate the action Congress took to allow restoration of this rightful benefit, the current age threshold of 57 years is arbitrary. Remarried survivors of retirees of the Civil Service Retirement System, for example, obtain a similar benefit at age 55.[20] *The Independent Budget* veterans service organizations believe the survivors of veterans who died from service-connected disabilities should not be further penalized for remarriage. Equity with beneficiaries of other federal programs should govern Congressional action for this deserving group.

Recommendation:

Congress should lower the existing eligibility age from 57 to 55 for reinstatement of dependency and indemnity compensation to remarried survivors of service-connected veterans.

[20] http://www.opm.gov/forms/pdfimage/RI83-5.pdf.

Supplemental Grant for Adaptation of a New Home:

Grants should be established for special adaptations to homes that veterans purchase to replace initial specially adapted homes.

Adapted housing grants for eligible service-connected disabled veterans literally open doors to independence for these men and women. Prevailing societal and structural barriers to access outside the home become easier to confront once the limitations brought on by a veteran's disability are mitigated by living circumstances that promote confidence and freedom of movement. The Department of Veterans Affairs adapted housing grants currently given to eligible veterans are provided on a once-in-a-lifetime basis. However, homeowners sell their homes for any number of reasons, both foreseeable and unforeseeable (increase or decrease in the size of families, relocation for career or health reasons, etc.). Once the housing grant is exhausted, veterans with service-incurred disabilities who own specially adapted homes must bear the full economic cost of continued accessible living should they move and modify a new home. Those same veterans should not be forced to choose between surrendering their independence by moving into an inaccessible home or staying in a home simply because they cannot afford the cost of modifying a new home that would both mitigate their service-incurred disability and better suit their life circumstances.

Recommendation:

Congress should establish a supplementary housing grant that covers the cost of new home adaptations for eligible veterans who have used their initial, once-in-a-lifetime grant on specially adapted homes they no longer own and occupy.

Stand-Alone Grants with Cost-of-Living Increases for Adaptation of Homes for Veterans Temporarily Living in Family-Owned Residences:

A separate grant should be provided for special adaptations to homes owned by family members in which veterans temporarily reside.

In addition to entitlement to a specially adapted housing or special housing adaptation grant, veterans with certain service-connected disabilities are afforded the temporary residence allowance grant to make structural modifications in homes owned by family members. Specifically, VA provides varying rates of financial assistance for home adaptations to veterans with service-incurred mobility impairment, loss of visual acuity, and complete loss or loss of use of both hands. The grant must be used by eligible veterans within the period of eligibility.

A 2009 Government Accountability Office report revealed that only nine veterans took advantage of the grant that year. Several reasons were cited for this low usage, chief among them being the temporary residence allowance grant's effect on the overall amount of a veteran's entitlement to specially adapted housing/special housing adaptation. Consequently, veterans who were forced to choose between achieving mobility independence at a temporary residence versus preserving more funding for modifying a future residence ultimately chose to defer independence until they had moved into their own homes.

Recommendations:

Congress should make the temporary residence allowance grant permanent with no finite eligibility period date and automatic adjustments to keep pace with inflation.

Congress should direct VA to administer the temporary residence allowance grant as a stand-alone program, separate and apart from the specially adapted housing/special housing adaptation grants.

SUPPLEMENTAL ENTITLEMENT TO AUTO GRANT FOR ELIGIBLE VETERANS:

The cost of replacing modified vehicles purchased through the VA auto grant presents a financial hardship for veterans who must bear the full replacement cost once the adapted vehicle has passed its life expectancy.

The Department of Veterans Affairs provides financial assistance, in the form of a grant, to eligible veterans toward the purchase of a new or used automobile to accommodate a service-disabled veteran or service member with certain disabilities that resulted from a disabling condition incurred during active military service. On October 1, 2011, VA increased this one-time auto grant from $11,000 to $18,900, thus giving service-disabled veterans who need a modified vehicle increased purchasing power. While *The Independent Budget* veterans service organizations recognize the benefit to those veterans who have not yet used the grant, those who previously exhausted the grant at much lower rates are left to replace modified vehicles at their own expense, with cost-of-living increase factored in, once those vehicles have surpassed their life expectancy.

VA acknowledged the impact that higher cost of living had on the intrinsic value of another critical ancillary entitlement. P.L. 109–233 authorized eligible veterans to utilize the specially adapted housing (SAH) grant up to three times or until the total available grant amount was exhausted. Additionally, P.L. 110–289 provided for annual increases in the maximum grant amount, to keep pace with the residential cost-of-construction index. When the maximum grant amount was increased, eligible veterans or service members were provided the opportunity to use additional allowance above the original SAH grant entitlement that they had used. This means a veteran who previously used the grant in the amount of $50,000 is entitled to an additional $13,780 in SAH entitlement, the current rate of maximum entitlement, $63,780, minus what was previously used. Insofar as the intent of this one-time grant, which allows for prorated supplementary funding as it increases, was to provide veterans with a means to overcome service-incurred disabilities in the home, the same consideration should be applied to the auto grant.

The U.S. Department of Transportation reports the average life span of a vehicle is 12 years, or about 128,500 miles. The cost to replace modified vehicles ranges from $40,000 to $65,000 new and $21,000 to $35,000 used, on average. These tremendous costs, with cost-of-living increases over the course of a decade or more, present a financial hardship for many disabled veterans who need to replace their primary mode of transportation once it passes its expected life cycle.

Recommendation:

VA should provide a supplementary auto grant to eligible veterans in an amount equaling the difference between their previously used one-time entitlement and the increased amount of the grant.

VALUE OF POLICIES EXCLUDED FROM CONSIDERATION AS INCOME OR ASSETS:

The cash value of veterans' life insurance policies should not be counted as assets, nor should dividends and proceeds be considered income, for the purpose of establishing eligibility for other government programs.

Life insurance provides the surviving spouses and dependents of veterans with a means of maintaining economic stability after the sponsor's death. In some cases, however, veterans are forced to surrender their government life insurance policies and apply the cash value of the surrendered policy toward nursing home care as a condition of Medicaid coverage. When this occurs, these policies become nothing more than a funding vehicle for one's care prior to death masquerading as a form of protection for survivors. As a result, the government is either paying for a veteran's care in life or paying proceeds to survivors in death, versus the morally superior option of shouldering the economic burden in both instances.

Recommendation:

Congress should enact legislation that exempts the cash value of VA life insurance policies, and all dividends and proceeds therefrom, from consideration in determining veteran entitlement under other federal programs.

LOWER PREMIUM SCHEDULE FOR SERVICE-DISABLED VETERANS' INSURANCE:

Improved life expectancy and mortality rates should lower premiums for service-disabled insurance policies.

Congress created the Service-Disabled Veterans' Insurance (SDVI) program for veterans who faced difficulty obtaining commercial life insurance due to their service-connected disabilities. At the program's outset in 1951, its rates were based on contemporaneous mortality tables and remained competitive with commercial insurance.

Since that time, lowering commercial rates reflected improved life expectancy as illustrated by updated mortality tables. However, the Department of Veterans Affairs remains bound to outdated mortality tables. This results in rates and premiums that are no longer competitive with commercial insurance offerings, which deviates from the intended benefit of providing SDVI to veterans with service-incurred disabilities.

This inequity is compounded by the fact that eligible veterans must pay for supplemental coverage and may not have premiums waived for any reason. Even though Congress, thankfully, authorized an increase from $20,000 to $30,000 in the supplemental amount available with the passage of the "Veterans Benefits Act of 2010" (P.L. 111–275), Congress's intent will not be met under the current rate schedule because many service-disabled veterans cannot afford the premiums.

Recommendation:

Congress should enact legislation that authorizes VA to revise its premium schedule for Service-Disabled Veterans' Insurance based on current mortality tables.