

# Benefit Programs

The Department of Veterans Affairs (VA) is the primary federal agency providing a variety of benefits to our nation's veterans. These benefits include, but are not limited to, disability compensation, dependency and indemnity compensation, education benefits, home loans, ancillary benefits for service-connected disabled veterans, life insurance, and burial benefits. From its headquarters in Washington, D.C., and through a nationwide system of field offices, VA administers its veterans' benefits programs. Responsibility for the various benefits programs is divided among six business lines within the Veterans Benefits Administration (VBA): Compensation, Pension and Fiduciary, Vocational Rehabilitation and Employment, Education, Loan Guaranty, and Insurance. The offices of the Secretary of Veterans Affairs and the Assistant Secretaries provide departmental management and administrative support. These offices, along with the Office of General Counsel and the Board of Veterans' Appeals (BVA), are the major activities under the General Administration portion of the General Operating Expenses appropriation. This appropriation funds the benefits delivery system—the VBA and its constituent line, staff, and support functions—and the functions under General Administration.

Disability compensation payments are intended to provide relief for some of the socioeconomic 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 incomes.<sup>1</sup> 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 result from the interruption of the civilian lives of individuals to perform military service, Congress authorized certain benefits to aid veterans in their readjustment. These readjustment benefits provide monetary assistance to veterans who choose to participate in educational or vocational rehabilitation programs and to seriously disabled veterans in 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.

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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.

These programs have been adopted by Congress, as representatives of a grateful nation, to recognize the sacrifices of those who serve our nation in both peace and war. The veterans organizations comprising *The Independent Budget for Fiscal Year 2015* have worked for a century or more to ensure that veterans and their families are not forgotten once the last soldier, sailor, airman, marine, or coastguardsman returns home or is laid to rest in some distant land.

Ensuring that these carefully crafted benefit programs provide for the needs of these selfless men and women is why *The Independent Budget* veterans service organizations work with Congress and the Administration.

Viewed in context of the service of those who have sacrificed so much for this great nation, veterans' programs must remain a national priority. In addition to maintaining and protecting existing veterans' programs, Congress must ensure that these programs are modified and improved as necessary. VA benefit programs achieve their intended purposes only if the benefits are delivered to entitled beneficiaries in a timely manner and at a sufficient level. In order to maintain or increase their effectiveness, we offer the following recommendations in this *Independent Budget*.

## ENSURE SUFFICIENT STAFFING FOR THE VETERANS BENEFITS ADMINISTRATION AND THE BOARD OF VETERANS' APPEALS

*Congress must provide sufficient resources to ensure adequate staffing levels in the Veterans Benefits Administration and the Board of Veterans' Appeals to address increasing workloads.*

### COMPENSATION SERVICE

In recent years the Veterans Benefits Administration (VBA) has seen a significant staffing increase because Congress recognized that rising workload, particularly claims for disability compensation, could not be addressed without additional personnel and therefore provided additional resources to do so. More than 5,000 full-time employee equivalents (FTEEs) were added to the VBA between 2008 and 2012 with most of that growth going to the Compensation Service. In FY 2013, the VBA's budget supported an additional 450 FTEEs above the FY 2012 authorized level.

In addition during the past several years, the VBA has been in the process of comprehensively transforming its claims-processing system with national deployment taking place throughout FY 2013. At the core of the new system is a new organizational model and new information technology (IT) system, the Veterans Benefits Management System (VBMS), which will change the roles and responsibilities of thousands of VBA employees at each of the 57 Department of Veterans Affairs regional offices (VAROs). While this ongoing transformation is taking place, it is imperative that the VBA and Congress continue to closely monitor the Compensation Service's actual and projected workload and the measurable and documented increases in productivity resulting from the new organizational model and the VBMS. The VBA and Congress must also track personnel changes, such as attrition, in order to ensure that staffing is sufficient. Furthermore, the VBA must develop a better, more consistent, and data-driven method of determining future staffing requirements to more accurately inform future funding requirements.

Since the early part of 2013 the VBA has clearly made positive strides toward increasing productivity, reducing the backlog of disability claims and, by the end of 2015, reaching the Secretary's goal of completing all claims in less than 125 days with 98 percent accuracy. Over the past year, the total number of claims pending dropped by about 20 percent, and the number in the backlog (over 125 days) decreased by more than a third. The VBA has employed a variety

of aggressive initiatives, such as processing all claims pending longer than two years and then, when completed, moving to process all claims pending longer than one year. Both of these initiatives helped reduce the average time pending for all claims, and the focused effort also contributed to reducing the backlog of disability claims. The VBA claims-transformation strategy has also contributed to some increased efficiency; however, this strategy is only now beginning to drive increases in efficiency and productivity. Almost certainly, the most significant change that has helped reduce the backlog over the past year has been VBA's heavy reliance on mandatory overtime. However, it is not clear how long the use of mandatory overtime can be sustained by VBA, thereby leaving uncertainty for the continued backlog reduction. Clearly, the VBA is still in a major state of fluidity with the recent implementation of the new organizational model and the VBMS, which makes any recommendation for an increase in the VBA challenging to meet both present needs and future needs once the transformation reaches its full productive state.

So while it is clear that extra manpower in the form of mandatory overtime is needed to drive down the backlog in the next couple of years, *The Independent Budget* veterans service organizations (IBVSOs) believe that the VBA and Congress should also look at an alternative approach to increasing staffing on a temporary basis. Several years ago the passage of the "stimulus" legislation allowed the VBA to hire several thousand employees for a temporary two-year term. At the end of those two years, many of those who had been working in the VBA on a temporary basis transitioned into permanent positions made available through attrition.

The IBVSOs believe this approach may prove to be even more beneficial to the VBA with its new organizational model and VBMS now firmly in place, as well as beneficial to the training of new employees. We believe allowing the VBA to again hire employees for a two-year temporary term could supplement and/or alleviate the reliance on mandatory overtime and further reduce the backlog of disability claims to help reach the Secretary's goal by the end of 2015. Such an

initiative would also provide an outstanding opportunity for VBA to have a generous pool of fully trained, qualified candidates to choose from as replacements for full-time VBA employees who will undoubtedly be lost over the next few years because of attrition. However, rather than hiring “new” employees who need training and time to become fully productive, VBA would have instantly productive replacements ready, and would have the ability to hire only the best of these candidates. Therefore, the IBVSOs recommend Congress provide the funding and resources necessary for VBA to hire a minimum of 1,000 new employees for a temporary two-year term.

### BOARD OF VETERANS’ APPEALS

The BVA makes final decisions on behalf of the Secretary on veterans’ and others’ appeals of decisions of local VA regional offices. It reviews all appeals for benefit entitlement, including claims for service connection, increased disability ratings, total disability ratings, pension, insurance benefits, educational benefits, home loan guaranties, vocational rehabilitation, dependency and indemnity compensation, and health-care delivery, primarily dealing with medical care reimbursement and fee-basis claims. The BVA’s mission is to conduct hearings and issue timely, understandable, and accurate decisions for veterans and other appellants in compliance with the requirements of law. While the BVA controls jurisdiction over a host of issues, historically, 95 percent of appeals considered by the BVA involve claims for disability compensation or survivor benefits.

Based on historical trends, the number of new appeals to the BVA averages approximately 5 percent of all claims received; because the number of claims processed by the VBA is expected to rise significantly, so too will the BVA’s workload rise accordingly. It is worth noting that in both FY 2011 and FY 2012 a significant number of VA regional office employees who would otherwise have normally worked on certifying appeals to the BVA were instead focused on processing *Nehmer*<sup>1</sup> and other Agent Orange–related cases, creating a backlog of appeals to be certified. In addition, while the VBA is continuing the implementation of its new organizational model and VBMS system, the focus on processing claims has also shifted away from certifying appeals to the BVA. With the *Nehmer* claims now behind VBA and the VBMS system fully

implemented into the disability claims process in all VA regional offices, much needed attention should be given to the backlog of pending appeals, which may lead to a surge of new appeals being sent to the BVA in the next couple of years, further straining its already resource-constrained capacity to handle the rising workload. However, there have been some reports that VAROs are continuing to limit the number of staff working on appeals in order to help reach the Secretary’s 2015 goal on the backlog of claims.

Yet, despite the fact that workload is rising and is projected to grow significantly as the VAROs begin to process both the backlog of claims and pending appeals, the budget provided to the BVA has been declining, forcing it to reduce the number of employees. Although the VBA had been authorized to have up to 544 FTEEs in FY 2011, its appropriated budget could support only 532 FTEEs. In FY 2012 that number was further reduced to 510. Projecting for FY 2014 the IBVSOs recommended a modest increase in staffing to 544 FTEEs. We are pleased Congress supported this recommendation and actually went beyond the suggested number by providing enough funding for BVA to increase staffing to approximately 618 FTEEs to be in place by the end of FY 2014. Currently, BVA staffing is approximately 600 FTEEs, which is an increase of approximately 75-80 FTEEs from the 518 FTEEs on board in FY 2012. While it is a positive step by increasing BVAs staffing, real gains, if any, toward reducing the backlog of appeals will not be ascertainable until these new employees are fully integrated into the workflow process and the VBMS has been fully implemented at the BVA. As such, with the overall increase to approximately 618 FTEEs by the end of FY 2014, the IBVSOs are not recommending any specific increase in staffing for FY 2015.

### VOCATIONAL REHABILITATION AND EMPLOYMENT SERVICE

VA’s Vocational Rehabilitation and Employment (VR&E) program, also known as the VetSuccess program, is authorized by Congress under title 38, United States Code, chapter 31. The VetSuccess program provides critical counseling and other adjunct services necessary to enable service-disabled veterans to overcome barriers as they prepare for, find, and maintain gainful employment. VetSuccess offers

services along five tracks: reemployment, rapid access to employment, self-employment, employment through long-term services, and independent living.

An extension for the delivery of VR&E assistance at a key transition point for veterans is the VetSuccess on Campus program. This program provides support to student veterans in completing college or university degrees. VetSuccess on Campus has developed into a program that places a full-time vocational rehabilitation counselor and a part-time Vet Center outreach coordinator at an office on campus specifically for the student veterans attending that college. These VA officers are present to help the transition from military to civilian and student life. The VetSuccess on Campus program is designed to give needed support to all student veterans, whether or not they are entitled to one of VA's education benefit programs.

In FY 2013, VR&E's VetSuccess program had more than 124,100 participants in one or more of the five assistance tracks, an increase above the FY 2012 participation level of approximately 121,000 participants. In FY 2012, VR&E had a total of 1,446 FTEEs and anticipated an increase of approximately 150 FTEEs for FY 2013. Given the estimated 10 percent workload increases for both FY 2013 and FY 2014, *The Independent Budget* estimated that VR&E would need an additional 230 counselors in FY 2014 in order to reduce its counselor-to-client ratio to the stated goal of 1:125; however, VR&E's total staffing has fallen to approximately 1,343 FTEEs, which has adversely impacted their ability to reduce the counselor to client ratio to the targeted and much more manageable 1:125. This reduction in the number of FTEEs means the time VR&E counselors can provide to veteran clients will continue to be compromised.

In FY 2012, VR&E added 110 FTEEs to work at the Integrated Disability Evaluation System sites. In addition, VA added 20 FTEEs on college campuses to expand the VetSuccess on Campus program. However, with no additional FTEEs placed in VAROs and with workload continuing to increase, VA's counselor-to-client ratio continues to be approximately 1:145.

Based on its success and demand, VA was expected to increase its VetSuccess on Campus program from

34 colleges in FY 2012 to 50 colleges in FY 2013, and the IBVSOs previously recommended VR&E expand this program to at least 70 campuses in FY 2014. With increasing numbers of veterans separating from active duty and returning to college campuses, (largely due to the Post-9/11 G.I. Bill), the highly regarded VetSuccess on Campus program should also grow in order to support these student veterans. We are pleased to note that the number of campuses in the VetSuccess on Campus program was increased from 32 to 94 in 2013, but we believe with increasing number of veterans separating from military service this successful program should continue to expand to more campuses in FY 2015 with sufficient staffing resources provided.

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### Recommendations:

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The VBA and Congress must carefully monitor both workload and productivity in the VBA's Compensation Service so that staffing levels can be adjusted annually to reflect such changes.

Congress should authorize and approve funding to allow VBA to hire at least 1,000 new temporary claims processors in order to provide additional capacity to reduce the backlog and to develop highly qualified candidates to replace employees leaving through attrition.

The VBA must develop an accurate model to measure and project claims-processing workload and productivity, as well as a data-driven model to determine resource and staffing requirements.

Congress must provide the Vocational Rehabilitation and Employment Service with sufficient funding to support an adequate number of full-time employee equivalents to meet growing demand of the program and achieve its current caseload target of one counselor for every 125 veteran clients, and equitably allocate resources among VAROs in a manner to achieve that target.

Congress should authorize the necessary resources for additional FTEEs in FY 2015 to support the VR&E's expanding VetSuccess on Campus program beyond the current number of 94 campuses.

## COMPLETE THE TRANSFORMATION OF VA'S BENEFITS CLAIMS-PROCESSING SYSTEM

*The Veterans Benefits Administration has made significant progress toward eliminating the backlog of veterans' claims over the past year and must continue to receive and properly allocate sufficient resources to all critical elements of its claims-transformation strategy.*

For the first time in years, some good news is coming out of the Veterans Benefits Administration (VBA) regarding the backlog of veterans' disability compensation and pension claims. Over the past year the VBA has reported that the number of claims pending dropped by approximately 175,000 and the number of claims classified as "backlogged"—pending longer than 125 days—has been reduced by almost 200,000, a decrease of approximately one-third.

Furthermore, VBA's ASPIRE Dashboard ([www.vba.va.gov/reports](http://www.vba.va.gov/reports)) indicates that the quality of completed claims has steadily risen from to 86.3 percent in January 2013 to 89.6 percent in November 2013; more than a 5 percent increase in less than one year. Finally, the average days pending for rating claims has dropped from 280 days to under 170 days in 2013, and the VBA has virtually no claims currently pending longer than a year.

All of this progress comes after four years of comprehensive transformation that included implementation of new organizational and operating processes, new IT systems, and new training, testing and quality control regimes. Despite a partial government shutdown that disrupted progress for most of October, 2013, the VBA appears to have finally turned a corner for the first time in more than two decades. However, despite the laudable progress and milestones that have been achieved, significant work remains to be done before the VBA can hope to completely eliminate the backlog and reform the claims processing system so that every claim is done right the first time.

### BACKGROUND OF TRANSFORMATION EFFORTS

Four years ago, recognizing that its infrastructure was outdated and ineffective and that rising workload could no longer be managed, VBA leadership in 2010 determined that it would be necessary to completely and comprehensively rebuild and modernize its claims process. VBA committed to completely overhaul its outdated and broken claims processing system and finally create a modern, paperless system that could eliminate the backlog of pending claims once and for

all. Department of Veterans Affairs Secretary Eric Shinseki established an ambitious goal: by 2015 the VBA would process all claims within 125 days and would do so with 98 percent accuracy. To accomplish this, the VBA would need to develop entirely new IT systems, organizational structures and adjudication procedures, while continuing to process a million claims or more every year. Considering VBA's failure to modernize this system for the past two decades, this task was indeed daunting.

Since 2000, the number of claims filed annually has doubled, from about 600,000 to nearly 1,200,000 in 2013, but that only tells part of the story. The complexity and average number of issues per claim has also risen, further multiplying the workload that the VBA must now process. Over this same time period, the VBA workforce grew by just 50 percent, resulting in an ever-increasing backlog of claims.

In order to meet the Secretary's ambitious goal of zero claims pending more than 125 days and all claims completed to a 98 percent degree of accuracy standard, the VBA began with a comprehensive review of the existing claims process, which included extensive outreach to veterans service organizations (VSOs). The VBA launched dozens of experimental pilot programs and initiatives to test process changes that might streamline operations or increase the quality and accuracy of decisions. In 2011, the second year of transformation, the VBA analyzed and synthesized the results of its study and experimentation and developed a comprehensive strategy to re-engineer the entire claims process, focusing on three critical areas: people, process, and technology. Throughout 2012, the VBA further developed, refined, and began to deploy a new organizational model and a new IT system, known as the Veterans Benefits Management System (VBMS), based on lessons learned over the prior two years. By the end of 2012, the VBA had completed the roll out of its new Transformation Organizational Model (TOM) to nearly all VA regional offices (VAROs), and the VBMS had been deployed to 16 VAROs. Last year the VBA completed the deployment of VBMS to the remaining VAROs by June, ahead of schedule. Finally, in September the

VBA began operating the first fully digital regional office in Newark, New Jersey, in order to test current and develop new operating procedures necessary for a full transition to all-digital processing throughout all VAROs.

## PRODUCTIVITY AND QUALITY INCREASES

Today there are measurable signs of progress resulting from VBA's transformation efforts; however, there are also troubling questions about whether this progress can be sustained two, five or 10 years from now. Based only on the currently available data and information from the VBA, it is not certain whether this level of progress will be sufficient to meet the Secretary's ambitious 2015 goals. Without such information, *The Independent Budget* veterans service organizations (IBVSOs) find it difficult to determine whether the documented progress is short-term progress that will stall, or whether it can be sustained and accelerated to finally eliminate the backlog.

At the beginning of 2013, there were more than 860,000 pending claims for disability compensation and pension. By the end of the year, that number had dropped by more than 20 percent, down to about 685,000 pending. The number of claims in the backlog—greater than 125 days pending—dropped by about a third, from more than 600,000 in January 2013 to just over 405,000 in January 2014. The VBA increased the number of claims completed each month from an average of about 89,000 during the first four months of the year to more than 114,000 during the succeeding six months prior to the government shutdown. Claims production dropped significantly following the shutdown and during the subsequent holiday period.

The most important factor driving VBA's productivity gains was undoubtedly the policy of mandatory overtime for claims processors that ran from May through November. During this six-month stretch, the VBA achieved significant boosts in the number of completed claims per month, reaching as high as 129,488 in August, before dropping back down during the shutdown and after mandatory overtime ended just before Thanksgiving. The other key factors boosting claims production were likely the increased focus on fully developed claims (FDCs), which rose to more than 12 percent of VBA's claims inventory, and the continued professional development of VBA's newest employees hired during the past five years.

Although the VBA finished the rollout of both the VBMS and the new TOM last year, this achievement likely had only a marginal influence on productivity increases last year since there is a learning curve that both employees and management must complete before they reach their full productive potential with new systems.

While the drop in the backlog was certainly good news, even more encouraging was the steady increase in the accuracy of claims produced throughout the year, as measured by the Systematic Technical Accuracy Review (STAR) teams. The teams' 12-month measure for average rating claims accuracy rose from 85.7 percent at the beginning of the year to 89.6 percent by the end. Although this figure remains far from the 98 percent accuracy goal put forward by the Secretary, it is a significant improvement. As VBA officials regularly point out, however, when using an issue-based standard, rather than a claims-based one (as one claim may contain many separate issues), the average three-month accuracy rate is much higher, over 96 percent during the final months of 2013.

There are several likely causes for the increased accuracy of rating claims. First, statutory and regulatory changes have eliminated virtually all errors related to the duty to notify veterans of their rights under the Veterans Claims Assistance Act (VCAA), as the required notice is now included on the application form itself. Inadequate VCAA notice had historically been one of the largest categories of STAR errors. Second, the use of the VBMS has automated many of the required development steps required to properly prepare a claim to be rated, such as scheduling compensation exams and routine future examinations, thereby reducing the number of these types of errors by more than 50 percent. Third, rating calculators and other automation tools have helped to prevent inaccurate ratings because the system will not accept disability evaluation levels outside certain parameters established for each diagnostic code. Finally, VBA's new Quality Review Teams (QRTs) have had a positive effect on the quality and accuracy of ratings.

## TRANSPARENCY AND PARTNERSHIP WITH VSO STAKEHOLDERS

While the progress is real, the IBVSOs remain concerned about a recent trend toward less openness and transparency from the VBA over the past year, which

could hinder its ability to successfully complete the transformation. It is essential that VBA work in an open, transparent and collaborative manner with both Congress and VSO stakeholders in order to continue receiving the support and assistance needed to complete this transformation. Just as important, without proper and transparent data and metrics, neither Congress nor VSO stakeholders will gain the information necessary to provide constructive feedback that could help improve VBA's claims processing system.

At the beginning of the transformation process, the VBA made a critical decision to partner with VSOs accredited by VA to help veterans file claims, including the IBVSOs, because we possess significant knowledge and experience in the claims process. Collectively, our organizations hold power of attorney (POA) for millions of veterans who are filing or have filed claims, and VBA recognized that close collaboration with VSOs could reduce its workload and increase the quality of its work. VSOs make VBA's job easier by helping veterans prepare and submit better claims, thereby requiring less time and resources for VBA staff to develop and adjudicate them. The IBVSOs have been regularly consulted on initiatives proposed or under way at the VBA, including fully developed claims (FDCs), disability benefit questionnaires (DBQs), the VBMS, the Stakeholder Enterprise Portal (SEP), the update of the VA Schedule for Rating Disabilities (VASRD), and many of the pilots being conducted at VAROs. Consistent with the path set forth by both the VBA and VA leadership, the VBA must continue to reach out to its VSO partners, both at the national and local levels, in order to consolidate and sustain a fruitful partnership that results in better service and outcomes for veterans.

## *Creating a Culture of Accountability*

### TRANSFORMATION ORGANIZATIONAL MODEL

In order to complete the transformation, end the backlog, and decide each claim right the first time, VBA must develop and inculcate a new work culture based on quality and accountability. At a time when so much national attention has been focused on reducing the number of claims pending in the

backlog, VBA must continue to place at least equal emphasis on quality and accuracy, rather than just speed and production.

Unfortunately, most of the metrics that VBA employs today are based primarily on measures of production, rather than quality. For example, the most common way to measure the VBA's progress is through its Monday Morning Workload Reports, which contain measures of production but not accuracy or quality. Another major tool used to review VBA's status is its "Aspire Dashboard," which provides current performance statistics for each VARO and provides national totals. Like the Monday Morning Workload Reports, however, the Aspire Dashboard metrics are primarily related to pending work inventory and production times, with only a few measures of accuracy included. The VBA must develop new and realistic metrics and performance measures at every level in the process—from claims processors to regional office management to VA Central Office leadership.

### PERFORMANCE STANDARDS

A similar focus on production is reflected in performance standards for VBA employees. While accuracy has been and remains one of the performance standards that must be met by all employees, current performance standards adopted in recent years have done little to create new incentives to promote quality above production. In fact given the high percentages of Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs) who have struggled to meet the new performance standards, the VBA has acknowledged that adjustments need to be made to ensure that they fairly measure current job performance. Furthermore, the implementation of the new organizational model is changing the roles and workloads of VSRs and RVSRs and consequently requires adjustments be made to their performance standards. Employees handling complex "Special Ops" claims should not be held to the same performance levels in terms of claims competed per day as those handling simpler "Express" claims.

Furthermore, as new processes and technologies come online, it is imperative that the VBA be able to make timely adjustments to performance standards to ensure that production pressures do not outweigh the goals of accuracy and quality. The IBVSOs

believe the VBA must develop a scientific methodology for measuring the resources (primarily personnel) required to accurately and timely process the current and future anticipated workload as well as develop a new model for allocating those resources among VA regional offices.

## TRAINING

The VBA must continue to invest in the training and professional development of its workforce. Over the past several years, VBA has reengineered its “challenge” training program for new employees, which consists of four weeks of in-station training via “live-meeting” software, followed by four weeks of in-residence training at the Baltimore academy or other centralized locations around the country. Every employee is also required to complete continuing training of 85 hours per year. In addition, the VBA has developed a new training program called Station Enhancement Training (SET), which requires all employees at targeted poor performing VAROs to undergo comprehensive training together for one week. First begun at some of the VBA’s lowest performing stations, including Oakland, Los Angeles, and Baltimore, SET allows employees to review and refresh their knowledge, while also providing structured time to work live cases under the supervision of the training staff. The VBA has found that SET training not only increased quality, it also boosted morale of employees and the VBA expects to continue SET training in 2014.

## TESTING

VBA also requires that employees, everyone from coaches down to VSRs, take and pass a skills-certification examination every two years.. For STAR employees the testing is now done every year to ensure that those employees who measure quality are held to the highest standards. Certification exams are designed by subject- matter experts and reviewed by a test committee of employees who process claims to ensure that the exams are appropriate for each class of employees. VBA must continue to ensure that its testing regime is adequate to measure necessary job skills and that appropriate human resources accountability measures are developed for employees who fail to pass skills certification examinations.

## QUALITY CONTROL

In order to sustain any progress made with the new IT systems and organizational models, the VBA must continue to make the changes to its work culture so that quality and accuracy are the cornerstones of all their activities. The IBVSOs believe that VBA’s creation of Quality Review Teams was a powerful statement of the VBA’s commitment to quality. QRTs perform several functions: they conduct local quality reviews, perform in-process reviews, and provide select training. In particular, the in-process reviews, often referred to as “mulligan reviews,” allow errors to be corrected before they negatively affect a rating decision and without penalizing the VBA employee. The VBA must continually evaluate and improve its training, testing, and quality-control programs in order to truly reform the claims system over the long term.

## *Maximizing the Use of VBA Resources*

### NEW TRANSFORMATION ORGANIZATIONAL MODEL

After conducting and evaluating dozens of pilots to improve its claims-processing system, the VBA synthesized the best practices in what is now called the Transformation Organizational Model (TOM), based upon the segmentation of claims based on their complexity. At the beginning of the new process, VBA’s traditional triage function has been replaced with a new Intake Processing Center that puts an experienced VSR at the front end of the process to divide claims along three separate “lanes:” “Express,” “Core,” and “Special Ops.” The Express Lane is for simpler claims, such as fully developed claims, claims with one or two contentions, etc. The Special Ops Lane is for more difficult claims, such as those with eight or more contentions or long-standing pending claims; complex conditions, such as traumatic brain injury and special monthly compensation; and other claims requiring extensive time and expertise. The Core Lane is for the balance of claims involving three to seven contentions, as well as claims for individual unemployment.

The VBA estimates that about 30 percent of claims will be processed through the Express lane, about 60 percent through the Core lane, and about 10 percent through the Special Ops lane. In each of these lanes, integrated teams comprised of VSRs, RVSRs, and Decision Review Officers (DROs) work in close proximity so that they can better coordinate their efforts and increase production through synergistic effects. Although there have been increases in both production and quality over the past year using the TOM, the VBA must regularly measure, carefully analyze, and continually improve its new operating procedures to fix problems and maximize efficiencies.

In particular, the VBA must avoid the temptation to put more resources and personnel in the Express lanes as a tactic to generate greater production and artificially lower the pending backlog of claims. While such a redistribution of VBA resources would allow the VBA to move a larger number of simple claims more quickly and thus lower the number of pending claims, it would force much longer delays on veterans awaiting decisions on the more complex claims, including those with eight or more contentions or those suffering from PTSD.

VBA also must not neglect the preparation of claims awaiting certification to the Board of Veterans Appeals. There have been reports that some VAROs have redirected some VSRs and RVSRs who normally work on preparing appeals instead to work only on claims that contribute to lowering the backlog. Again, such an approach may yield short-term gains in reducing the claims backlog, but it will have longer-term negative consequences for the growing backlog of appeals.

In order to continue incentivizing quality and accuracy along each track, the VBA must also ensure that performance standards are adjusted appropriately for VSRs and RVSRs work on each of the different tracks within the new organizational model. Production standards for VSRs and RVSRs handling the simplest claims must be different from those handling the most complex, which take more time per claim. Understanding that this model will continue to evolve as technology evolves simultaneously, it would be wise for the VBA to consult with the American Federation of Government Employees and other labor representatives in developing a mutually acceptable framework for quickly adjusting performance

standards in the future as conditions merit. In addition, the VBA should develop a systemic approach to rotating VSRs and RVSRs through each of the tracks so that they have sufficiently trained and experienced employees able to make adjustments in the organizational model in the future.

### FULLY DEVELOPED CLAIMS PROGRAM

The IBVSOs continue to actively support the FDC program and the VBA's goal of channeling an increasing share of all claims through the FDC program: by the end of 2013 more than 20 percent of all claims filed were done through the FDC program. This approach will not only lower the burden on VBA employees, it will also result in faster and more accurate claims decisions for veterans. While not all claims can or will be filed as "fully developed," there are certain steps that the VBA can take to increase the success of this program.

When veterans submit additional evidence after an FDC is formally filed, by rule that claim is removed from the FDC program and put back into the regular claims track even when the supplemental evidence submitted required no additional development actions by VBA. The IBVSOs believe that in those instances the VBA should allow the claim to remain in the FDC program, benefiting both the veteran and VBA. Similarly, VBA should not remove claims from the FDC program if VBA determines that secondary claim can be inferred based on the evidence received. When a claimant fulfills all their obligations to file a FDC, actions taken by VBA in satisfying the law should not become a reason to remove that claim from the FDC program. Removing a claim from the FDC program does not help the veteran, and it will not help the FDC program.

In addition every VARO should clearly designate one individual to serve as the FDC coordinator, and VARO directors must ensure that this person is provided adequate time and resources to successfully work with VSOs to address problems with submitted FDCs. This person must not be diverted away from their FDC responsibilities to address gaps in regular claims processing, particularly if such a change were being done to make short-term boosts in productivity just to show momentary progress in reducing the backlog.

## PRIVATE MEDICAL EVIDENCE AND DBQS

The VBA should also continue to encourage and support the use of private medical evidence in order to eliminate the time and resources required to administer compensation medical exams, which would also support efforts to increase the number of FDCs filed. The VBA has taken significant actions in recent years to encourage private evidence, such as the development and use of DBQs and the Acceptable Clinical Evidence (ACE) initiative, under which VA physicians review existing medical records to determine if enough evidence already exists to make a rating decision without the need for a VA-ordered exam.

However, there remains resistance in some VAROs and from some employees in giving private medical evidence the same weight as VA medical evidence. In order to further support efforts to encourage the use of private medical evidence, Congress should amend title 38, United States Code, section 5103A(d)(1) to provide that, when a claimant submits private medical evidence, including a private medical opinion that is competent, credible, probative, and otherwise adequate for rating purposes, the Secretary shall not request a VA medical examination.

Furthermore, the VBA should expand the availability of DBQs, most of which were developed in consultation with IBVSO experts, to enable private physicians to submit medical evidence on behalf of veterans they treat. Currently, however, the “Medical Opinion” DBQ, which is used to support claims for service connection, and the PTSD DBQ are not available to private physicians. The VBA should release these DBQs for the private treating physicians of veterans to complete.

The VBA must also develop and institutionalize greater cooperation from the Veterans Health Administration (VHA) in having physicians complete DBQs for veterans treated by the VHA. In the past year many VHA treating physicians were told that they either should not or may not fill out DBQs for their patients. The VHA has made efforts to address this problem by creating more convenient opportunities for veterans to have DBQs filled out by VHA physicians at specific times and locations. However, the VBA and VHA should continue working to reach an agreement to have VHA-treating physicians complete DBQs for veterans upon request.

## *Modernizing Technology Infrastructure*

### VETERANS BENEFITS MANAGEMENT SYSTEM

Perhaps the most important element of VBA’s transformation strategy is the successful implementation of new technology, including the VBMS, the SEP, an expanded e-Benefits system with VONAPPS Direct Connect (VDC), and the Virtual Lifetime Electronic Record (VLER) initiative. In terms of processing claims, the most important technology is the VBMS, the paperless, rules-based system the VBA uses to create electronic claims files, manage workflow, and determine ratings. The VBA was able to complete implementation of the VBMS ahead of schedule in June, and by the end of 2013, nearly all of VBA’s pending claims were processed using electronic files. Going forward, the VBA must continue to receive and allocate sufficient funding for scanning paper claims forms and evidence, including the back-scanning legacy files, and must monitor and work to improve the quality of the scanned documents.

The IBVSOs have generally been pleased with VBA efforts to incorporate our perspectives, experience, and expertise throughout the IT development process, particularly recognizing the important role that VSO service officers play in the claims process. Although there have been some obstacles to overcome in providing full access to claims decisions for VSO POA-holders, the VBA continues to work in partnership with VSOs to ensure that claimants will be fully represented in the new digital environment. The VBA must ensure that neither the VBMS nor other new technologies override veterans’ rights or the ability of VSOs to fully represent veterans in this new electronic claims processing environment.

While the VBA was able to finish its rollout of the VBMS ahead of schedule, significant work remains, including completing the authorization and awards portions of the VBMS for compensation and pension. In addition, connecting the VBMS to the Appeals Management Center (AMC), Board of Veterans’ Appeals (BVA), and the Court of Appeals for Veterans Claims (CAVC), will allow for a continuous electronic flow throughout the claims process.

In addition, the VBMS was ultimately intended to include all of VBA's business lines so that no matter where a veteran or survivor applied for benefits, the VBMS would seamlessly connect them to all benefit they may be entitled to receive. While some programs, such as Education Service, have developed adequate IT systems in recent years, others, especially the Vocational Rehabilitation and Employment (VR&E) service, are in dire need of a complete IT overhaul. VR&E's processing system, called the Corporate Winston-Salem, Indianapolis, Newark, Roanoke, Seattle (CWINRS) system, is incapable of managing the many needs of this program. Rather than invest in short term upgrades and patches, the IBVSOs believe that VBMS development for VR&E should be accelerated.

Recognizing that no modern IT system or software is ever truly "finished" is vitally important. In addition to the funding required for maintenance of the VBMS system, VBA must continue to make significant investments in VBMS development for as long as this system is capable of meeting VBA needs. The coding and embedding of rating calculators inside the VBMS, for example, remains a labor-intensive, time-consuming process and one that will continue as the VA Schedule for Rating Disabilities (VASRD) is continually updated in the future. Furthermore, as new IT technologies emerge, and new requirements for the VBA are identified, the VBMS must evolve to address those needs and opportunities, requiring an aggressive development program that has sufficient resources.

#### STAKEHOLDER ENTERPRISE PORTAL

Another crucial IT component for reforming the claims process has been the development of SEP, which allows service officers representing veterans to directly file their claims, upload new evidence, and track the progress of pending claims. SEP allows VSOs to do for veterans what VONAPPS Direct Connect (VDC) and e-Benefits allows veterans to do for themselves. The VBA must continue to work out problems and glitches in the SEP to ensure that VSOs are able to fully represent veterans in this electronic environment.

## *Simplified Notification Letters and Automated Rating Tools*

The IBVSOs continue to have concerns about the content of rating decisions issued through the Simplified Notification Letter (SNL) program. Too often, SNL decisions contain insufficient information to allow veterans and their representatives to fully understand the rating decisions, to be certain what evidence was considered, or to know what reasons and bases were used to reach such decisions. While we certainly support the use of rules-based decision support, the VBA must not use technological automation to eliminate essential manual steps, such as the inclusion of sufficiently detailed explanations, in rating decisions. We believe that requiring raters to provide detailed, plain English explanations of their decisions will not only better inform veterans (and their representatives) but will also lead to better-reasoned and more accurate decisions by the raters themselves.

#### VA-DOD MEDICAL RECORDS

Finally, perhaps the most challenging element of VBA's IT transformation strategy is the fulfillment of what has long been called the Veterans Lifetime Electronic Record. After too many years of futile debate, negotiation, and ultimately stalemate, VA and the DOD must finally come to an agreement on how to create a single interoperable medical record that serves the mission of both departments. The impasse between the DOD and VA has already cost the country more than \$1 billion over five years, and less palatable alternatives to a single integrated electronic health record do not satisfy Congress's 2008 directive to VA. The seamless integration of VA and DOD medical information is one of the keys to truly achieving automated, electronic processing of claims for disability compensation and other earned VA benefits. Congress, VA, and the Administration must accelerate efforts to finally reach agreement and move forward expeditiously.

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## Recommendations:

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The VBA must increase its openness, transparency, cooperation, and collaboration with Congress and veterans service organization stakeholders as it implements its new transformation initiatives.

The VBA must provide comprehensive and detailed plans, including benchmarks, milestones, and interim goals for its claims transformation initiatives.

The VBA must develop new metrics and assessment tools to measure performance at every level of the claims processing system, based upon a scientific methodology of projecting workload, resource requirements, and allocations.

The VBA must ensure that VA regional offices equitably allocate their resources among the newly designed, claims-processing lanes so that all claims are processed accurately in a timely manner.

The VBA must allocate sufficient resources to preparing claims for certification for appeal to the BVA.

The VBA must continue to strengthen and emphasize training, testing, and quality-control programs, which are the cornerstone of accountability.

The VBA should revise its policies so that it do not exclude claims from the fully developed claims process when a veteran submits additional evidence, provided that evidence requires no further development actions, and should designate a fully developed claims coordinator at every VARO.

Congress should pass legislation to require that private medical evidence be given due deference when it is competent, credible, probative, and otherwise adequate for rating purposes.

The VBA should allow private treating physicians to complete and submit disability benefit questionnaires for medical opinions (“nexus”) and for diagnosing PTSD.

The VBA and VHA must reach agreement to allow VHA physicians to complete DBQs for veterans they are actively treating.

The VBA must not allow new technologies to override veterans’ rights or the ability of VSOs to fully represent veterans in the new electronic-claims-processing environment.

The VBA must complete the full development and integration of the Veterans Benefits Management System to the Appeals Management Center, Board of Veterans’ Appeals, and Court of Appeals for Veterans Claims as well as to the other VBA business lines, particularly Vocational Rehabilitation & Employment.

The VBA must request and Congress must provide sufficient funding to continue adequate development and maintenance of the Veterans Benefits Management System for as long as it remains capable of meeting VBA needs.

The VBA must ensure that automated rating or decision notification tools accurately reflect current law and regulations and fully protect veterans’ rights before being implemented.

VA and the DOD must agree upon, develop, and implement a single, interoperable electronic medical record that will facilitate automated processing of veterans’ medical records for benefits applications.

## UPDATING AND REVISING THE RATING SCHEDULE

*As the Veterans Benefits Administration continues working to update and revise 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 Veterans Benefits Administration (VBA) is currently engaged in updating and revising the Department of Veterans Affairs *Schedule for Rating Disabilities* (VASRD), which determines the amount of disability compensation paid to a service-connected disabled veteran. The VASRD is divided into 15 human-body systems with more than 700 diagnostic codes found in title 38, Code of Federal Regulations, part 4. In 2007 both the Congressionally mandated Veterans Disability Benefits Commission, established by P.L. 108-136, the “National Defense Authorization Act of 2004,” as well as the Institute of Medicine Committee on Medical Evaluation of Veterans for Disability Compensation, recommended in a report, “A 21st Century System for Evaluating Veterans for Disability Benefits,” that Department of Veterans Affairs regularly update the VASRD to reflect the latest understanding of disabilities and how disabilities affect veterans’ earnings capacity. In line with these recommendations, the VBA is currently updating all 15 body systems in the VASRD and has committed to review and update the entire VASRD every five years thereafter.

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 in its first “Biennial Report” from 2010, the ACDC recommended that the VBA follow a coordinated and inclusive process while reviewing and updating the VASRD. The ACDC recommended that veterans service organization (VSO) stakeholders be consulted several times throughout the review and revision process, particularly before any proposed rule is published for public comment. The IBVSOs are pleased that the VBA has followed this recommendation.

VSOs help hundreds of thousands of veterans each year with their claims for benefits before VA. Collectively, they spend millions of dollars each

year training service officers in the law, regulations, policies and practices used by VA to make benefit determinations to ensure that veterans they represent receive every benefit to which they are entitled. VSO service officers have a unique understanding of the VASRD and other regulations used by VA to make claims decisions. Historically, revisions to the VASRD have been completed behind closed doors with the first indication of changed criteria for evaluating specific disabilities reflected in publication of a proposed rule. It is imperative that the regulatory process, especially on a subject as critical as the VASRD, be as open to public scrutiny as possible.

Over the past two years, VBA officials have responded to VSO concerns and opened up the regulatory process to include our representatives on all active committees working to propose changes to the VASRD. The VBA also provided additional information concerning half of the body systems under review during a forum in which members of the public, including VSOs, were allowed to review the draft regulations and provide feedback and suggestions concerning the proposed changes.

While most of the proposals to update the VASRD were based on changes in medical care, advances in rehabilitation, and greater understanding of long-term effects from disability, the IBVSOs found some significant problems that needed to be corrected, particularly in the proposed revision to the section on mental health. Under a working group’s proposal, veterans’ disability ratings would have been based on estimated individual reductions in earnings capacity rather than the “average impairments of earnings capacity” mandated by statute.

After a group of VSOs provided the VBA with detailed criticisms and concerns about the proposed mental health changes, as well as other proposed changes, the VBA decided that significant additional work was needed on the mental health section of the VASRD, and withdrew that proposal. The VBA then created a new working group that included VSO representatives to restart the process from the beginning. Over the past year the new working group has

conducted a *de novo* review of the existing VASRD section on mental disorders and has begun to develop a new approach to update and revise that section, one that is not bound only by economic considerations. It is important that the VBA has pledged to conduct pilot tests of the proposed new rating criteria for mental disorders in order to test the efficacy of the revised criteria before proposing any regulatory changes.

The VBA's unprecedented transparency and willingness to solicit views and opinions of stakeholders during the information development and policy formulation stages is likely to lead to positive changes to the VASRD that accomplish the goal of modernizing the rating schedule so that it can appropriately evaluate the long-term residuals of service-connected disabilities. As the VBA moves toward proposing regulations over the next year, Congress should continue to exercise appropriate oversight and closely examine any changes to the VASRD proposed by the VBA to ensure that revisions adhere strictly to the existing statute that requires the levels of disability compensation to be based on the "average loss of earnings capacity." Any changes to this long-standing and

tested standard would have severely negative consequences for VA-disability-compensation system and especially for the millions of disabled veterans who rely upon it.

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### Recommendations:

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The VBA should continue to work collaboratively with veterans service organizations as it continues developing draft regulations to update the VA *Schedule for Rating Disabilities*.

Congress should continue to monitor the progress of the VASRD update to ensure that any proposed rules remain consistent with the statutory purpose and scope of veterans' disability compensation, including the well-established standard of "average impairments of earnings capacity."

Once the VASRD update cycle is completed, the VBA should conduct after-action reviews of the VASRD update process with VSO participation, so that the VBA may apply lessons learned to future body system updates in the VASRD.



## COMPENSATION FOR QUALITY OF LIFE AND NONECONOMIC LOSS

*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.*

In 2007 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," recommending that the current VA disability compensation system be expanded to include compensation for non-work disability (also referred to as "noneconomic loss") and loss of quality of life. 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; Veterans Affairs Canada's disability compensation program; and the Australian Department of Veterans' Affairs disability compensation program.

The IOM distinguished between the purpose of disability benefits and the operational basis for those benefits. 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 limitations on participation 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. Non-work 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 limitations on participation 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.

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). Neither of these models generally incorporates noneconomic loss or quality of life into the final disability ratings, although special monthly compensation does address these deficits 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, non-work 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.

The Congressionally mandated Veterans Disability Benefits Commission (VDBC), established by P.L. 108-136, the "National Defense Authorization Act of 2004," 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.

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.

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### Recommendations:

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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 noneconomic loss and loss of 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.

## STANDARDS FOR SERVICE CONNECTION

*Standards for determining service connection should remain grounded in the existing statute, which recognizes the unique nature of military service.*

Disability compensation is paid to a veteran who is disabled as the result of an 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.<sup>2</sup> Compensation may also be paid to National Guard and reserve service members who suffer disabilities resulting from injuries while undergoing training.

Periodically, a committee, commission, government agency, or member of Congress proposes that military service should be treated as if it were a day job. Under this proposed concept, 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 is not obviously related to military service, he or she would not be eligible for service connection at all. Furthermore, medical care after service 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 essentially on call 24 hours a day, 365 days a year. A service member 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 additional weeks or months. The ground crews that prepared planes in support of missions 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. 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 (VDBC) 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 VDBC unanimously endorsed the current standard for determining service connection.<sup>3</sup>

Current law requires only that an injury or disease be incurred coincident with active military service. A veteran is not required to 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.

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### **Recommendation:**

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

## RELAXED EVIDENTIARY STANDARDS FOR PROVING POST-TRAUMATIC STRESS SYNDROME AND MILITARY SEXUAL TRAUMA CLAIMS

*The Department of Veterans Affairs should accept a diagnosis of post-traumatic stress disorder from a private mental health professional in the same manner as it accepts a diagnosis of PTSD from a VA mental health professional.*

For years, *The Independent Budget* veterans service organizations (IBVSOs) asked Congress to expand the provisions of title 38, United States Code, section 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 combat zones seemingly minor injuries are often overlooked while medical treatment is provided to those more seriously injured. Furthermore, many combat service members tend to trivialize their own injuries when in the presence of more severely injured comrades. This trivialization results in many injuries occurring in combat zones going unreported and unrecorded.

In 2010, VA validated this *Independent Budget* recommendation when it amended title 38, Code of Federal Regulations, paragraph 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.<sup>4</sup>

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

However, under this regulation VA will not accept a diagnosis of PTSD from a private psychiatrist or psychologist if the stressor is related to service in a combat zone. VA requires a separate examination and confirmatory opinion from a VA mental-health

professional before considering a grant of service connection for PTSD. In our view this requirement is an unwarranted waste of scarce mental health resources, significantly delays adjudication of claims, and puts an undue burden on veterans.

In recent years the Veterans Benefits Administration (VBA) has repeatedly stated that it will accept evidence from private physicians in lieu of a VA examination if that evidence is adequate for rating purposes. VA has developed scores of disability benefits questionnaires that can be completed by private physicians for this purpose. This policy change has saved VA millions of dollars in unnecessary examination costs and substantially speeded the adjudication of some disability claims.

Furthermore, since 2012 the VBA has encouraged veterans service organizations to submit what it calls "fully developed claims" with the promise of expedited claims processing. A vital part of a fully developed claim involves the submission of current medical evidence from private physicians.

While the IBVSOs recognize that VA mental health professionals have, by necessity, developed an expertise in treating veterans with PTSD, the requirement that only VA professionals are capable of confirming 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.

VA's governing 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 VBA would apparently not accept a diagnosis and confirmation if that same psychiatrist diagnoses and treats a veteran in his or her private practice.

The savings to VA would be substantial if the acceptance of information from private health-care professionals allowed VA to avoid scheduling unnecessary examinations.

## MILITARY SEXUAL TRAUMA

Evidentiary standards for establishing a service-connected disability resulting from military sexual trauma should be relaxed. One in five female veterans and one in 100 male veterans have reported to VA that they experienced military sexual trauma (MST) while on active duty.<sup>5</sup> A recent study examined MST in men and women deployed in the wars in Iraq and Afghanistan. A sample of 470 service members (408 men and 62 women) completed anonymous self-report questionnaires. Among those surveyed, 77 respondents reported a history of MST (12.5 percent of men and 42 percent of women).<sup>6</sup>

VA defines MST as

“...psychological trauma, which in the judgment of a VA mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the Veteran was serving on active duty or active duty for training.” Sexual harassment is further defined as “...repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.”<sup>7</sup>

Numerous studies have shown that a majority of veterans fail to report rape, attempted rape, or other forms of MST. According to the Department of Defense Sexual Assault Prevention and Response Office, 86.5 percent of sexual assaults go unreported, meaning that official documentation of most assaults may not exist.

Sexual assault is one of the most devastating crimes against a person. Long after physical injuries heal, psychological wounds can persist. While the long-term effects of rape can vary greatly among survivors, many experience anxiety, depression, and PTSD as a result.

For decades, VA treated claims for service connection for mental health problems resulting from MST in the same way it treated all claimed conditions—the burden was on the claimant to prove that the condition was related to service. Without validation from medical or police records, claims were routinely denied.

More than a decade ago, VA relaxed its policy of requiring medical or police reports to show that MST occurred.<sup>8</sup> Rating personnel are instructed to consider evidence showing a sudden change in behavior, a request for transfer from a unit, and correspondence to, or statements of, friends or relatives as secondary evidence that could be used to support the assertion of an assault during service.

Nevertheless, thousands of claims for service connection for PTSD resulting from MST have been denied since 2002 because claimants were unable to produce evidence that assaults occurred. From 2008 to 2012 grant rates for PTSD resulting from MST were 17 to 30 points behind grant rates for PTSD resulting from other causes.<sup>9</sup>

The extraordinarily high incidence of sexual trauma on active duty in the military, the persistent failure of victims to report such trauma to medical or police authorities, and the resulting disproportionate burden placed on veterans, often years after the event, to produce evidence of MST in order to obtain service connection for PTSD, lead the IBVSOs to conclude that current VA regulations and policies with regard to MST lead to a high level of denials of claims for PTSD in women veterans. VA Under Secretary for Benefits recently acknowledged this disparity when contrasted with PTSD claims due to causes other than MST.

Years ago Congress recognized that events experienced in combat zones were often not documented, resulting in the denial of thousands of otherwise legitimate claims for service connection. Congress amended title 38, United States Code, section 1154, to ease the evidentiary burden on veterans who suffered injury in combat. VA followed with an amendment to title 38, Code of Federal Regulations, section 3.304, to allow VA to accept a veteran’s statement of a stressor if it occurred in combat and a mental health professional diagnosed PTSD and concluded that the alleged stressor causing the PTSD occurred in combat.<sup>10</sup>

Given the high incidence of veterans experiencing sexual trauma while on active duty, the IBVSOs believe it reasonable that VA should grant veterans the same reduced evidentiary burden as provided in title 38, United States Code, section 3.304(f)(3).

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## Recommendations:

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Congress and VA should amend the existing standard to allow veterans to submit and VA to accept the diagnosis of PTSD by a qualified private clinician along with confirmation that the stressor is directly related to PTSD and military service.

VA should amend title 38, Code of Federal Regulations, section 3.304, to read as follows:

If a stressor claimed by a veteran is related to military sexual trauma and a mental health practitioner confirms that the claimed stressor is adequate to support a diagnosis of post-traumatic stress disorder and that the veteran's symptoms are related to the claimed stressor, in the absence of clear and convincing evidence to the contrary and provided the claimed stressor is consistent with the places, types, and circumstances of the veteran's service, the veteran's lay testimony alone may establish the probity of the stressor.



### **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 length of service must forfeit a portion of their retired pay, earned through faithful performance of military duties, as a condition of receiving VA compensation for service-connected disabilities. This policy is inequitable—military retired pay is earned by virtue of a veteran's career of service, usually of more than 20 years, on behalf of the nation.

VA compensation 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 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<sup>11</sup> disability.

In order to place all disabled longevity military retirees on equal footing with nondisabled military retirees, no offset should occur between full military retired pay and VA disability compensation. To the extent that military retired pay is offset by VA disability compensation, the disabled military retiree is

treated less fairly than a nondisabled military retiree. 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 financial rewards. 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 disabled 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.

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## Recommendation:

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Congress should enact legislation to repeal the inequitable requirement that veterans' military longevity retired pay be offset by an amount equal to the

disability compensation awarded to disabled veterans rated less than 50 percent, the same as exists for those rated 50 percent or more disabled.



## ANNUAL COST-OF-LIVING ADJUSTMENT

*Congress should authorize an automatic adjustment of disability compensation and dependency and indemnity compensation benefits annually and end the practice of rounding down such increases.*

Congress has authorized annual increases in compensation and dependency and indemnity compensation (DIC) by the same percentage that Social Security is increased. Increases in Social Security benefits are based on the Consumer Price Index (CPI). 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. DIC is paid to the surviving spouse and minor or school-age children of a service member who died on active duty or to 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 automatically increases Social Security payments to account for these increases in costs. Over the years, Congress has amended laws governing most other benefit programs to ensure that they are adjusted each year by the same percentage that Social Security is increased. This approach eases the burden of work on Congress and ensures that individuals who are entitled to these benefits receive an inflation adjustment to their benefits.

Congress has not enacted legislation that would automatically increase compensation and DIC to account for inflation. Congress eventually increases compensation and DIC based on inflation, but such increases are occasionally delayed, creating financial strain on veterans and their survivors. Delayed increases place stress on those who have already sacrificed themselves or their loved ones in service to our nation.

*The Independent Budget* veterans service organizations (IBVSOs) urge Congress to enact legislation indexing compensation and DIC to Social Security cost-of-living adjustment (COLA) increases. The IBVSOs also note that the CPI index used for Social Security does not account for increases in the cost of food or gasoline, both of which have risen significantly in recent years. While no inflation index is perfect, the IBVSOs believe that the Department of Veterans Affairs should examine whether other inflation indices would more appropriately correlate with the increased cost of living experienced by disabled veterans and their survivors.

### VETERANS' AND SURVIVORS' BENEFITS PAYMENT ROUNDED DOWN

In 1990, Congress, in an omnibus reconciliation act, mandated 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 has continued to extend it every few years. 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.

The effect of rounding down monthly COLA increases has eroded approximately \$10 per month for every veteran or survivor. For example, a veteran totally disabled from service-connected disabilities would have received \$1,823 per month in 1994 today will be paid at \$2,848 per month. Had that veteran received the full COLA each year for the past two decades, he or she would receive about \$120 extra this year, and

cumulatively over two decades would have received almost \$2,000 more. The cumulative effect of this provision of the law levies a tax on disabled veterans and their survivors, costing money each year, and when multiplied by the number of disabled veterans and DIC recipients, this results in millions of hundreds of millions of dollars siphoned from these deserving individuals annually. *The Independent Budget* veterans service organizations would note and greatly appreciate that the most recent COLA was not rounded down and encourages future Congresses to make this same choice.

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## Recommendations:

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Congress should permanently index compensation and dependency and indemnity compensation benefits to Social Security to ensure the timely adjustment of benefits in response to inflation.

VA should examine whether there are other inflation indices that would more appropriately measure the erosion of disability compensation benefits.

Congress should not return to a policy of rounding down veterans' and survivors' benefits payments.



## 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 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 could 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 were 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 was due to military service. World War II veterans are particularly at a disadvantage because testing by spoken voice and whispered voice (the standard practice in the 1940s) was universally insufficient to detect all but the most severe hearing loss.

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

Audiometric testing in the military services was insufficient; therefore, confirming records are often missing. 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

the Department of Veterans Affairs 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 to grant service connection for those who now experience documented hearing loss or tinnitus. Furthermore, this presumption should be expanded to anyone who is shown to have been in combat.

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### Recommendation:

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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

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

*VA Schedule for Rating Disabilities* (VASRD) contained in title 38, United States Code, part 4, 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 VASRD 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 title 38, Code of Federal Regulations, part 4, VASRD, shows that all disabilities for which treatment warrants an appliance, device, implant, or prosthetic, other than hearing loss with hearing aids, receive a compensable rating.

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

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### Recommendation:

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

## AGENT ORANGE IN KOREA

*The presumptive service connection end date for veterans who served on the Korean demilitarized zone should be extended.*

The delineating dates for presumptive service connection in Korea to exposure to herbicides such as Agent Orange and dioxin, one of Agent Orange's contaminants, should be established in the same manner as they are for Vietnam veterans. If a veteran served in the along the Korean demilitarized zone (DMZ) at any time after Agent Orange was applied, presumptive service connection should be granted for the conditions contained in title 38, Code of Federal Regulations, section 3.309(e).

Currently, 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.<sup>12</sup> 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 title 38, Code of Federal Regulations, section 3.309(e).

The ending date of August 1971 was established by P.L. 108-183 and is found in title 38, United States Code, section 1821. While *The Independent Budget* veterans service organizations applaud the action of Congress and the Department of Veterans Affairs 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 remains 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.”<sup>13</sup>

The EPA has concluded:

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.<sup>14</sup>

The dioxin on the Korean DMZ did not lose its toxicity on August 1, 1969, or any specific date. The IBVSOs believe military personnel continued to be exposed to this toxic substance while they served near the DMZ and that this exposure is affecting the health of these veterans today as it is affecting Vietnam veterans.

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### **Recommendation:**

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Congress should change the dates of eligibility for Agent Orange–presumed disabilities in veterans who served in the Korean demilitarized zone at any time beginning in April 1968.

## **SUPPLEMENTAL GRANT FOR ADAPTATION OF A NEW HOME**

*Grants should be established for special adaptation 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. 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. VA 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 (e.g., change in the size of families, relocation for career or health reasons, etc.). Once the housing grant is used, veterans with service-incurred disabilities who own specially adapted homes must bear the full cost of continued accessible living should they

move or modify a 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.

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### **Recommendation:**

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Congress should establish a supplementary housing grant that covers the cost of new home adaptations for eligible veterans who have already used their initial grants.



## **ADMINISTRATION OF THE SPECIALLY ADAPTED HOUSING GRANT SHOULD BE EXPEDITED FOR ELIGIBLE, TERMINALLY ILL VETERANS**

*Terminally ill veterans and their families should be provided expedited access to Specially Adapted Housing Grants.*

Veterans who suffer from amyotrophic lateral sclerosis (ALS) often do not survive to benefit from the improvements that VA Specially Adapted Housing (SAH) grant could have furnished for them. Those that do not die quickly often deteriorate to a point where a wheelchair and related ancillary benefits are needed. These ancillary benefits, which SAH grant funds can provide, can enable these veterans a modicum of dignity in their remaining days. Appropriate and timely intervention for their specific needs is important for their quality of life.

It is not uncommon for unneeded adaptations to be forced on veterans as a condition of project approval, only to be removed by them after the work is completed. These extra adaptations are a needless waste of time and money. It is especially troublesome to see renovations that were deemed as essential be undone or removed following the completion of the project. The root of this problem is the myriad and complex network of regulatory requirements that

guide the SAH program. Appropriate regulatory intervention would serve to make the SAH program more timely and less expensive. While the required renovations must be as compliant as possible with all of the applicable rules, procedures, and general safety issues, there must be a balanced focus on the immediate needs of the veteran. Safety issues must be weighted and balanced to ensure that concerns such as potential evacuation in case of fire do not prevent immediate modifications, modifications that would be critical in preventing dangers that would place the veteran in imminent danger of accidental death as well as otherwise severely compromising his or her functional capacity.

On the positive side, VA regulations have been modified to establish eligibility for SAH immediately upon the grant of service-connection for ALS. This development has eliminated delay associated with establishing entitlement to Special Monthly Compensation (SMC). This arrangement allows veterans to obtain

SAH grants much earlier in the process, as opposed to when the need for intervention has reached a critical stage.

Veterans with ALS and other terminal illnesses who satisfy eligibility requirements dealing with medical feasibility, property suitability, and financial feasibility can be granted conditional approval that would authorize them to incur certain pre-construction costs for home adaptation. While there is a procedural framework in place for this to happen, there are risks involved for the clients that opt for these provisions.

Also, in some cases, VA can provide direct reimbursement for work that has been completed, but nuances in the law can too easily thwart these options. Every veteran and every situation is unique, and these variances require legislation to be crafted in such a way as to facilitate favorable outcomes for the most severely disabled veterans who may face life-threatening emergencies in the absence of prompt modifications to their living environment.

Numerous administrative hurdles must be overcome in the application of the SAH decision process. The minimum property requirements (MPR) focus on safety and sanitation, which generally means ingress/

egress and bathrooms. Some MPRs address how these two items can best be achieved, and we have seen the application of increased flexibility on the part of VA. More progress, however, is needed when dealing with unique situations, such as veterans with terminal illnesses. While VA has made progress in reducing administrative hurdles, which in some cases has facilitated more efficient outcomes, it still too often clings to an inefficient MPR focus that is suitable for much of its work, but not in these cases of terminal illness.

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### Recommendations:

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Congress should pass appropriate legislation to provide VA with the authority to implement emergency procedures as needed to bypass existing regulations when life-threatening situations are involved.

VA should be required to expedite the approval of the Specially Adapted Housing process and be authorized to exercise judgment at the local level in cases where the failure to act would pose a significant risk to the life or health of a veteran. This flexibility would ensure that veterans in these circumstances could actually benefit from the adaptations in life.




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## **SUPPLEMENTAL ENTITLEMENT TO AN AUTO GRANT FOR ELIGIBLE VETERANS**

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

The Department of Veterans Affairs provides a one-time financial assistance grant of \$18,900 to eligible veterans toward the purchase of a new or used automobile to accommodate a veteran or service member with certain disabilities that resulted from a condition incurred or aggravated during active military service. While the *Independent Budget* veterans service organizations recognize the benefit to those veterans who have not yet used the grant, veterans who have exhausted the grant are left to replace modified vehicles, once those vehicles have surpassed their useful life, at their own expense and at a higher cost because of inflation than the first adapted vehicle.

VA has previously acknowledged the impact that higher cost of living had on the intrinsic value of another critical, one-time VA benefit. P.L. 109-233 authorized up to three usages of the Specially Adapted Housing (SAH) grant. 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 amounts are increased, veterans or service members who have not used the assistance available to them up to the allowable three times may be entitled to a grant equal to the increase in the grant maximum amount at that time. This increase also means a veteran who previously

used the grant is entitled to additional SAH benefits—the current rate of maximum entitlement minus what was previously used. 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 calculus should be applied to the automobile grant.

The Department of Transportation reports the average useful life of a vehicle is 12 years, or about 128,500 miles. On average the cost to replace modified vehicles ranges from \$40,000 to \$65,000 when the vehicle is new and \$21,000 to \$35,000 when the

vehicle is used. These tremendous costs, compounded by inflation, present a financial hardship for many disabled veterans who need to replace their primary mode of transportation once it reaches its expected useful life.

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### Recommendation:

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VA should provide supplementary automobile grants to eligible veterans in amounts equaling the difference between the total amount they previously used and the current grant maximum in effect at the time they are replacing their vehicles.



## **VALUE OF LIFE INSURANCE POLICIES SHOULD BE EXCLUDED FROM CONSIDERATION AS INCOME OR ASSETS**

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

Life insurance provides the surviving spouses and dependents of veterans with a means of maintaining financial stability after a sponsor's death. In some cases, however, veterans are forced to surrender their VA life insurance policies and apply the cash value of policy surrender toward the cost of nursing home care as a pre-condition of Medicaid coverage. When this occurs, these policies become nothing more than a funding vehicle for the veterans' 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 instead of fulfilling both sacred obligations.

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### Recommendation:

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Congress should enact legislation that exempts the cash value of VA life insurance policies and all directly resulting dividends and proceeds from consideration in determining veteran entitlement to health care under Medicaid.



## **REDUCE PREMIUMS FOR SERVICE-DISABLED VETERANS' INSURANCE**

*Improved life expectancy and new mortality tables should be used to reduce premiums for Service-Disabled Veterans' Insurance.*

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, reductions in commercial mortality rates reflected improved life expectancy as illustrated by updated mortality tables. However, the Department of Veterans Affairs remains bound to outdated mortality tables. The use of outdated tables results in rates and premiums that are no longer competitive with commercial insurance offerings, which

deviates from the intended benefit of providing the SDVI to veterans with service-incurred disabilities who cannot obtain commercial life insurance due to disability.

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 *The Independent Budget* veterans service organizations are thankful that Congress authorized an increase from \$20,000 to \$30,000 in the supplemental amount available with the passage of

P.L. 111-275, the “Veterans Benefits Act of 2010”, Congressional intent will not be met under the current rate schedule because many service-disabled veterans cannot afford VA premiums.

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### Recommendation:

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



## 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 or not 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, who served at least one day of active duty during a period of war, and has a qualifying low income.<sup>15</sup>

Although Congress has the sole authority to make declarations of war, the President, as Commander in Chief, may send U.S. forces into hostile situations at any time. While some of these incidents occur during defined periods of war (e.g., Somalia, 1992–95), many other military actions take place during periods of “peace” (e.g., Granada, 1983; Lebanon, 1982–87; Panama, 1989). Even the Mayaguez Incident, May 12-15, 1975, falls outside the official dates of the Vietnam War, which ended May 7, 1975.

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 amend the law so that the receipt of hostile-fire pay, award of an expeditionary medal, campaign medal, combat-action ribbon, or similar military decoration would qualify an individual for VA pension benefits. This action would ensure that veterans who were placed in hostile situations would become eligible for nonservice-connected pension later in life.

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### Recommendation:

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

## **INCREASE OF DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES OF SERVICE MEMBERS**

*The current rate of compensation paid to the survivors of deceased members is inadequate and inequitable when measured against other federal programs.*

Under current law, Dependency and Indemnity Compensation (DIC) is paid to an eligible surviving spouse if the military service member died while on active duty or the veteran's death resulted from a service-related injury or disease.

DIC payments were intended to provide surviving spouses with the means to maintain some semblance of economic stability after the loss of their loved ones. The rate of payment for in-service deaths and certain service-related deaths occurring after service should equal what is provided in other federal programs. All surviving spouses who rely solely on DIC, regardless of the status of their sponsors at the time of death, face the same financial hardships.

Therefore, *The Independent Budget* veterans service organizations believe that the rate of DIC should be

increased from 43 percent to 55 percent of a 100 percent disabled veteran's compensation for all eligible surviving spouses. This amount would increase DIC by approximately \$300 per month and is in line with survivor benefits of federal workers and other federal programs.

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### **Recommendations:**

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Congress should authorize dependency and indemnity compensation eligibility increases for all survivors.

Congress should increase DIC equal to that of other federal programs. The amount of increase should be 55 percent of VA disability compensation for a 100 percent disabled veteran.



## **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 is 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 military retirement pay to purchase a survivor's annuity. This benefit is not gratuitous but is purchased by a retiree.

Upon the retiree'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 the SBP annuity in its entirety.

*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 to the survivor of 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.

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### Recommendation:

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Congress should repeal the inequitable offset between dependency and indemnity compensation and survivor benefit pay because there is no duplication between these two distinct benefits.



## RETENTION OF REMARRIED SURVIVORS' BENEFITS AT AGE 55

*Congress should lower the age required for remarriage for survivors of veterans who have died on active duty or from service-connected disabilities to be eligible for retention of dependency and indemnity compensation to conform with the requirements of other federal programs.*

Current law allows retention of dependency and indemnity compensation (DIC) on remarriage at age 57 or older for eligible survivors of veterans who die on active duty or of a service-connected injury or illness. Although *The Independent Budget* veterans service organizations (IBVSOs) 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. This change in eligibility would also bring DIC in line with Survivor Benefit Plan rules

that allow retention with remarriage at the age of 55. The IBVSOs believe no eligible survivors should be penalized for remarriage. Equity with beneficiaries of other federal programs should govern Congressional action for this deserving group.

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### Recommendation:

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Congress should enact legislation to enable survivors to retain dependency and indemnity compensation on remarriage at age 55 for all eligible surviving spouses.



## NOTES

<sup>1</sup> *Nehmer v. US Dept. of Veterans Affairs*, 494 F.3d 846 (9th Cir. 2007).

<sup>2</sup> 38 U.S.C. § 3.4(b)(1).

<sup>3</sup> Veterans' Disability Benefits Commission, *Honoring the Call to Duty: Veterans Benefits in the 21st Century*, (October, 2007), p. 98, section 1.2.B.

<sup>4</sup> *Federal Register* 75, no. 133 (July 13, 2010), 39843.

<sup>5</sup> "Military Sexual Trauma," VA, PTSD: National Center for PTSD, last modified October 31, 2013, <http://www.ptsd.va.gov/public/pages/military-sexual-trauma-general.asp>.

<sup>6</sup> Lori S. Katz, et al., "Military Sexual Trauma During Deployment to Iraq and Afghanistan: Prevalence, Readjustment, and Gender Differences in Violence and Victims," *Violence and Victims* 27, no. 4 (2012): 487–499.

<sup>7</sup> *Ibid.*

<sup>8</sup> 38 CFR 3.304(f)(5); <http://www.gpo.gov/fdsys/pkg/FR-2002-03-07/html/02-5376.htm>; <http://www.law.cornell.edu/cfr/text/38/3.304>.

<sup>9</sup> <https://www.aclu.org/womens-rights/new-report-finds-va-discriminates-against-military-sexual-assault-survivors>, November 7, 2013.

<sup>10</sup> 38 CFR 3.304(f)(3).

<sup>11</sup> 38 C.F.R. 3.304(f)(4).

<sup>12</sup> 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.

<sup>13</sup> Encyclopedia Britannica, quoted in <http://www.hatfieldgroup.com/wp-content/uploads/VietNamHighlights/A%20%20HISTORY%20OF%20AGENT%20ORANGE%20USE.pdf>.

<sup>14</sup> 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.

<sup>15</sup> The requirements for pension, along with applicable definitions, are found throughout title 38, United States Code (e.g., sections 101 (15), 1521, 1501).