Introduction

Once again, the four veterans service organizations who coauthor *The Independent Budget (IB)*—AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars—offer budget and program recommendations for the Department of Veterans Affairs (VA) based upon our unique expertise and experience concerning the resources that will be necessary to meet the needs of America's veterans in fiscal year (FY) 2010. In fact, this FY 2010 issue of the *IB* represents the 23rd consecutive year that this partnership of veterans service organizations has joined together to produce a comprehensive budget document that highlights the needs of elderly veterans and those of the younger men and women who join their ranks each year as they return from the conflicts in Afghanistan and Iraq and other hostile areas around the world.

Thousands of men and women who have sacrificed themselves in the global war on terrorism are returning home. These brave men and women are relying on VA health-care and benefits systems to help rebuild their lives and become productive members of society. Currently, according to information released by the VA on October 29, 2008, America's current veteran population is projected to be 23,442,000, which includes 1,802,000 females. Of the 23,442,000, 7.8 million veterans are enrolled in the VA health-care system. According to VA data, 5.5 million veterans are identified as unique individual patients who actually received care in VA facilities in 2007. Also, 2.95 million veterans receive disability compensation for injuries they received while on active duty. In addition, 333,196 spouses of deceased veterans rely on VA's dependency and indemnity compensation for the costs of everyday life.

The Veterans Health Administration, similar to private sector health-care providers and other federal health-care programs, including Medicare, Medicaid, and TRICARE, is facing growing demand for services, as the country ages and medical treatment and administrative costs spiral upward. In addition to increasing medical operational costs, almost 40 percent of America's veterans are 65 years of age or older. This group of elderly veterans has an increased demand for VA health and long-term-care services. Additionally, the influx of new, and often severely disabled, veterans entering the VA system brings new demands for care. These age-related, economic, and new patient factors make accurate resource forecasting difficult but more important each year.

Year after year, the coauthors of *The Independent Budget* review VA workload information and medical and administrative cost data and then call upon Congress to provide funding necessary to meet the health-care needs of veterans and to do so in a timely manner. Unfortunately, Congress historically has been unable to complete the VA appropriation process prior to the beginning of the new fiscal year. The *IB* offers reasonable solutions to this serious budget-timing problem—through either a mandatory or an advance appropriation process. The *IB*'s goal is to secure sufficient, timely, and predictable funding that allows VA to conduct effective planning and provide quality services.

With regard to veterans' benefits, the *IB* recommends that VA fast-track real steps that will help ameliorate nagging barriers to claims processing. Continuing studies to find solutions must be replaced by real action plans that produce positive results. These action steps must be implemented before VA's claims system becomes further mired in its own red tape and ultimately collapses under its own weight. Veterans and their families deserve prompt decisions regarding the benefits for which they have shed their blood. These benefits are part of a covenant between our nation and the men and women who have defended it. Veterans have fulfilled their part of the covenant; now VA must avoid further delay and move forward to meet its obligations in a timely manner.

The Independent Budget for Fiscal Year 2010 provides recommendations for consideration by our nation's decision makers that are based on rigorous and rational methodology designed to support the Congressionally authorized VA programs that serve our nation's veterans. *The Independent Budget* veterans service organizations are proud that more than 60 veteran, military, medical service, and disability organizations have signed on in support of this *IB*. Our primary purpose is to inform and encourage the United States government to provide the necessary resources to care for the men and women who have answered the call of our country and taken up arms to protect and defend our way of life.

VA Accounts FY 2010 (Dollars in Thousands)

	FY 2009 Appropriation	FY 2010 IB
Veterans Health Administration		
Medical Services	30,969,903	36,572,421
Medical Support and Compliance	4,450,000	4,584,964
Medical Facilities	5,029,000	5,402,015
Subtotal Medical Care, Discretionary	**40,448,903**	**46,559,400**
Medical Care Collections	2,544,000	
Total, Medical Care Budget Authority *(including Medical Collections)*	**42,992,903**	**46,559,400**
Medical and Prosthetic Research	510,000	575,000
Total, Veterans Health Administration	**40,958,903**	**47,134,400**
General Operating Expenses		
Veterans Benefits Administration	1,466,095	1,629,230
General Administration	335,772	353,552
Total, General Operating Expenses	**1,801,867**	**1,982,782**
Departmental Admin and Misc. Programs		
Information Technology	2,489,391	2,713,058
National Cemetery Administration	230,000	291,500
Office of Inspector General	87,818	90,719
Total, Dept. Admin. and Misc. Programs	**2,807,209**	**3,095,277**
Construction Programs		
Construction, Major	923,382	1,123,000
Construction, Minor	741,534	827,000
Grants for State Extended-Care Facilities	175,000	250,000
Grants for Construction of State Veterans Cemeteries	42,000	52,000
Total, Construction Programs	**1,881,916**	**2,252,000**
Other Discretionary	158,926	163,217
Total, Discretionary Budget Authority *(Including Medical Collections)*	**50,152,821**	**54,627,676**
Cost for Priority Group 8 Veterans Denied Enrollment	**375,000***	**544,200****

*The FY 2009 Appropriations Bill provided $375 million to expand enrollment for Priority Group 8 veterans by 10 percent.

**Cost for Priority Group 8 veterans based on known total cumulative number denied enrollment since 2003 (approximately 565,000 veterans) and a utilization rate of approximately 25 percent.

Benefit Programs

Through the Department of Veterans Affairs (VA), our nation's veterans are provided a comprehensive range of benefits. Included are disability compensation, dependency and indemnity compensation (DIC), pensions, vocational rehabilitation and employment, education benefits, housing loans, ancillary benefits for service-connected disabled veterans, life insurance, and burial benefits.

Disability compensation payments fulfill our primary obligation to attempt to make up for the economic and other losses veterans suffer as a result of the effects of service-connected diseases and injuries. When service members are killed on active duty or veterans' lives are cut short by service-connected injuries or following a substantial period of total service-connected disability, eligible family members receive DIC. Veterans' pensions provide a measure of financial relief for needy veterans of wartime service who are totally disabled as a result nonservice-connected causes or who have reached 65 years of age. Death pensions are paid to needy eligible survivors of wartime veterans. Burial benefits assist families in meeting a portion of the costs of veterans' funerals and burials and provide for burial flags and grave markers. Miscellaneous assistance includes other special allowances for smaller select groups of veterans and dependents and attorney fee awards under the Equal Access to Justice Act. Congress has also authorized special programs to provide a monthly financial allowance, health care, and vocational rehabilitation for the children of some Vietnam and Korean war veterans who suffer from spina bifida and other birth defects.

In recognition of the disadvantages that result from a life of military service, Congress has authorized various benefits to assist veterans in their readjustment to civilian life. These readjustment benefits provide veterans financial assistance for education or vocational rehabilitation programs and provide seriously disabled veterans financial assistance for specially adapted housing and automobiles. Education benefits are also available for children and spouses of those who die on active duty, of those are permanently and totally disabled, or of those who die as a result of service-connected disability. Qualifying students pursuing VA education or rehabilitation programs may receive work-study allowances. For temporary financial assistance to veterans undergoing vocational rehabilitation, loans are available from the vocational rehabilitation revolving fund.

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

Under several different plans, VA offers life insurance to eligible veterans, disabled veterans, and members of the Retired Reserve. A group plan also covers service members and members of the Ready Reserve and their family members. Mortgage life insurance protects veterans who have received VA specially adapted housing grants.

COMPENSATION AND PENSIONS

Compensation

ANNUAL COST-OF-LIVING ADJUSTMENT:

Congress should provide a cost-of-living adjustment (COLA) for compensation and dependency and indemnity compensation (DIC) benefits.

On average, veterans with service-connected disabilities earn less than those who were not disabled in service to America. Compensation is intended to replace lost earning capacity. However, each year increasing consumer prices erode the value of compensation and increase the hardship on those who have already sacrificed much for our nation. Further, the families of those who died in service or from service-connected disabilities depend on the small monthly stipend granted them by a grateful nation.

Compensation and DIC rates are modest—inflation erodes this fixed income and has a detrimental impact on its recipients. These benefits must therefore be regularly adjusted to keep pace with increases in the cost of living. Observant of this need, Congress has traditionally adjusted compensation and DIC rates to be equal to the annual adjustment for Social Security benefits. However, timely action by Congress is not guaranteed.

Recommendation:

Congress should enact legislation that automatically adjusts compensation and dependency and indemnity compensation by a percentage equal to the increase received by Social Security recipients in order to offset the rise in the cost of living.

FULL COST-OF-LIVING ADJUSTMENT FOR COMPENSATION:

Congress must provide cost-of-living adjustments (COLAs) equal to the annual increase in the cost of living without rounding down such increases to the next whole dollar.

Congress increases disability compensation and dependency and indemnity compensation (DIC) rates each year in an attempt to keep pace with the cost of living. However, as a temporary measure to reduce the budget deficit, Congress enacted legislation in 1978 to round monthly payments down to the nearest whole dollar after adjustment for increases in the cost of living. Finding this a convenient way to meet budget reconciliation targets and fund spending for other purposes, Congress refuses to break its recurring habit of extending this provision, even in the face of prior budget surpluses. Inexplicably, VA has recommended that Congress make round-down monthly payment increases a permanent part of the law.

The cumulative effect of this practice over 30 years has eroded and will continue to substantially erode the value of compensation and DIC. This continued practice is entirely unjustified. It robs monies from the benefits of some of our most deserving veterans and their dependents and survivors who have no choice but to rely on modest VA compensation for life's necessities.

Recommendations:

Congress should reject any recommendations to permanently extend provisions for rounding down compensation cost-of-living adjustments and allow the temporary round-down provisions to expire on their statutory sunset date.

In the alternative, Congress should enact a one-time adjustment to ensure that veterans and the survivors of those who gave the ultimate sacrifice in service to our nation again receive the full value of benefits intended by a grateful nation.

STANDARD FOR SERVICE CONNECTION:

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

A member of the armed forces on active duty is at the disposal of military authority and, in effect, serves on duty 24 hours a day, 7 days a week.

Under many circumstances, a service member may be directly engaged in performing various duties for far more extended periods than a typical eight-hour workday and may be on call or standing by for duty the remainder of the day. Other circumstances require service members to live with their unit 24 hours a day, such as when on duty on naval vessels or at remote military outposts. There is no distinction between "on duty" and "off duty" for purposes of legal status in America's military service, nor is there any clear demarcation between the two. In the overall military environment, there are rigors, physical and mental stresses, known and unknown risks, and hazards unlike and far beyond those seen in civilian occupations.

Compensation for "service-connected" disabilities or death is the core of veterans' benefits. When disability or death results from injury or disease incurred or aggravated in the "line of duty," the disability or death is service connected for purposes of entitlement to these benefits. "Line of duty" means "an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran's own willful misconduct or, for claims filed after October 31, 1990, was a result of his or her abuse of alcohol or drugs."[1] Accordingly, *any* such occurrence during service that meets the current requirements of law satisfies the criteria for service connection.

These principles are expressly set forth in law. The term "service connected" means, with respect to disability or death, "that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty in the active military, naval, or air service." The term "active military, naval, or air service" contemplates, principally, "active duty," although duty for training qualifies when a disability is incurred during such period. The term "active duty" means "full-time" duty in the armed forces of the United States.

For these reasons, current law requires only that an injury or disease be incurred or aggravated coincident with military service. There is no requirement that the veteran prove a causal connection between military service and a disability for which service-connected status is sought.

In spite of these long-standing principles, some Congressional members have proposed the abolishment of these rules by replacing the "line of duty" standard with a strict "performance of duty" standard, under which service connection would not generally be granted unless a veteran could offer proof that a disability was caused by the actual performance of military duty.

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, and to produce a report on the study." After more than 30 months of meetings, study, analysis, and debate, the VDBC, in October 2007, unanimously endorsed the current standard for determining service connection.
The Independent Budget veterans service organizations believe that current standards governing service connection for veterans' disabilities and deaths are equitable, practical, sound, and time-tested. We urge Congress to reject any revision of this long-standing policy.

Recommendation:

Congress should reject all suggestions from any source to change the terms for service connection of veterans' disabilities and deaths.

[1] 38 C.F.R. § 3.1(m).

Standard for Determining Combat-Veteran Status:

Veterans should be presumed to have engaged in combat while serving in an active combat zone.

Current law provides a relaxed evidentiary standard for those veterans who incurred disability or experienced an event that causes a disability, while in combat with the enemy. This standard helps both veterans and the Department of Veterans Affairs. It helps veterans because it is often impossible to prove through documentary evidence that a disease or injury occurred while in combat. The law requires VA to accept as true a veteran's statement that a particular injury or event occurred in combat. (This only relieves the burden of showing service incurrence. Medical evidence must still demonstrate that a disability currently exists and that it is related to service.) It helps VA because it relieves it from spending months or even years researching military records trying to prove that a disease, injury, or event occurred.

Although VA states that evidence of combat is not limited to certain documents, in practice, VA claims processors accept only evidence showing receipt of a certain military decoration[2] or military unit records. Unfortunately, many veterans who were in combat never received a medal on VA's list. Further, unit records, if existent, are notoriously incomplete, vague, or both. These two factors (no combat medal or no accurate unit records) make it impossible for many combat veterans to obtain service connection for disabilities incurred in or caused by combat.

If VA applied 38 U.S.C.A. section 1154 properly, these problems, and others, would be resolved. Section 1154(a) reads in part: "[I]n each case where a veteran is seeking service-connection for any disability due consideration shall be given to the places, types, and circumstances of such veteran's service...."[3] Likewise, section 1154(b) states:

> In the case of any veteran who *engaged in combat with the enemy* in active service...the Secretary shall accept as sufficient proof of service-connection of *any* disease or injury alleged to have been incurred in or aggravated by such service satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, *notwithstanding the fact that there is no official record of such incurrence or aggravation in such service,* and, to that end, shall resolve every reasonable doubt in favor of the veteran.[4]

Specific to post-traumatic stress disorder (PTSD) resulting from combat, VA has determined that service connection requires (1) medical evidence of the condition; (2) credible supporting evidence that a claimed in-service stressor occurred; and (3) a link, established by medical evidence, between the diagnosis and the in-service stressor.[5] Section 3.304(f) appears on its face to be consistent with the statute by stating:

> If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.[6]

It is evident that the provisions of the foregoing statute and regulation do not require validation by official military records of an in-service combat stressor. The law merely requires, absent "clear and convincing evidence to the contrary," " 'credible,' satisfactory lay or other evidence" of an in-service stressor "consistent with the circumstances, conditions, or hardships of the veteran's service." Congress made clear its intent of not requiring such proof to be in the form of official military records when it stated, "notwithstanding the fact that there is no official record of such *incurrence* or aggravation in such service." In cases of combat-related PTSD, the *incurrence* of the disability is the actual exposure to the event; therefore, requiring proof through official records of the *incurrence* violates the law.

Notwithstanding the plain language of the foregoing statute and regulation, VA has circumvented the law by conducting improper rulemaking through its general counsel and its adjudication procedures manual, M21-1MR. Specifically, veterans are required to prove they engaged in combat as shown through official military records, thus contradicting the intent of the statute. VA Office of General Counsel Opinion 12-99 reads in part:

> In order to determine whether VA is required to accept a particular veteran's "satisfactory lay or

> other evidence" as sufficient proof of service connection, an initial determination must be made as to whether the veteran "engaged in combat with the enemy." That determination is not governed by the specific evidentiary standards and procedures in section 1154(b), which only apply once combat service has been established.[7]

This general counsel opinion requires veterans to establish by official military records or decorations that they "personally participated in events constituting an actual fight or encounter with a military foe or hostile unit or instrumentality." Further, VA has promulgated internal instructions that arguably go beyond the general counsel's opinion by instructing rating authorities as follows:

> Credible supporting evidence that an in-service stressor actually occurred includes not only evidence that specifically documents the veteran's personal participation in the event, but evidence that indicates the veteran served in the immediate area and at the particular time in which the stressful event is alleged to have occurred, and supports the description of the event.[8]

The M21-1 manual gives the following two "examples" to VA adjudicators considering whether a veteran has submitted sufficient evidence of an in-service combat stressor:

- When considered as a whole, evidence consisting of a morning report, radio log, and nomination for a Bronze Star may be sufficient to corroborate a veteran's account of an event, even if it does not specifically include mention of the veteran's name.
- Unit records documenting the veteran's presence with a specific unit at the time mortar attacks occurred may be sufficient to corroborate a veteran's statement that she/he experienced such attacks personally.

These examples exceed statutory and regulatory requirements. By requiring official records to prove the "incurrence" of a disease or injury—the in-service stressor serving as the incurrence, or injury, in the case of PTSD—VA has effectively read "satisfactory lay or other evidence" out of the law, thereby exceeding its authority.

For decades VA has required such proof before recognizing a claimant as a "combat veteran." As a result, those who suffer a disease or injury resulting from combat are forced to provide evidence that may not exist or must wait a year or more while VA conducts research to determine whether a veteran's unit engaged in combat. Many claims that satisfy the requirements of the statute are improperly denied.

Congress should amend title 38, United States Code, section 1154(b) to clarify when a veteran is considered to have engaged in combat for purposes of determining combat-veteran status. In the alternative, Congress could amend title 38, section 1101, and define who is considered to have engaged in combat with the enemy. It is hoped that such clarification would allow for utilization of nonofficial evidence—such as a veteran's statement alone if the statement is "credible" and "consistent with the circumstances, conditions, or hardships" of the veteran's service and is otherwise not contradicted by clear and convincing evidence—as proof of an in-service occurrence of a combat-related disease or injury, to include PTSD.

This type of legislation would remove a barrier to the fair adjudication of claims for disabilities incurred or aggravated by military service in a combat zone. This legislation would follow the original intent of the law by requiring VA to accept as sufficient proof lay or other evidence that a veteran engaged in combat with the enemy as well as suffered a disease or injury as a result of that combat, if consistent with that veteran's service.

Many veterans disabled by their service in Iraq and Afghanistan, and those who served in earlier conflicts, are unable to benefit from liberalizing evidentiary requirements found in the current version of the applicable statute, section 1154; and regulation, section 3.304(f). This results because of difficulty, even impossibility, in proving by official military documents personal participation in combat.

Congressional staff conducting oversight visits in VA regional offices found claims that had been denied under this policy because those who served in combat zones had not been able to produce official military documentation of personal participation in combat via engagement with the enemy. The only possible resolution to this problem, without amending section 1154 or otherwise defining who is considered to have engaged in combat, is for the military to record the names and personal actions of every single soldier, sailor, airman, marine, or coastguardsman involved in every single event—large or small—that constitutes combat

and/or engagement with the enemy on every battlefield. Such recordkeeping is impossible.

In numerous cases, extensive delays in claims processing occur while VA adjudicators attempt to obtain official military documents showing participation in combat—documents that may never be located. Without codifying whom VA considers to have engaged in combat, the VA will continue to apply criteria that unlawfully exceed regulatory and statutory authority.

Congress and VA must understand that the change requested herein would not open the proverbial floodgates by forcing VA to accept every unsupported claim made by any veteran who served in a combat zone. With specific regard to occurrences of combat injuries and/or combat stressors, the law would still require a claimant to satisfy some evidentiary burden. Albeit, that evidentiary burden *may,* in some circumstances, solely be a lay statement. For example, if a military truck driver who served in Iraq stated, with clarity and detail, that his convoy came under attack, absent evidence to the contrary, such a statement may be accepted without additional proof because the conditions and circumstances of the veteran's service would have placed him or her directly in the line of fire for that type of attack. However, a unit mailroom clerk's statement of the same would require additional proof of the event because the nature of that veteran's service *normally* may not include such circumstances.

The legislative amendment requested herein would overturn VA's internal requirement—a requirement inconsistent with the original intent of Congress in liberalizing the requirements for proof of service connection in cases involving veterans who served in combat areas. The Senate noted in 1941, in the report on the original bill providing special consideration for combat veterans: "The absence of an official record of care or treatment in many of such cases is readily explained by the conditions surrounding the service of combat veterans."

It was emphasized in the hearings that the establishment of records of care or treatment of veterans in other than combat areas, and particularly in the states, was a comparatively simple matter when compared to that of veterans who served in combat. Either the veterans attempted to carry on despite their disability to avoid having a record made lest they be separated from their organization, or, as in many cases, the records themselves were lost. Likewise, many records are simply never generated. Nowhere in the *law* has Congress ever required proof of combat exposure through official military records.

Recommendation:

Congress should clarify its intent by amending title 38, United States Code, section 1154(b), with respect to defining a veteran who engaged in combat for all purposes under title 38.

In the alternative, Congress should enact legislation that extends 38 U.S.C. section 1154(b) to anyone who served in a war zone. This action would ease the evidentiary burden on veterans and time-consuming development by VA while leaving in place the need for the veteran to prove the existence of a disability and medical evidence connecting the disability to service.

[2]Air Force Achievement Medal with "V" Device; Air Force Combat Action Medal; Air Force Commendation Medal with "V" Device; Air Force Cross; Air Medal with "V" Device; Army Commendation Medal with "V" Device; Bronze Star Medal with "V" Device; Combat Action Badge; Combat Action Ribbon (before February 1969, the Navy Achievement Medal with "V" Device was awarded.); Combat Aircrew Insignia; Combat Infantry/Infantryman Badge; Combat Medical Badge; Distinguished Flying Cross; Distinguished Service Cross; Joint Service Commendation Medal with "V" Device; Medal of Honor; Navy Commendation Medal with "V" Device; Navy Cross; Purple Heart; Silver Star. VA Manual M21-1MR, Part IV, Subpart ii.1.D.13.d.
[3]38 U.S.C. § 1154(a) (West 2002).
[4]Ibid., § 1154(b) (emphasis added).
[5]38 C.F.R. § 3.304(f) (2007).
[6]Ibid., § 3.304(f)(1).
[7]VA Gen. Coun. Prec. 12-99, October 18, 1999.
[8]VA Manual M21-1MR, Part IV, Subpart ii, 1.D.13.

Concurrent Receipt of Compensation and Military Retired Pay:

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

Many veterans, retired from the armed forces based on longevity of service, must forfeit a portion of their retired pay earned through faithful performance of military service before they receive VA compensation for service-connected disabilities. This is inequitable—military retired pay is earned by virtue of a veteran's career of service on behalf of the nation, careers of no less than 20 years.

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

To put retirees disabled from service on equal footing with nondisabled retirees, VA should provide full military retired pay and compensation to account for reduction of their earning capacity. To the extent that military retired pay and VA disability compensation now offset each other, the disabled 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 compensation and full civilian retired pay—including retirement from any federal civil service. A veteran who performed 20 or more years of military service should have that same right.

A disabled veteran should not suffer a financial penalty for choosing military service as a career rather than a civilian career, especially where in all likelihood a civilian career would have involved fewer sacrifices and greater rewards. Disability compensation to a disabled veteran should not be offset against military longevity retired pay. While Congress has made progress in recent years in correcting this injustice, *The Independent Budget* veterans service organizations believe the time has come to finally remove this prohibition completely.

Recommendation:

Congress should enact legislation to totally repeal the inequitable requirement that veterans' military retired pay be offset by an amount equal to their rightfully earned VA disability compensation. To do otherwise results in the government compensating disabled retirees with *nothing* for their service-connected disabilities. *The Independent Budget* veterans service organizations urge Congress to correct this continuing inequity.

Continuation of Monthly Payments for All Compensable Service-Connected Disabilities:

Lump-sum settlements of disability compensation should be fully rejected.

The government pays disability compensation monthly to eligible veterans on account of, and at a rate commensurate with, diminished earning capacity resulting from the effects of service-connected diseases and injuries. By design, compensation provides relief from service-connected disability for the life of the condition's disabling effects. The severity of disability determines the rate of compensation, which usually warrants reevaluation when changes in severity occur.

Lump-sum payments have been suggested as a way for the government to avoid the administrative costs of reevaluating service-connected disabilities and as a way to avoid future liabilities to qualified veterans when their disabilities worsen or cause secondary disabilities. Under such a scheme, the Department of Veterans Affairs would use the immediate availability of a lump-sum settlement to entice veterans to bargain away future benefits. Lump-sum payments are not in the best interests of disabled veterans.

In its final report, the Veterans' Disability Benefits Commission rejected the concept of paying a lump sum in lieu of recurring compensation because the "complexity of lump sum payments would likely be excessive and difficult for veterans to understand and accept...[b]e difficult and costly to administer...would have significant short-term impact on the budget of the United States[,] and the break-even point when the up-front costs would be offset by future savings would be many years in the future.... "[9] *The Independent Budget* veterans service organizations strongly oppose any change in law to provide for lump-sum payments of compensation.

Recommendation:

Congress should reject any recommendation to permit VA to discharge its future obligation to compensate service-connected disabilities through payment of lump-sum settlements to veterans.

[9]*Honoring the Call to Duty: Veterans' Disability Benefits in the 21st Century,* Veterans' Disability Benefits Commission, October 2007, p. 278.

Mental Health Rating Criteria:

The Department of Veterans Affairs should compensate mental health disabilities on parity with physical disabilities.

Two recent studies, the first by the Center for Naval Analysis, Inc. (commissioned by the Veterans' Disability Benefits Commission)[10] and second by the Econ-Systems (commissioned by the Department of Veterans Affairs),[11] found that veterans who suffer from service-connected psychiatric disabilities suffer greater lost earnings at all levels than do veterans with nonpsychiatric disabilities. VA should update its mental health rating criteria to ensure that those veterans with service-connected psychiatric disabilities are equitably and appropriately evaluated.

Recommendation:

VA should propose a rule change in the *Federal Register* that would update the mental health rating criteria to more accurately reflect the severe impact that psychiatric disabilities have on veterans' average earning capacity.

[10]Ibid., pp. 233, 473.
[11]*A Study of Compensation Payments for Service-Connected Disabilities,* vol. 1. Economic Systems, Inc., September 2008, p. 31.

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, who are now suffering from hearing loss or tinnitus, are unable to prove service connection because of inadequate testing procedures, lax examination practices, or poor recordkeeping. The presumption requested herein would resolve this long-standing injustice.

The Institute of Medicine (IOM) issued a report in September 2005 titled "Noise and Military Service: Implications for Hearing Loss and Tinnitus." The IOM found that patterns of hearing loss consistent with noise exposure can be seen in cross-sectional studies of military personnel. Because large numbers of people have served in the military since World War II, the total number who experienced noise-induced hearing loss by the time their military service ended may be substantial.

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

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

Recommendation:

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

Compensable Disability Rating for Hearing Loss Necessitating a Hearing Aid:

The VA disability-rating schedule should provide a minimum 10 percent disability rating for hearing loss that requires use of a hearing aid.

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

A disability severe enough to require use of a prosthetic device should be compensable. Beyond the functional impairment and the disadvantages of artificial hearing restoration, hearing aids negatively affect the wearer's physical appearance, similar to scars or deformities that result in cosmetic defects. Also, it is a general principle of

VA disability compensation that ratings are not offset by the function artificially restored by a prosthetic device. For example, a veteran receives full compensation for amputation of a lower extremity although he or she may be able to ambulate with a prosthetic limb.

Providing a compensable rating for this condition would be consistent with minimum ratings provided elsewhere when a disability does not meet the rating formula requirements but requires continuous medication. Such a change would be equitable and fair.

Recommendation:

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

TEMPORARY TOTAL COMPENSATION AWARDS:

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

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

The effective date of temporary total disability ratings corresponds to the beginning date of hospitalization or treatment. However, title 38, United States Code, section 5111 delays the effective date for payment purposes until the first day of the month following the effective date of the increased rating.

This provision deprives veterans of an increase in compensation to offset the total disability during the first month in which temporary total disability occurs. This deprivation and consequent delay in the payment of increased compensation often jeopardizes disabled veterans' financial security and unfairly causes them hardship.

The Independent Budget veterans service organizations urge Congress to enact legislation exempting these temporary total disability ratings, administered under title 38, Code of Federal Regulations, sections 4.29 and 4.30, from the provisions of title 38, United States Code, section 5111.

Recommendation:

Congress should amend the law to authorize increased compensation based on a temporary total rating for hospitalization or convalescence to be effective, for payment purposes, on the date of admission to the hospital or the date of treatment, surgery, or other circumstances necessitating convalescence.

Pensions

Pension for Nonservice-Connected Disability:

Congress should extend basic eligibility for nonservice-connected pension benefits to veterans who serve in combat environments, despite no declaration of war.

Veterans totally disabled from nonservice-connected conditions (or are at least 65 years old) with low income and wartime service are eligible to receive a modest pension. The amount of pension awarded is reduced for every dollar of income received from any other source. It is designed to ensure that wartime veterans do not become charges on the public welfare.

Under the Constitution, Congress is charged with declaring war. However, in the past century large numbers of service members have been sent into many hostile areas around the world to conduct operations in support of American foreign policy and to protect American interests. Typically, these military actions are not conducted under the umbrella of a declaration of war and not all are considered to be a "war" under VA regulations.[12] As a consequence, not all veterans who have been engaged in combat are eligible for a VA pension. Another factor to consider is that some expeditionary medals and combat badges are awarded to members of the armed forces who have served in hostile regions, in situations and circumstances other than those officially designated combat operations, or during a wartime era as declared by Congress.

Recommendation:

Congress should amend eligibility requirements in title 38, United States Code, chapter 15 to authorize nonservice-connected disability pension benefits to veterans who have been awarded the Armed Forces Expeditionary Medal, Navy/Marine Corps Expeditionary Medal, Purple Heart, Combat Infantryman's Badge, Combat Medical Badge, or Combat Action Ribbon for participation in military operations not falling within an officially designated or declared period of war.

[12] 38 C.F.R. § 3.2.

Dependency and Indemnity Compensation

Increase of Dependency and Indemnity Compensation for Surviving Spouses of Service Members:

Congress should increase rates of dependency and indemnity compensation (DIC) to survivors of active duty military personnel who die while on active duty.

Current law authorizes the Department of Veterans Affairs to pay an enhanced amount of DIC, in addition to the basic rate, to surviving spouses of veterans who die from service-connected disabilities after at least an eight-year period of the veteran's total disability rating prior to death. However, surviving spouses of military service members who die on active duty receive only the basic rate of DIC. This is inequitable because surviving spouses of deceased active duty service members face the same financial hardship as survivors of deceased service-connected veterans who were totally disabled for eight years prior to their deaths.

Recommendation:

Congress should authorize disability and indemnity eligibility at increased rates to survivors of deceased military personnel on the same basis as that for the survivors of totally disabled service-connected veterans.

Repeal of Offset against Survivor Benefit Plan:

The current requirement that the amount of an annuity under the Survivor Benefit Plan (SBP) be reduced on account of and by an amount equal to dependency and indemnity compensation (DIC) 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 DIC from VA. This benefit indemnifies survivors, in part, for the losses associated with the veteran's death from service-connected causes or after a period of time when the veteran was unable, because of total disability, to accumulate an estate for inheritance by survivors.

Career members of the armed forces earn entitlement to retired pay after 20 or more years' service. Unlike many retirement plans in the private sector, survivors have no entitlement to any portion of the member's retired pay after his or her death. Under the SBP, deductions are made from the member's retired pay to purchase a survivors' annuity. This is not a gratuitous benefit. Upon the veteran's death, the annuity is paid monthly to eligible beneficiaries under the plan. If the veteran died of 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 due to service or followed from the requisite period of total service-connected disability, the SBP annuity is reduced by an amount equal to the DIC payment. Where the monthly DIC rate is equal to or greater than the monthly SBP annuity, beneficiaries lose all entitlement to the SBP annuity.

This offset is inequitable because no duplication of benefits is involved. The offset penalizes survivors of military retired veterans whose deaths are under circumstances warranting indemnification from the government separate from the annuity funded by premiums paid by the veteran from his or her retired pay.

Recommendation:

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

Retention of Remarried Survivors' Benefits at Age 55:

Congress should lower the age required for survivors of veterans who die from service-connected disabilities who remarry to be eligible for restoration of dependency and indemnity compensation (DIC) to conform with the requirements of other federal programs.

Current law permits the Department of Veterans Affairs to reinstate DIC benefits to remarried survivors of veterans if the remarriage occurs at age 57 or older or, if survivors have already remarried, they apply for reinstatement of DIC at age 57. While *The Independent Budget* veterans service organizations appreciate the action Congress took to allow this restoration of rightful benefits, the current age threshold of 57 years is arbitrary. Remarried survivors of retirees in other federal programs obtain a similar benefit at age 55. We believe the survivors of veterans who died from service-connected disabilities should not be further penalized for remarriage and that equity with beneficiaries of other federal programs should govern Congressional action for this deserving group.

Recommendation:

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

READJUSTMENT BENEFITS

Housing Grants

GRANT FOR ADAPTATION OF SECOND HOME:

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

Like those of other families today, veterans' housing needs tend to change with time and new circumstances. An initial home may become too small when the family grows or become too large when children leave home. Changes in the nature of a veteran's disability may necessitate a home configured differently and/or changes to the special adaptations. These evolving requirements merit a second grant to cover the costs of adaptations to a new home.

Recommendation:

Congress should establish a grant to cover the costs of home adaptations for veterans who replace their specially adapted homes with new housing.

GRANTS FOR ADAPTATION OF HOMES FOR VETERANS LIVING IN FAMILY-OWNED TEMPORARY RESIDENCES:

Grants should be increased for special adaptations to homes in which veterans temporarily reside that are owned by a family member.

The Department of Veterans Affairs may provide specially adapted housing grants for veterans who have service-connected disabilities for certain combinations of loss or loss of use of extremities and blindness or other organic diseases or injuries when those veterans reside in but do not intend to permanently reside in a residence owned by a family member. Specifically, the assistance for the first group may not exceed $14,000 for veterans who have a permanent and total service-connected disability as a result of the loss or loss of the use of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair. For the second group, the assistance may not exceed $2,000 for veterans who have a permanent and total service-connected disability rating due to blindness in both eyes with 5/200 visual acuity or less and the disability includes the anatomical loss or loss of use of both hands. Unless the amounts of these grants are periodically adjusted, inflation erodes these benefits that are payable to a select few, albeit among the most seriously disabled service-connected veterans.

Recommendation:

Congress should increase the allowance from $14,000 to $28,000 for those veterans meeting the criteria of the first group and increase the allowance from $2,000 to $5,000 for veterans meeting the criteria of the second group. Then it should provide for automatic annual adjustments in the future to keep pace with inflation.

Automobile Grants and Adaptive Equipment

Increase in Amount of Automobile Grant and Automatic Annual Adjustments for Increased Costs:

The automobile and adaptive equipment grants need to be increased and automatically adjusted annually to cover increases in costs.

The Department of Veterans Affairs provides grants for the purchase of automobiles or other conveyances to certain severely disabled veterans and service members. VA also provides grants for adaptive equipment necessary for safe operation of these vehicles. Veterans suffering from service-connected ankylosis of one or both knees or hips are eligible for only the adaptive equipment. This program also authorizes replacement or repair of adaptive equipment.

Congress initially fixed the amount of the automobile grant to cover the full cost of the automobile. However, because adjustments have not kept pace with increased costs, over the past 52 years the value of the automobile allowance has been substantially eroded. In 1946 the $1,600 allowance represented 85 percent of the average retail cost and was sufficient to pay the full cost of automobiles in the "low-price field." Comparing the Department of Energy's average price of a new vehicle to the automobile allowance that was in effect for that year, Table 1 demonstrates the dramatic decline in this benefit.

The National Automobile Dealers Association has confirmed that the $28,500 average price of a new car in 2007 is the same for 2008. The table below shows that an $11,000 automobile allowance represents only about 39 percent of the average cost of a new automobile. To restore equity between the cost of an automobile and the allowance, the allowance, based on 80 percent of the average new vehicle cost, would be $22,800.

Veterans eligible for the automobile allowance under title 38, United States Code, section 3902 are among the most seriously disabled service-connected veterans. Often public transportation is quite difficult for them, and the nature of their disabilities requires the larger and more expensive handicap-equipped vans or larger sedans, which have base prices far above today's smaller automobiles. The current $11,000 allowance is only a fraction of the cost of even the most modest and smaller models, which are often not suited to these veterans' special needs. Accordingly, if this benefit is to accomplish its purpose, it must be adjusted to reflect the current cost of automobiles.

Recommendation:

Congress should increase the automobile allowance to 80 percent of the average cost of a new automobile in 2008 and then provide for automatic annual adjustments based on the rise in the cost of living.

Price of New Vehicle vs. Auto Allowance

Year	Auto Allowance	Avg. Cost of New Car	Cost as a % of Allowance
1946	$1,600	$1,875	85%
1971	$2,800	$3,919	72%
1975	$3,300	$5,084	65%
1978	$3,800	$6,478	58%
1981	$4,400	$8,912	49%
1985	$5,000	$11,589	43%
1988	$5,500	$13,418	41%
1998	$8,000	$18,479	43%
2001	$9,000	$19,654	46%
2007	$11,000	$28,500	39%

INSURANCE

Government Life Insurance

VALUE OF POLICIES EXCLUDED FROM CONSIDERATION AS INCOME OR ASSETS:

For purposes of other government programs, the cash value of veterans' life insurance policies should not be considered assets, and dividends and proceeds should not be considered income.

For nursing home care under Medicaid, the government forces veterans to surrender their government life insurance policies and apply the amount received from the surrender for cash value toward nursing home care as a condition for Medicaid coverage of the related expenses of needy veterans. It is unconscionable to require veterans to surrender their life insurance to receive nursing home care. Similarly, dividends and proceeds from veterans' life insurance should be exempt from countable income for purposes of other government programs.

Recommendation:

Congress should enact legislation to exempt the cash value of, and dividends and proceeds from, VA life insurance policies from consideration in determining entitlement under other federal programs.

LOWER PREMIUM SCHEDULE FOR SERVICE-DISABLED VETERANS' INSURANCE:

The Department of Veterans Affairs should be authorized to charge lower premiums for Service-Disabled Veterans' Insurance (SDVI) policies based on improved life expectancy under current mortality tables.

Because of service-connected disabilities, disabled veterans have difficulty getting or are charged higher premiums for life insurance on the commercial market. Congress therefore created the SDVI program to furnish disabled veterans life insurance at standard rates.

When this program began in 1951, its rates, based on mortality tables then in use, were competitive with commercial insurance. Commercial rates have since been lowered to reflect improved life expectancy shown by current mortality tables. However, VA continues to base its rates on mortality tables from 1941. Consequently, SDVI premiums are no longer competitive with commercial insurance and therefore no longer provide the intended benefit for eligible veterans.

Recommendation:

Congress should enact legislation to authorize VA to revise its premium schedule for Service Disabled Veterans' Insurance to reflect current mortality tables.

INCREASE IN MAXIMUM SERVICE-DISABLED VETERANS' INSURANCE COVERAGE:

The current $10,000 maximum for life insurance under Service-Disabled Veterans' Insurance (SDVI) does not provide adequately for the needs of survivors.

When life insurance for veterans was first made available to members of the armed forces in October of 1917, coverage was limited to $10,000. At that time, the law authorized an annual salary of $5,000 for the director of the Bureau of War Risk Insurance. Obviously, the average annual wages of service members in 1917 was considerably less than $5,000. Then, a $10,000 life insurance policy provided sufficiently for the loss of income from the death of an insured in 1917.

Today, more than 90 years later, maximum coverage under the base SDVI policy remains at $10,000. Given that the annual cost of living is many times what it was in 1917, the same maximum coverage now nearly a century later clearly does not provide meaningful income replacement for the survivors of service-disabled veterans.

A May 2001 report from an SDVI program evaluation conducted for VA recommended that basic SDVI coverage be increased to $50,000 maximum. *The Independent Budget* veterans service organizations therefore recommend that the maximum protection available under SDVI be increased to $50,000.

Recommendation:

Congress should enact legislation to increase the maximum protection under base Service Disabled Veterans' Insurance policies to $50,000.

Veterans' Mortgage Life Insurance

INCREASE IN MAXIMUM VETERANS' MORTGAGE LIFE INSURANCE COVERAGE:

The maximum amount of mortgage protection under Veterans' Mortgage Life Insurance (VMLI) needs to be increased.

The maximum VMLI coverage was last increased in 1992. Since then, housing costs have risen substantially. Because of the great geographic differentials in the costs associated with accessible housing, many veterans have mortgages that exceed the maximum face value of VMLI. Thus, the current maximum coverage amount does not cover many catastrophically disabled veterans' outstanding mortgages. Moreover, severely disabled veterans may not have the option of purchasing extra life insurance coverage from commercial insurers at affordable premiums.

Recommendation:

Congress should increase the maximum coverage under Veterans' Mortgage Life Insurance from $90,000 to $150,000.