

Introduction

As *The Independent Budget (IB)* begins its 22nd year, its four participating authors, AMVETS, Disabled American Veterans, Paralyzed Veterans of America, and the Veterans of Foreign Wars, are faced with the responsibility and challenge of predicting the Department of Veterans Affairs (VA) resource requirements for fiscal year (FY) 2009. In addition to making financial recommendations, the *IB* offers program and service recommendations to assist veterans based on the real-life experiences of veterans. Today, fewer and fewer members of Congress are veterans, and the *IB* authors believe that their core mission, service to veterans, must be articulated clearly, accurately, and often.

Currently, VA continues to deny approximately 1.6 million veterans access to health care. However, despite this restriction, its medical care workload is increasing. Thousands more men and women who have sacrificed themselves in the global war on terrorism are returning home. These brave men and women are relying on the VA health-care and benefits system to help them rebuild their lives and become productive members of society. During FY 2009, VA will be caring for an ever-growing number of new veterans as they transition from active duty in the U.S. military to civilian status and become veterans. According to VA, in the first six months of fiscal year 2007, it treated nearly 124,000 new veterans from Operation Enduring Freedom and Operation Iraqi Freedom. This represents a 29 percent increase over the same time period in fiscal year 2006.

Additionally, VA's general veteran population is aging and has an increasing demand for VA's acute medical and long-term-care services. The influx of new veterans entering the VA system coupled with the increasing demand for medical services by an aging veteran population makes adequate resource forecasting difficult but more important year after year.

As America's servicemen and -women continue to be placed in harm's way in the global war on terrorism, it is important that their various needs, upon returning home from the battlefield, are met as expeditiously and as effectively as possible. VA's health-care and benefits systems are critical national resources for our nation's increasing veteran population. Veterans depend on VA for health care, compensation for disability, housing, education, vocational rehabilitation, and insurance benefits they earned serving our country. As the Administration and Congress consider the financial needs of VA this fiscal year, they should pause to consider how much is at stake.

Year after year, we call on Congress to provide funding necessary to meet the health-care needs of veterans and to do so in a timely manner. Unfortunately, Congress continues to be unable to complete the VA appropriation process in time to coincide with the beginning of VA's new fiscal year. Continued Congressional delays in VA funding bolster the *IB* recommendation to alter the current process and make VA health care a mandatory rather than a discretionary expense. Mandatory funding would ensure that the government meets its obligation to provide quality VA health care to America's veterans in an efficient and timely manner.

With regard to veterans' benefits, the *IB* recognizes a vastly growing crisis that has not been properly addressed in years past. It is time to take real steps to fix the backlog in claims processing before the system collapses under its own weight. Continuing to study these problems without developing real solutions serves no other purpose than to delay the benefits that veterans have earned and deserve. Moreover, a large number of adjudication decisions are incorrect or have technical or procedural errors, further exacerbating the problem. Veterans' benefits are part of a covenant between our nation and its defenders and should never be denied, reduced, or delayed.

The *Independent Budget for Fiscal Year 2009* offers comments and recommendations to improve and maintain the broad array of VA services designed to improve the lives of America's veterans. These men and women have answered the call of their country; they have taken an oath to defend and protect America; and they have served our country with honor and distinction. It is the goal of the *IB* to ensure that the promises of a grateful nation are upheld.

The recommendations contained in the *IB for FY 2009* provide decision-makers with a rational, rigorous, and sound review of the budget required to support authorized programs for our nation's veterans. We are proud that more than 50 veterans, military, and medical service organizations have endorsed the 22nd edition of *The Independent Budget*.

VA Accounts FY 2009 (Dollars in Thousands)			
	FY 2008 Appropriation	FY 2009 Admin.	FY 2009 IB
Veterans Health Administration (VHA)			
Medical Services*	29,104,220	34,075,503	34,619,998
Medical Administration*	3,517,000		3,625,762
Medical Facilities	4,100,000	4,661,000	4,576,143
Subtotal Medical Care, Discretionary	36,721,220	38,736,503	42,821,903
Medical Care Collections**	2,414,000	2,467,000	
Total, Medical Care Budget Authority** (including Collections)	39,135,220	41,203,503	42,821,903
Medical and Prosthetic Research	480,000	442,000	555,000
Total, Veterans Health Administration	37,201,220	39,178,503	43,376,903
General Operating Expenses (GOE)			
Veterans Benefits Administration	1,327,001	1,371,753	1,693,574
General Administration	277,999	328,114	292,028
Total, General Operating Expenses (GOE)	1,605,000	1,699,867	1,985,602
Departmental Admin. and Misc. Programs			
Information Technology	1,966,465	2,442,066	2,164,938
National Cemetery Administration	195,000	180,959	251,975
Office of Inspector General	80,500	76,500	83,158
Total, Dept. Admin. and Misc. Programs	2,241,965	2,699,525	2,500,071
Construction Programs			
Construction, Major	1,069,100	581,582	1,275,000
Construction, Minor	630,535	329,418	621,000
Grants for State Extended Care Facilities	165,000	85,000	200,000
Grants for Construction of State Veterans cemeteries	39,500	32,000	42,000
Total, Construction Programs	1,904,135	1,028,000	2,138,000
Other Discretionary	155,572	158,000	160,084
Total, Discretionary Budget Authority	43,107,892	44,763,895	50,160,660
Total, Discretionary Budget Authority (including Medical Collections)	45,521,892	47,230,895	50,160,660
Cost for Category 8 Veterans Denied Enrollment			1,386,482
Total, Budget Authority			51,547,142

*The FY 2009 Administration Request consolidates Medical Services and Medical Administration into one account.

**The *Independent Budget* believes Medical Care Collections should be a supplement to and not a substitute for appropriations. As such, our FY 2009 Medical Care recommendation reflects the total funding that we believe is necessary to operate the VA health care system.

Benefit Programs

Through the Department of Veterans Affairs (VA), our citizens provide a wide array of vital benefits to veterans. 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 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 by nonservice-connected causes or who have attained the age of 65. Death pensions are paid to needy eligible survivors of wartime veterans. Burial benefits assist families in meeting 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 Vietnam veterans who suffer from spina bifida and other birth defects.

In recognition of the disadvantages that result from interruption of civilian life to perform military service, Congress has authorized various benefits to assist veterans in their readjustment to civilian life. These readjustment benefits provide financial assistance to veterans in education or vocational rehabilitation programs and to seriously disabled veterans in acquiring specially adapted housing and automobiles. Education benefits are also available for children and spouses of those who die on active duty, who are permanently and totally disabled, or for 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.

Congress, VA, and veterans service organizations have worked together to ensure that VA benefit programs have been carefully crafted to meet the needs of veterans and their survivors. Experience has proven that these benefit programs generally serve their intended purposes and taxpayers very well. Over time, however, adjustments are needed to make the programs better serve veterans or to meet changing circumstances. Unfortunately, failure to regularly adjust the benefit rates for increases in the cost of living or to make other needed changes erodes the value and effectiveness of some veterans' benefits.

Veterans' programs must remain a national priority. Additionally, they must be maintained, protected, and improved as necessary. To maintain or increase their effectiveness, we offer the following recommendations.



Benefits Issues

COMPENSATION AND PENSIONS

Compensation

ANNUAL COST-OF-LIVING ADJUSTMENT:

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

Veterans whose earning power is compromised or completely lost as a result of service-connected disabilities must rely on VA compensation for the necessities of life. Similarly, surviving spouses of men and women who died in service or as a result of service-connected disabilities often have little or no income other than dependency and indemnity compensation (DIC). Compensation and DIC rates are modest, and erosion due to inflation has a direct and detrimental impact on recipients with fixed incomes. Therefore, these benefits must be ad-

justed periodically to keep pace with increases in the cost of living. Observant of this principle, Congress has traditionally adjusted compensation and DIC rates annually.

Recommendation:

Congress should enact a cost-of-living adjustment for all compensation benefits sufficient to offset the rise in the cost of living.



FULL COST-OF-LIVING ADJUSTMENT FOR COMPENSATION:

To maintain the effectiveness of compensation for offsetting the economic loss resulting from service-connected disability and death, Congress must provide cost-of-living adjustments (COLAs) equal to the annual increase in the cost of living.

Disability compensation and dependency and indemnity compensation rates have historically been increased each year to keep these benefits even with the cost of living. However, as a temporary measure to reduce the budget deficit, Congress enacted legislation to require monthly payments, after adjustment for increases in the cost of living, to be rounded down to the nearest whole dollar amount. Finding this a convenient way to meet budget reconciliation targets and fund spending for other purposes, Congress seemingly has become unable to break its recurring habit of extending this round-down provision and has extended it even in the face of prior budget surpluses. Inexplicably, VA budgets have recommended that Congress make the round-down requirement a permanent part of the law. While rounding down compensation rates for one or two years may not seriously degrade its ef-

fectiveness, the cumulative effect over several years will substantially erode the value of compensation. Moreover, extended—and certainly permanent—rounding down is entirely unjustified. It robs monies from the benefits of some of our most deserving veterans and their dependents and survivors, who must rely on their modest VA compensation for the necessities of life.

Recommendation:

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.

**STANDARD FOR SERVICE CONNECTION:**

Service-connected benefits should be provided for all disabilities incurred or aggravated in the line of duty.

The core veterans' benefits are those provided to make up for the effects of "service-connected" disabilities and deaths. When disability or death results from an 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 for veterans and their eligible dependents and survivors. A disability or death from injury or disease is in the line of duty if it is incurred or aggravated during active military, naval, or air service, unless it was due to misconduct or other disqualifying circumstances. Accordingly, a disability or death from an injury or disease that occurs or increases during service meets the current requirements of law for service connection.

These principles are expressly and clearly set forth in current law. Under the 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.

A member on active duty in the armed forces is at the disposal of military authority and, in effect, serves on duty 24 hours a day, 7 days a week. Under many circumstances, such member may be directly engaged in performing tasks involved in his or her military vocation for far more extended periods than a typical eight-hour civilian workday and may be normally on call or

standing by for duty the remainder of the hours in a day. Under other typical circumstances, a service member may live on or near the workstation 24 hours a day, such as when on duty on submarine, on ship, or at a remote military outpost. Even when a military service member is not actively or directly engaged in performing functions of his or her military occupational specialty, the member is indirectly on duty or involved in general military duties and ongoing responsibilities associated therewith. In America's military service, there is no distinction between "on duty" and "off duty" for purposes of legal status, and there is often no clear practical demarcation between being on and being off duty. Moreover, in the overall military environment, there are rigors, physical and mental stresses, and known and unknown risks and hazards unlike, and far beyond, those seen in civilian occupations and daily life. American military service members stationed overseas are often exposed to increased risks of injury and disease, both on and off military facilities.

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. For these same reasons, a requirement to prove service causation would be unworkable as long as it remains the purpose of the law to equitably dispose of questions of service connection and provide benefits when benefits are rightfully due those who risk their health and lay their lives on the line to bear the extraordinary burdens of defending our national interests, often in terrible hardship. Of course, if it were to become the object of our government to limit as much as possible its responsibility for veterans' disabilities rather than to have a fair and practical legal framework for justice for them, requiring proof of service causation would effectively accomplish that object by making it more difficult to prove otherwise meritorious claims for compensation.

Surprisingly, during deliberations on the annual defense authorization bill for fiscal year 2004, key members of the leadership of the United States House of Representatives developed a scheme to accomplish that very purpose 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. Although this scheme was not enacted into law, the final legislation did require the establishment of a federal advisory commission to study the foundations of disability benefit programs for veterans—presumably with the same ultimate goal in mind. This action seems to be consistent with current systematic efforts to reduce spending on military personnel and veterans' programs in order to devote more resources to mission programs, weapons and other military hardware, and the operational costs of war.

Consequently, 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, 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 longstanding policy.

Recommendation:

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



STANDARD FOR DETERMINING COMBAT-VETERAN STATUS:

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

Title 38, United States Code, section 1154(b) requires VA to accept lay or other evidence as sufficient proof of service connection of a disease or injury if a veteran alleges that disease or injury occurred in or was aggravated during combat. While VA recognizes the receipt of certain medals as proof of combat, only a fraction of those who participate in combat receive a qualifying medal. Further, military personnel records do not document combat experiences except for those who receive certain medals. As a result, veterans who are injured during combat or suffer a disease resulting from a combat environment are forced to try to provide evidence that does not exist or wait a year or more while the Department of Defense conducts research to determine whether a veteran's unit engaged in combat.

Congress should amend title 38, United States Code, section 1154(b) to clarify military service to be treatable as service in which a member is considered to have engaged in combat for purposes of determining combat-veteran status. Such clarification would properly allow for utilization of nonofficial evidence as proof of a "triggering-event" occurrence for service-connection of a combat-related disease or injury.

If enacted, this type of legislation would remove a barrier to the fair adjudication of claims for VA benefits filed by veterans who have disabilities incurred or aggravated by their military service in combat zones. Under existing law, veterans who can establish that they served in combat do not have to produce official military records to support their claim for disabilities related to such service. Such legislation would not alter the law's current requirement that a veteran confirm his or her claimed disability through official diagnosis. Further, it would not alter the requirement that a veteran show a connection, either through medical or lay evidence, of the claimed disability to military service. The only alteration from current law would be a relaxed standard of proof required to establish a triggering event that results in eventual disability. This relaxed standard of proof would then apply only to veterans who served in a combat zone.

To understand the need for such legislative change, it must be understood that under current law, service in a "combat zone" does not necessarily produce, for VA purposes, a "combat veteran." There lies the inherent

flaw that successfully constructs insurmountable obstacles that lie in the path of rightful benefits earned by thousands of combat veterans.

At present, many veterans disabled by their service in Iraq and Afghanistan, as well as those who served earlier in Korea and Vietnam, are unable to benefit from liberalizing evidentiary requirements found in the current version of section 1154(b). This results because of difficulty, even impossibility, in proving personal participation in combat by official military documents.

Under an opinion of VA General Counsel (12-99), veterans must 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." Oversight visits by Congressional staff to VA regional offices have found claims denied as a result of this policy because those who served in combat zones were not able to produce official military documentation of their personal participation in an actual fight. The only possible resolution to this problem without amending section 1154(b) is for the military to record the names and personal actions of every single soldier, sailor, airman, and marine involved in every single event—large or small—that constitutes combat, in every single battle, on every single battlefield, and in every single war. Anything less will—and has—resulted in veterans who were disabled in combat being denied rightful benefits to which they are entitled under the law. However, during every war in American history, the military has proven that such recordkeeping is impossible.

Not only have countless World War II, Korean War, Vietnam War, and Persian Gulf War veterans been harmed by this defect in the law, such unfortunate cases already include veterans from the wars in Iraq and Afghanistan. In other 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.

The legislative amendment requested herein would overturn the foregoing VA General Counsel precedent opinion—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 as compared to that of the veteran who served in combat. Either the veteran attempted to carry on despite a disability to avoid having a record made lest he or she might be separated

from his or her organization, or, as in many cases, the records themselves were lost. Likewise, many records are simply never generated.

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, as a veteran who during active service served in a combat zone for purposes of section 112 of the Internal Revenue Code of 1986 or a predecessor provision of law.



CONCURRENT RECEIPT OF COMPENSATION AND MILITARY RETIRED PAY:

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

Some former service members who are retired from the armed forces on the basis of length of service must forfeit a portion of the retired pay they earned through faithful performance of military service to receive VA compensation for service-connected disabilities. This is inequitable because military retired pay is earned by virtue of a veteran's long service on behalf of the nation.

Entitlement to compensation, on the other hand, is for an entirely separate reason—because of disability incurred during that military 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 along with the added reward of full pay in civilian employment. 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 them on equal footing with nondisabled military retirees, disabled retirees should receive full military retired pay and compensation to account for diminution of their earning capacities.

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 the enlistment obligation can receive full VA compensation and full civilian retired pay—including retirement from federal civil service employment and employment in the U.S. Postal Service. A veteran who has served this country in the armed forces for 20 years or more, however, or one who was disabled and discharged before attaining the full military retirement service threshold, 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. If a veteran must forfeit a dollar of retired pay for every dollar of VA disability compensation otherwise payable, our government is, in effect, compensating the veteran with *nothing* for the service-connected disability he or she suffered. *The Independent Budget* veterans service organizations urge Congress to correct this continuing inequity.

While Congress has made progress in recent years in correcting this injustice, the members of *The Independent Budget* 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, based on longevity, be offset by an amount equal to their rightfully earned VA disability compensation.



CONTINUATION OF MONTHLY PAYMENTS FOR ALL COMPENSABLE SERVICE-CONNECTED DISABILITIES:

Lump-sum settlements of disability compensation should not be used as a way to decrease the government's obligation to disabled veterans and save the government money.

Under current law, 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 continues to provide relief from the service-connected disability for as long as the veteran continues to suffer its effects at a compensable level. By law, the level of disability determines the rate of compensation, thereby requiring reevaluation of the disability upon change in its degree. Lump-sum payments have been recommended 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 service-connected disabled veterans when their disabilities worsen or cause secondary disabilities. Under such a scheme, VA would use the immediate availability of a lump-sum settlement to entice veterans to bargain away their future entitlement. Such lump-sum payments would not be, on the whole, in the best interests of disabled veterans, but rather would be for government savings and convenience.

In its deliberation of lump-sum disability severance payments as a means of compensation for disabilities as an alternative to monthly payments, the Veterans' Disability Benefits Commission (VDBC) considered reports from previous Presidential and Congressional

commissions, the Government Accountability Office, and VA's Office of Inspector General, as well as a VDBC-commissioned study by the Center for Naval Analysis. In its final report, the VDBC 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..."¹ *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 that it change the law to permit VA to discharge its future obligation to compensate service-connected disabilities through payment of lump-sum settlements to veterans.

¹Honoring the Call to Duty: Veterans' Disability Benefits in the 21st Century," Veterans' Disability Benefits Commission, October 2007, p. 278.

INCREASE IN RATES OF SPECIAL MONTHLY COMPENSATION:

Congress should increase rates of payment to veterans who have been determined to be housebound or in need of regular aid and attendance because of service-connected disabilities.

VA, under the provisions of title 38, United States Code sections 1114(k)–(s), provides additional special compensation to select categories of veterans with very severe, debilitating disabilities, such as the loss of a limb and loss of certain senses, and to those who require the assistance of an aide for the activities of daily living, such as dressing, toileting, bathing, and eating.

The present special monthly compensation rate of \$91 is paid beyond the service-connected compensation level of disability to a veteran who as the result of a service-connected disability has suffered the devastating loss or loss of use of a creative organ, one foot, one hand, or both buttocks. In addition, a veteran who has suffered blindness of one eye having only light perception; complete organic aphonia with constant inability to communicate through speech; deafness of both ears having absence of air and bone conduction; and, in the case of a woman, has received radiation treatment of breast tis-

sue, or the anatomical loss of 25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) as the result of a service-connected disability is entitled to special compensation. The payment of special monthly compensation, while minimally adjusted for inflation each year, is now no longer sufficient to compensate for the special needs of these veterans.

Recommendation:

Congress should enact legislation to increase the special monthly compensation under title 38, United States Code, sections 1114(l)–(s) by an immediate 20 percent above the current base amount and additionally, increase by 50 percent the current base amount of special monthly compensation under 38 U.S.C. § 1114(k).

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

For combat veterans and those who had military occupations that typically involved noise exposure sufficient to cause hearing loss or tinnitus, service connection should be presumed.

Many combat veterans and veterans who had military duties involving high levels of noise exposure who are now suffering from hearing loss or tinnitus likely related to noise exposure or acoustic trauma during service are unable to prove service connection because of inadequate 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 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 ex-

perienced noise-induced hearing loss by the time their military service ended may be substantial, but the available data provide no basis for a valid estimate of the number.

Hearing loss and tinnitus are common among combat veterans. The reason is simple: Combat veterans are typically exposed to prolonged and frequent loud noises from unusual sources, such as gunfire and loud aircraft engines, just to name two. Combat veterans suffer acoustic trauma from black powder and other explosive sources. Exposure to loud noise and acoustic trauma are well-known causes of high-frequency hearing loss and tinnitus. Yet many combat veterans are unable to document their in-service acoustic trauma or that 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 insufficient to detect hearing loss in many instances.

Many veterans serve in military occupations that typically involve noise exposure sufficient to cause hearing loss. Today's defense against noise-induced hearing loss for these military occupations includes hearing conservation programs and mandatory hearing protection devices. However, many veterans performed those same jobs without protection during earlier periods. Furthermore, the IOM report indicates, "[a] handful of reports over the past 30 years suggest that in some settings, only about half of those who should have been using hearing protection devices were doing so."

As a result of inconsistent audiometric testing and insufficient testing records, Congress has made special provisions for deserving groups of veterans whose claims are unusually difficult to establish because of circumstances beyond their control. Congress should do the same for combat veterans and veterans whose military duties are

generally recognized to have involved noise exposure sufficient to cause hearing loss and tinnitus, such as artillery gun crews. When these veterans suffer from tinnitus or the type of hearing loss that can result from noise exposure and when their medical records are insufficient to prove absence of service-related hearing loss or tinnitus during service, service connection should be presumed.

Recommendation:

Congress should enact a presumption of service-connected disability for combat veterans and veterans who performed military duties typically involving high levels of noise exposure and who subsequently suffer from tinnitus or hearing loss. This presumption of service connection should be applied when the veteran's records do not affirmatively prove such condition or conditions are unrelated to service.



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 com-

ensation for amputation of a lower extremity although he or she may ambulate normally 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.

Recommendation:

VA should amend its *Schedule for Rating Disabilities* to provide a minimum 10 percent disability rating for any hearing loss for which the wearing of a hearing aid is medically indicated.

TEMPORARY TOTAL COMPENSATION AWARDS:

Temporary awards of total disability compensation should be exempted 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 the date of hospital admission or outpatient visit.

Although the effective date of the temporary total disability rating corresponds to the beginning date of hospitalization or treatment, the provisions of title 38, United States Code, section 5111 delay 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 any 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 hardships.

Therefore, *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 on the basis of 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.

**PENSION FOR NONSERVICE-CONNECTED DISABILITY:**

Congress must amend basic eligibility for pensions for nonservice-connected veterans who serve in combat circumstances, irrespective of whether those are declared wars.

Many veterans who have participated in hostile military operations do not fall within any defined or declared period of war as currently listed in title 38, Code of Federal Regulations, paragraph 3.2. Accordingly, these veterans are ineligible for nonservice-connected war pension benefits under title 38, United States Code, chapter 15, "Pension for Nonservice-Connected Disability/Death."

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. These veterans may have served our nation under more dangerous and threatening circumstances than veterans who served during official periods of war. Similarly, not all those who served during a period of war were directly involved in combat or infantry operations.

Recommendation:

Congress should amend eligibility requirements in title 38, United States Code, chapter 15, to authorize eligibility for nonservice-connected disability pension to veterans who have been awarded the Armed Forces Ex-

peditionary 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.



Dependency and Indemnity Compensation

REVIEW OF ADEQUACY OF OVERALL DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM:

Congress should review the adequacy of dependency and indemnity compensation (DIC) to ensure that the level of VA financial support is adequate to maintain these beneficiaries above the poverty level.

The VA Dependency and Indemnity Compensation program provides monthly financial support to the widow or widower of a veteran who dies from a service-connected disability (including the survivor of an active duty service member who dies while still in military service). Historically, DIC was intended to enable a survivor of a veteran to maintain a standard of living above the poverty level that might have ensued because of the loss of a spouse's life income and earning power. Current payment rates for DIC are set in law, and generally the maximum monthly payment is limited to \$1,091, about 41 percent of the level of maximum service-connected disability payment to a totally disabled veteran—and considerably less than pensions paid to a survivor of a federal retiree, which are set in law at 55 percent of that federal annuity. Because of inflation and other economic factors, many widows (and some widowers) are in fact now living in poverty due to lack of income other than DIC. Their situations are often compounded by their own disabilities, child-

care responsibilities, and consequent inability to work. *The Independent Budget* veterans service organizations believe strongly that no survivor of a veteran who died as a result of service-connected disability—and most certainly no survivor of a service member who died while serving our nation—ever should be reduced to poverty as a result of government compensation policy.

Recommendation:

Congress should use the Government Accountability Office or other independent reviewer to examine the VA's Dependency and Indemnity Compensation program to ensure that current policy adequately maintains the survivors of veterans who died as a result of service-connected disabilities or survivors of active duty deaths and should make legislative recommendations to correct any inequities observed from such examination.



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 in our armed forces is compensated for the effects of the 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 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 causes for the required time preceding his or her death, beneficiaries receive full SBP payments. However, if the veteran's death was due to service-connected causes 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.

**INCREASE OF DISABILITY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES OF SERVICE MEMBERS:**

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

Current law authorizes VA to pay additional, enhanced amounts of dependency and indemnity compensation, in addition to the basic rate, to the 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.

Needless to say, 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:

We urge Congress to 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.

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).

Current law permits remarried survivors of veterans who die from service-connected disabilities to requalify for DIC benefits if the remarriage occurs at age 57 or older, or if 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 based on no objective data related to this population or its needs. 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 to remarried survivors of service-connected veterans from 57 years of age to 55 years of age.

READJUSTMENT BENEFITS

Montgomery GI Bill

EXPANSION OF MONTGOMERY GI BILL ELIGIBILITY:

Military service members who in every respect are at least equally entitled to participate in the Montgomery GI Bill (MGIB) as service members who first entered military service after June 30, 1985, should be allowed to participate even if they entered or had military service before that date.

Under current law, an active duty service member must have first become a member of the armed forces after June 30, 1985, to be eligible to participate in the MGIB. An active duty service member who entered active duty before that date and continues to serve cannot participate—unless he or she was enrolled in the prior educational assistance program and elected to convert to the MGIB when that opportunity was first offered. In this situation, service members who have served longer and are arguably more deserving of education benefits are treated less favorably than members who have served in the armed forces for shorter periods.

Any person who was serving in the armed forces on June 30, 1985, or any person who reentered service in the armed forces on or after that date, if otherwise eligible, should be allowed to participate in the MGIB under the same conditions as members who first entered military service after that date.

Recommendation:

Congress should amend the law to remove the restriction on eligibility to the Montgomery GI Bill to those who first entered military service after June 30, 1985.

REFUND OF MONTGOMERY GI BILL CONTRIBUTIONS FOR INELIGIBLE VETERANS:

The government should refund the contributions of individuals who become ineligible for the Montgomery GI Bill because of general discharges or discharges “under honorable conditions.”

The Montgomery GI Bill–Active Duty program provides education assistance to veterans who first entered active duty (including full-time National Guard duty) after June 30, 1985. To be eligible, service members must have elected to participate in the program and made monthly contributions from their military pay. These contributions are not refundable.

Eligibility is also subject to an honorable discharge. Discharges characterized as “under honorable conditions” or “general” do not qualify. *The Independent Budget* veterans service organizations believe that when a discharge involves a minor infraction or defi-

ciency in the performance of duty, the individual should at least be entitled to a refund of his or her contributions to the program.

Recommendation:

Congress should change the law to permit refund of an individual’s Montgomery GI Bill contributions when his or her discharge was characterized as “general” or “under honorable conditions” because of minor infractions or inefficiency.

**GI BILL FOR THE 21ST CENTURY:**

Congress must invest in our troops, our veterans, and our nation.

Since the inception of the GI Bill, every generation of warriors has had this benefit to ease transition back into civilian life, which provided them an opportunity for education and served as an investment in the future of our nation. Today’s GI Bill is not meeting the needs of our veterans; skyrocketing education costs are forcing veterans to shoulder the bulk of college expenses. Our military, in the wake of the current conflict, is suffering from recruiting shortages. Moreover, young veterans are more likely to become unemployed and homeless. A new approach to veterans’ transition, stabilization, and education is needed.

The increasing cost of education is diminishing today’s GI Bill as a veterans’ education benefit. According to the Department of Education, the national average cost of undergraduate tuition, fees, room, and board charged to full-time students in degree-granting institutions for the 2005–06 academic year was \$17,447. A veteran in receipt of the active duty full-time GI Bill benefit for the same period received \$9,306, approximately 53 percent of the total cost of education. This benefit level makes it difficult for a single veteran to attend col-

lege and prohibitive for a married veteran to support his or her family and seek an education.

The Department of Health and Human Services set the 2005 poverty line as individuals earning at or below \$9,570, a two-person household at or below \$12,830, and a three-person household at or below \$16,090. A student veteran earning no additional income is living below the poverty line and struggling to afford an education. Veterans with families who must rely solely on the GI Bill to sustain them and their dependents while they attend college fall dramatically below the poverty line.

The GI Bill has evolved from its origins as a transition and stabilization benefit into a recruitment tool. With each successive year of conflicts in Iraq and Afghanistan, we face the increased challenge of meeting projected recruitment and retention numbers for the military. A robust education benefit would have a positive effect on military recruitment and help broaden the socioeconomic makeup of the military, improving the overall quality of individual recruits.

Veterans are increasingly at a disadvantage relative to their peers in the job market. Of the 200,000 men and women who annually leave service to enter the workforce, veterans are twice as likely as their civilian peers to remain unemployed. The estimate from the Department of Labor of unemployment among veterans between the ages 20 to 24 was 15.6 percent in 2005. Nonveterans of the same age group faced an unemployment rate of 8.7 percent. Increased education benefits improve a veteran's marketability, contribute to his or her long-term career growth, and promote a more positive readjustment experience.

Near the end of World War II, our nation's economy was recovering from the depression and showing promise of expansion. With the creation of the WWII GI Bill, millions of service members took seats in classrooms across the nation. The 7.8 million veterans who took advantage of the WWII GI Bill ushered in an era of prosperity, where for every tax dollar spent the gov-

ernment received approximately \$7 in return. The original GI Bill vastly expanded the middle class in America, improved the lives of veterans, and profoundly affected their families and all Americans.

Congress must pass and the President must sign into law a comprehensive GI Bill for the 21st century as an investment in our troops, our veterans, and our nation. It would serve to strengthen the Department of Defense's recruitment efforts, provide the nation with cadre of seasoned and patriotic leaders, and, most important, improve the lives of veterans and their families.

Recommendation:

Congress must pass a comprehensive GI Bill for the 21st century that provides for full tuition support, a small stipend, and other education-related costs.



Housing Grants

INCREASE IN AMOUNT OF GRANTS AND AUTOMATIC ANNUAL ADJUSTMENTS FOR INFLATION:

Housing grants and home adaptation grants for seriously disabled veterans need to be adjusted automatically each year to keep pace with the rise in the cost of living.

Veterans are increasingly at a disadvantage relative to their peers in the job market. Of the 200,000 men and women who annually leave service to enter the workforce, veterans are twice as likely as their civilian peers to remain unemployed. The estimate from the Department of Labor of unemployment among veterans between the ages 20 to 24 was 15.6 percent in 2005. Nonveterans of the same age group faced an unemployment rate of 8.7 percent. Increased education benefits improve a veteran's marketability, contribute to his or her long-term career growth, and promote a more positive readjustment experience.

Increases in housing and home adaptation grants have been infrequent, although real estate and construction costs rise continually. Unless the amounts of the grants are periodically adjusted, inflation erodes the value and

effectiveness of these benefits, which are payable to a select few but among the most seriously disabled service-connected veterans. Congress should increase the grants this year and amend the law to provide for automatic adjustment annually.

Recommendation:

Congress should increase the specially adapted housing grants and provide for future automatic annual adjustments indexed to the rise in the cost of living.

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 changes in the special adaptations. These things 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.

*Automobile Grants and Adaptive Equipment***INCREASE IN AMOUNT OF 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.

VA provides certain severely disabled veterans and service members grants for the purchase of automobiles or other conveyances. This grant also provides 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. With subsequent cost-of-living increases in the grant, Congress sought to provide 85 percent of the average cost of a new automobile and later 80 percent. Until the 2001 increase to \$9,000, the amount of the grant had not been adjusted since 1988, when it was set at \$5,500.

Because of a lack of adjustments to keep pace with increased costs, the value of the automobile allowance has substantially eroded through the years. In 1946 the \$1,600 allowance represented 85 percent of average retail cost and a sufficient amount to pay the full cost

of automobiles in the "low-price field." By contrast, in 2007 the allowance was \$11,000, and the average price of new vehicles, according the National Automobile Dealers Association, was \$28,500. The 1997 average cost of an automobile was 1,155 percent of the 1946 cost, but the automobile allowance of \$5,500 was only 343 percent of the 1946 award. Currently, the \$11,000 automobile allowance represents only about 39 percent of the average cost of a new automobile. To restore the comparability 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 modest and smaller models, which are often not suited to these veterans' needs.

Accordingly, if this benefit is to accomplish its purpose, it must be adjusted to reflect the current cost of automobiles. The amount of the allowance should be increased to 80 percent of the average cost of a new automobile in 2007, and to avoid further erosion of

this benefit, Congress should provide for automatic annual adjustments based on the rise in the cost of living.

Recommendation:

Congress should increase the automobile allowance to 80 percent of the average cost of a new automobile and provide for automatic annual adjustments in the future.

Home Loans

NO INCREASE IN, AND EVENTUAL REPEAL OF, FUNDING FEES:

Funding fees are contrary to the principles underlying benefit programs for veterans, and increased funding fees are negating the benefits and advantages of VA home loans.

Congress initially imposed funding fees upon VA guaranteed home loans under budget reconciliation provisions as a temporary deficit reduction measure. Now, loan fees are a regular feature of all VA home loans except those exempted. During its first session, the 108th Congress increased these loan fees. The purpose of the increases was to generate additional revenues to cover the costs of improvements and cost-of-living adjustments in other veterans' programs. In effect, this legislation requires one group of veterans (and especially our young active duty military), those subject to loan fees, to pay for the benefits of another group of veterans, those benefiting from the programs improved or adjusted for increases in the cost of living.

First and foremost, it is the position of *The Independent Budget* that veterans' benefits, provided to veterans by a grateful nation in return for their contributions and sac-

rifices through service in the armed forces, should be entirely free. In addition, *The Independent Budget* veterans service organizations find it entirely indefensible that Congress can only make improvements or adjustments in veterans' programs for inflation by shifting the costs onto the backs of other veterans. The government, not veterans, should bear the costs of veterans' benefits. With these increased funding fees, the advantages of VA home loans for veterans are being negated. These fees are increasing the burdens upon veterans purchasing homes while the intent of VA's home loan program is to lessen the burdens.

Recommendation:

Congress should refrain from further increasing home loan funding fees and should, as soon as feasible, repeal these fees entirely.

INSURANCE

Government Life Insurance

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:

VA 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. VA continues to base its rates on mortality tables from 1941, however.

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 SDVI 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 had its beginnings in the War Risk Insurance program, first made available to members of the armed forces in October 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. A \$10,000 life insurance policy provided sufficiently for the loss of income from the death of an insured in 1917.

Today, more than 88 years later, maximum coverage under the base SDVI policy is still \$10,000. Given that the annual cost of living is many times what it was in 1917, the same maximum coverage well more than three-quarters of a century later clearly does not pro-

vide 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 at least \$50,000.

Recommendation:

Congress should enact legislation to increase the maximum protection under base SDVI policies to at least \$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 VMLI from \$90,000 to \$150,000.

OTHER SUGGESTED BENEFIT IMPROVEMENTS

NATIONAL GUARD AND RESERVE BENEFITS:

Congress must improve and modernize federal benefits for members of the National Guard and Reserve forces.

The decade-long trend of our increasing reliance on Army National Guard, Air National Guard, and the Reserve forces of the Army, Navy, Marine Corps, Air Force, and Coast Guard for national security missions at home and peacekeeping and combat missions overseas, shows no sign of abatement. Reliance on Guard and Reserve forces has grown since the pre-Persean Gulf War era, and this trend continues even though both Reserve and active duty force levels remain far below their Cold War peak.

Since September 11, 2001, more than 600,000 individuals who serve in National Guard and Reserve forces have been mobilized for a variety of military, police, and security actions. Increasing demands on these serving members impose significant and repeated family separations (the single greatest disincentive for a military career) and create additional uncertainty and interruptions in their civilian career. Moreover, such mobilizations of individuals in the National Guard and Reserve forces are now being affected with regard to future employment opportunities. In particular, civilian employers and potential employers are becoming increasingly hesitant to employ National Guard and Reserve members because of the frequency and uncertainty of deployments, jeopardizing their continued employment and career progress.

Furthermore, Guard and Reserve recruiting, retention, morale, and readiness are already at considerable risk.

The nation cannot afford to promote the perception that we undervalue the great sacrifices and level of commitment being demanded from the Guard and Reserve community.

Various incentive, service, and benefit programs designed a half century ago for a far different Guard and Reserve philosophy are no longer adequate to address the demands on today's Guard and Reserve forces. Accordingly, steps must be taken by Congress to upgrade National Guard and Reserve benefits and support programs to a level commensurate with the sacrifices being made by these patriotic volunteers. Such enhancements should provide Guard and Reserve personnel a level of benefits comparable to their active duty counterparts and provide one means to ease the tremendous stresses now being imposed on Guard and Reserve members and their families, and to bring the relevance of these benefits into 21st century application.

Recommendation:

With concern about the current missions of the Guard and Reserve forces, Congress must take necessary action to upgrade and modernize Guard and Reserve benefits, to include more comprehensive health care, equivalent Montgomery GI bill educational benefits, and full eligibility for the VA Home Loan guaranty program.



Protection of Veterans' Benefits Against Claims of Third Parties

RESTORATION OF EXEMPTION FROM COURT-ORDERED AWARDS TO FORMER SPOUSES:

Through interpretation of the law to suit their own ends, the courts have nullified plain statutory provisions protecting veterans' benefits against claims of former spouses in divorce actions.

Congress has enacted laws to ensure that veterans' benefits serve their intended purposes by prohibiting their diversion to third parties. To shield these benefits from the clutch of others who might try to obtain them by a wide variety of devices or legal processes, Congress fashioned broad and sweeping statutory language. Pursuant to title 38, United States Code, section 5301(a), "[p]ayments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."

Thus, while as a general rule an individual's income and assets should rightfully be subject to legal claims of others, the special purposes and special status of veterans' benefits trump the rights of all others except liabilities to the United States government. Veterans cannot voluntarily or involuntarily alienate their rights to veterans' benefits. The justification for this principle in public policy is one that can never obsolesce with the passage of time or changes in societal circumstances.

However, unappreciative of the special character and superior status of veterans' rights and benefits, the courts have supplanted the will and plain language of Congress with their own expedient views of what the public policy should be and their own convenient interpretations of the law. The courts have chiseled away at the protections in section 5301 until this plain and forceful language has, in essence, become meaningless. Various courts have shown no hesitation to force disabled veterans to surrender their disability compensa-

tion and sole source of sustenance to able-bodied former spouses as alimony awards, although divorced spouses are entitled to no veterans' benefits under veterans' laws. The welfare of ex-spouses has never been a purpose for dispensing veterans' benefits.

We should never lose sight of the fact that it is the veteran, who, in addition to a loss in earning power, suffers the pain, limitations in the routine activities of daily life, and other social and lifestyle constraints that result from disability. The needs and well-being of the veteran should always be the primary, foremost, and overriding concern when considering claims against a veteran's disability compensation. Disability compensation is an earned entitlement based on a veteran's service. Dependent family members are only eligible for secondary compensation because of their relationship to an individual veteran. Therefore, federal law should place strict limits on access to veterans' benefits by third parties to ensure compensation goes mainly to support veterans disabled in the service of their country. Congress should enact legislation to override judicial interpretation and leave no doubt about the exempt status of veterans' benefits.

Recommendation:

Congress should amend title 38, United States Code, section 5301(a) to make its exemption of veterans' benefits from the claims of others applicable "notwithstanding any other provision of law" and to clarify that veterans' benefits shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever "for any purpose."

