

Benefit Programs

Ours is a nation that holds a special appreciation and high regard for those who have served in our Armed Forces. Ours is a nation that recognizes a profound indebtedness to those who have borne extraordinary burdens and made extraordinary sacrifices to defend our national interests. Through our Government, we therefore provide special assistance to veterans and their dependents to fulfill our Nation's obligation to make up for the effects of disadvantages from disabilities incurred in connection with military service and education and employment opportunities forgone or lost during service in our Armed Forces.

For budgetary classification, the benefit programs are grouped into three major categories:

- (1) compensation and pensions, which also includes the appropriations for burial benefits, miscellaneous assistance, and special benefits for children of Vietnam veterans;
- (2) readjustment benefits, which includes specially adapted housing grants, vocational rehabilitation programs, educational benefits, housing loans, and automobiles and adaptive equipment; and
- (3) insurance programs.

Disability compensation payments fulfill our primary obligation to make up for the economic and other losses veterans suffer due to the effects of service-connected diseases and injuries. When veterans' lives are cut short due to service-connected causes or following a substantial period of total service-connected disability, eligible family members receive dependency and indemnity compensation (DIC). Disability pensions provide a measure of financial relief for needy veterans of wartime service who are totally disabled by nonservice-connected causes. 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 attorney fee awards under the Equal Access to Justice Act and other special allowances for smaller select groups of veterans and dependents. Because of an apparent correlation between veterans' service in Vietnam and spina bifida and other birth defects in the children of these veterans, Congress authorized special programs to provide a monthly monetary allowance, medical treatment, and vocation rehabilitation to these children.

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

result of service-connected disability. Qualifying students pursuing Department of Veterans Affairs (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.

The Post-Vietnam Era Veterans Education Program provides educational assistance to veterans who entered service between December 31, 1976, and July 1, 1985. This assistance is funded by the contributions participating veterans made during their service and matching funds from the Department of Defense (DOD).

Under its home loan program, VA guarantees home loans for veterans, certain surviving spouses of veterans who have not remarried, certain servicemembers, and eligible reservists and National Guard personnel. VA also makes direct loans to supplement specially adapted housing grants. Under a program authorized until December 31, 2005, VA makes 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 Reserves. A group plan also covers service-members and members of the Ready Reserves and their family members. Mortgage life insurance protects veterans who have received specially adapted housing grants.

Through collaborative efforts of Congress, VA, and veterans' organizations, these benefit programs have been carefully crafted. Experience has proven that they generally serve their intended purposes and taxpayers very well. Over time, however, we learn of areas in which 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 and failure to make other needed changes threatens the 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 recommend the following.



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 limited or completely lost due to service-connected disabilities must rely on compensation for the necessities of life. Similarly, surviving spouses of veterans who died of service-connected disabilities often have little or no income other than DIC. Compensation and DIC rates are modest, and any erosion due to inflation has a direct detrimental impact on recipients with fixed incomes. Therefore, these benefits must be adjusted 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 COLA 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 equal to the annual increase in the cost of living.

Disability 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 Federal 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 the habit of extending this round-down provision and has extended it even in the face of budget surpluses. Inexplicably, VA recommends year after year that Congress make the round-down requirement a permanent part of the law. While rounding down compensation rates for 1 or 2

years may not seriously degrade its effectiveness, 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 dependents, who must rely on their modest compensation for the necessities of life.

Recommendation:

Congress should reject Administration recommendations to permanently extend provisions for rounding down compensation COLAs 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 incurred or aggravated "during" active military, naval, or air service, unless 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.

A member on active duty in the Armed Forces is at the disposal of military authority and, in effect, 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 8-hour civilian workday and may be on call or standing by for the remainder of the hours in a day. Under other typical circumstances, a servicemember may live

on or near the workstation 24 hours a day, such as duty on submarine, ship, or remote outpost. Even when a military member is not actively or directly engaged in performing functions of his or her military occupation, the member is indirectly on duty or involved in general military duties and ongoing responsibilities. In the 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. Military members stationed in foreign countries 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 is the purpose of the law to equitably dispose of questions of service-connection and provide benefits when benefits are rightfully due those who lay their health and lives on the line to bear the extraordinary burdens of defending our national interests. 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, requiring proof of service causation would accomplish that object quite effectively by making it impossible to prove many meritorious claims.

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 in order unless a veteran could prove that a disability was caused by actually performing military duties per se. Although this scheme was not enacted into law, the defense authorization bill did provide for the establishment of a commission to study the foundations of disability benefit programs for veterans, presumably with the same ultimate goal in mind. This action is consistent with current systematic efforts to reduce spending on military personnel and veterans to devote more resources to military hardware and the other costs of war.

It is self-evident that current standards governing service-connected status for veterans’ disabilities and deaths are equitable, practical, sound, and time-tested. *The Independent Budget* veterans service organizations (IBVSOs) urge Congress to reject any revision of this standard for the purpose of permitting the Government to coldly and expediently avoid its responsibilities for the human costs of war and national defense.

Recommendation:

Congress should reject any suggestion to change the terms for service-connection of disabilities and deaths.



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 servicemembers 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 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 Country.

Entitlement to compensation, on the other hand, is for an entirely separate reason—because of service-related disability. Many nondisabled military retirees pursue second careers after service to supplement their income, thereby justly enjoying the full reward for completion of a military career along with the added reward of full pay for the 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 retirees, they should receive full military retired pay and compensation to substitute for diminution of earning capacity.

To the extent that military retired pay and disability compensation now offset each other, the disabled retiree is treated less fairly than the nondisabled military retiree. Although the offset is being phased out for veterans 50% or more disabled, this is especially

inequitable where the military retiree is totally precluded from employment by service-connected disability and is still adversely affected during the 10-year phase-out period.

Moreover, a disabled veteran who does not retire from military service but elects instead to pursue a civilian career after his or her enlistment expires can receive full compensation and full civilian retired pay. A veteran who has served this country for 20 years or more should have that same right. The veteran should not be penalized for choosing the 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. Compensation should not be offset against military longevity retired pay. If a veteran must forfeit a dollar of retired pay for every dollar of compensation the veteran receives, our Government is in effect paying the veteran nothing for the service-connected disability he or she suffers. The IBVSOs urge Congress to correct this serious inequity.

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 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, on the whole, be in the best interests of disabled veterans, but rather would be for Government savings and convenience. The IBVSOs 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.



Recovery of Taxes on Disability Benefits:

To permit veterans to recover taxes improperly withheld, Congress should enact an exception to the 3-year limitation on amendment of tax returns.

Section 104(4) of title 26 United States Code (U.S.C.) exempts from taxable income "allowance for personal injuries or sickness resulting from active service in the armed forces." Similarly, 38 U.S.C. § 5301(a) provides that benefits due or to become due under any law administered by VA "shall be exempt from taxation." In *St. Clair v. United States*, 778 F. Supp. 894 (E.D. Va. 1991), the district court affirmed that the law excludes disability severance pay from taxable income.

The Internal Revenue Service (IRS) acquiesced in the district court's ruling, and veterans may amend their tax returns to recover amounts illegally taxed. Nonetheless, taxes are still being withheld from disability severance pay, and veterans must claim a refund or file an amended return to recover these taxes.

However, the 3-year statute of limitations on amending tax returns prevents veterans whose improper taxation occurred more than 3 years before the court's decision or their learning of this unlawful taxation from recovering amounts the IRS unlawfully withheld.

Additionally, where entitlement to disability compensation is established retroactively but not paid because the veteran received military retired pay during the period, the portion of the taxable retired pay that VA would have paid as nontaxable disability compensation but for the delayed award becomes nontaxable. The veteran may file an amended return to recover the excess taxes paid. Again, the 3-year limitation bars recovery of taxes for periods beyond that time.

Therefore, because of Government error, disability severance pay was improperly taxed, and this may have occurred more than 3 years previously. Additionally, retroactive compensation entitlement for more than 3 years would occur only where awards were delayed because of error reversed on appeal. In both instances, circumstances beyond the veteran's control may prevent timely amendment of tax returns. An exception to the 3-year limitation is fully justified to correct this inequity. Indeed, the IBVSOs maintain that taxes should not be withheld from disability severance pay and that necessary changes should be made to the law to discontinue this unnecessarily burdensome practice. The IBVSOs urge Congress to enact legislation to remedy this problem.

Recommendation:

Congress should amend the law to provide for an exception to the 3-year limitation on amendment of tax returns in the case of erroneous taxation of disability severance pay or in the case of retroactive exemption of more than 3 years and should change the law to discontinue the withholding of taxes from disability severance pay.



Exclusion of Compensation as Countable Income for Federal Programs:

Disability compensation should not be counted as income for purposes of eligibility for assisted housing through the Department of Housing and Urban Development and other means-tested Federal programs.

Current policy at the Department of Housing and Urban Development (HUD) considers nontaxable service-connected disability compensation provided by VA to be countable income when determining a veteran's eligibility for HUD's Assisted Senior Housing Program. In some cases, particularly when income is limited to Social Security and VA disability compensation, our aging veterans are being denied access to this program because their VA compensation places them above an established income threshold. This compassionate program must be available to those

veterans who have severely limited incomes. The principle that disability compensation should not be counted as income should extend to all Federal programs.

Recommendation:

Congress should enact legislation to exempt VA disability compensation from countable income for purposes eligibility for federally funded programs.



Service-Connection for Smoking-Related Disabilities:

Congress should reverse its action that took money from veterans' disability compensation to pay for over-budget spending on transportation programs.

In 1998, Congress changed the law to prohibit service-connection for disabilities related to smoking. Under the pretext of making an appropriate change in law for genuine public policy purposes, Congress enacted, in a transportation bill, a provision concocted to generate savings from the veterans' disability compensation program to pay for over-budget spending on politically popular transportation programs. This unprecedented raid on veterans' programs for the ignoble purpose of paying the cost of massive pork-barrel spending was a shameful injustice against veterans. At a cost of \$217 billion, this transportation bill contained nearly 1,500 pork projects and exceeded by \$26 billion the spending caps set in the balanced budget bill of the year before.

Compensation for smoking-related disabilities provided a convenient target for those with the motive of finding money to satisfy their appetite for big spending. The target was convenient because it was easy to get similarly inclined members to subscribe to the superficial arguments that veterans should not be compensated for disabilities that result from their personal choice to use an injurious product. It was made an attractive target for those who coveted the money for their own use by exaggeration of the costs of smoking-related compensation for the calculated purpose of artificially increasing the amount of spoils it would yield to those who would capture it as their prize. As a result, they obtained \$15.5 billion to pay for increased spending of massive proportions on transportation programs.

It is easy to subscribe to the notion that veterans should not be compensated for illnesses that result from their personal choice to smoke cigarettes. However, the argument that this is merely a matter of personal choice or responsibility is more than a deceptive oversimplification: It is a misrepresentation. The question of whether these are disabilities that should be compensated cannot be answered so simply. Indeed, when the question is considered in the depth required to arrive at a fair, judicious conclusion, the injustice of the prohibition against service-connection is easily seen.

Cigarettes have been one of our country's major mass-marketed products since the 1920s. Citizens across all socioeconomic levels have used tobacco for pleasure or have been enticed by its glamorization and romanticization in books, motion pictures, advertising, and in our society in general. Only recently has there been a serious shift in public attitude about smoking and serious proposals to regulate tobacco for public health reasons.

Smoking has traditionally been even more prevalent among members of our Armed Forces. The DOD has been perhaps our Nation's largest distributor of cigarettes. The DOD has long been in the business of discounting tobacco products and subsidizing smoking among servicemembers. In past years, many of the images of soldiers included cigarettes dangling from their mouths. Cigarettes were an integral part of military life. Survey data compiled in connection with a study for VA showed that more than 70% of veterans, as compared to about 50% of the U.S. adult population, had a history of smoking. Findings from that study indicate that a significant proportion of veterans started smoking while on active duty. The higher incidence of smoking among veterans can be explained by a military environment and culture that encouraged and facilitated smoking.

Smoking was much more of a social activity in the military setting than it was in civilian life. Part of that was due to the inherent nature of the military environment, and part was due to the military's own use of tobacco as a small and relatively inexpensive but effective way to help servicemembers cope with that difficult environment.

During rigorous training and combat operations, smoking often provided the only opportunity for a brief distraction or escape from the stresses or drudgery of the moment. Smoking provided the only coping tool immediately accessible. Drill instructors and others in control of military units used smoking as the activity for occupying servicemembers during breaks. Servicemembers looked forward to those breaks as their only respite and pause from combat and the rigors of military training and duties. Smoking was also an ever-present part of

the restricted social activities available to servicemembers in isolated military settings.

Perhaps it was for these reasons that the military establishment became a partner with the tobacco companies in distributing cigarettes and promoting tobacco use among members of the military services. It is well established that the Armed Forces, under various legal authorities, provided rations of tobacco to servicemembers. Free cigarettes were provided to them during combat tours. Free cigarettes were included in C-rations, and, as noted, cigarettes were provided at substantially discounted prices in military exchanges. Thus, we can accurately state that smoking was not only fully approved of by the Armed Services, it was encouraged and facilitated by the military on a level probably unparalleled anywhere else in our society.

Like the recent groundswell of anti-tobacco sentiments, the Government's opposition to tobacco-related benefits for veterans is of recent advent and, within VA, represents an abrupt—and convenient—reversal of policy. Given the Government's complicity in tobacco use among veterans, VA's self-righteous hypocrisy and the Government's ulterior motive for enacting this legislation become all the more reprehensible.

Under the law, service-connection is awarded for any disability incident to service. Disabilities due to willful misconduct are an exception to that rule, however. "Willful misconduct" is "an act involving conscious wrongdoing or known prohibited action." It means a deliberate or intentional act with "knowledge of or wanton and reckless disregard" of its probable consequences. Tobacco use has never been a prohibited action. On the contrary, as noted previously, tobacco use was fully authorized and approved by the military. VA has held expressly that tobacco use is not willful misconduct. In 1964, Administrator's Decision No. 988 pointed out that smoking is not deemed willful misconduct by VA. The Omnibus Reconciliation Act of 1990 amended sections 105(a), 1110, and 1131 of title 38, United States Code, to include "abuse of alcohol or drugs" as disabilities for which service-connection is barred. However, smoking did not fall within the definition of drug abuse for VA purposes. In that application, "drug abuse" means use of illegal drugs, use of illegally or illicitly obtained prescription drugs, intentional use of prescription or nonprescription drugs for purposes other than their medically

intended use, and use of substances to enjoy their intoxicating effects.

It would be the height of hypocrisy for Congress or VA to declare smoking misconduct when VA provided free tobacco to hospitalized veterans under authority of a statute enacted by Congress, a law that has not been repealed. To do so would suggest the Government abetted misconduct.

Congress's action to prohibit service-connection for smoking-related illnesses was inequitable and inconsistent with the Government's position on who is responsible for the adverse health effects of smoking. During decades of litigation, the cigarette manufacturers paid not even a single dollar in damages for the injurious effects of smoking. They successfully invoked the defense that smokers were personally responsible for the consequences of smoking because they "assumed the risk" by knowingly using a potentially harmful product. Those suing the tobacco companies persisted, nonetheless, and that defense is no longer recognized as viable because it has come to light that the tobacco companies concealed from consumers much about the injurious and addictive effects of tobacco use.

It is on the premise that the cigarette manufacturers, and not smokers, are responsible for the effects of smoking that the state governments and the Federal Government are recouping from the tobacco industry billions of dollars for costs of tobacco-related health care provided to government beneficiaries. Yet the Clinton Administration disingenuously invoked the very defense the Government rejected as an excuse for depriving veterans of compensation. Congress, seeing that this was the way to fund its own pork-barrel spending, seized upon the President's proposal.

While the Government's position in the litigation against tobacco companies rested on the premise that these consumers could not themselves be held responsible for their own tobacco use inasmuch as they were not undertaking a potentially harmful activity with full knowledge of its risks and probable consequences, the President's proposal to prohibit compensation for veterans rested on a contrary premise. The contrary premise was that veterans were somehow in a position of knowledge and understanding superior to that of all other consumers and thereby voluntarily exposed themselves to a known danger of which they appreciated the nature and

extent and thus must be held personally responsible and not entitled to compensation.

There was no proposal to prohibit other Government benefits on this basis. For example, disability and health-care benefits continue under other Federal programs even though smoking may have played a role in causing the illness and disability.

Accordingly, considering that smoking was encouraged by the Armed Forces with the result of a higher incidence of smoking among veterans, considering that veterans were no more aware of the inherent risks of smoking than the general public, and considering that no other Federal programs prohibit disability or medical benefits for conditions related to smoking, no rational basis exists for holding veterans to a different standard and singling them out for disparate and punitive treatment.

In its quest to get veterans' benefits to fund increased spending on transportation, Congress paid little atten-

tion to the merits of a prohibition against service-connection. The manner in which the provision was enacted demonstrates that it was the money and not the merits that provided the momentum behind this legislation.

Certainly it is arguable that anyone entering military service today should be deemed to have full knowledge of the risks of smoking. We would not oppose a prohibition of service-connection for disabilities shown by clear and convincing evidence to have been caused by smoking alone if the law applied to persons who enter military service on or after the date of enactment of the law. The current prohibition should be repealed, however.

Recommendation:

Congress should repeal its prohibition on service-connection for smoking-related disabilities.



Compensable Disability Rating for Hearing Loss Necessitating Hearing Aid:

VA's disability rating schedule should provide a minimum 10% disability rating for hearing loss that requires use of a hearing aid.

The VA *Schedule for Rating Disabilities* does not provide a compensable evaluation for hearing loss at certain levels severe enough to require hearing aids. The minimum rating for any hearing loss warranting use of hearing aids should be 10%, however.

A disability severe enough to require use of a prosthetic device should be compensable. Beyond the functional impairment and the disadvantages of artificial restoration of hearing, 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 disability compensation that ratings are not offset by the function artificially

restored by prosthesis. For example, a veteran receives full compensation for amputation of a lower extremity though he or she may ambulate with a prosthetic limb. Providing a compensable rating 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% disability evaluation for any hearing loss for which 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 in excess of 21 days for a service-connected disability entitles the veteran to a temporary total disability rating. This rating is effective the first day of hospitalization and continues to the last day of the month of hospital discharge. Similarly, where surgery for a service-connected disability necessitates at least 1 month's convalescence or causes complications, or where immobilization of a major joint by cast is necessary, a temporary total rating is awarded effective the date of hospital admission or outpatient visit.

While the effective date of the temporary total disability rating corresponds to the beginning date of hospitalization or treatment, under 38 U.S.C. § 5111 the effective date for payment purposes is delayed 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 IBVSOs urge Congress to enact legislation exempting these temporary total ratings, under 38 C.F.R. §§ 4.29, 4.30, from the provisions of 38 U.S.C. § 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.



READJUSTMENT BENEFITS

Montgomery GI Bill

Expansion of Montgomery GI Bill Eligibility:

Servicemembers who in every respect are at least equally entitled to participate in the Montgomery GI Bill as servicemembers who first entered military service after June 30, 1985, are ineligible if they entered or had military service before that date.

Under current law, an active duty servicemember must have first become a member of the Armed Forces after June 30, 1985, to be eligible to participate in the Montgomery GI Bill. An active duty servicemember who entered the Armed Forces 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 Montgomery GI Bill. In this situation, servicemembers who have served longer and are arguably more deserving of educational 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 Montgomery GI Bill 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 educational assistance to veterans who first entered active duty (including full-time National Guard duty) after June 30, 1985. To be eligible, servicemembers 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 IBVSOs believe that in the case of a discharge that involves a minor

infraction or deficiency 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.



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.

VA provides specially adapted housing grants of up to \$50,000 to veterans with service-connected disabilities consisting of certain combinations of loss or loss of use of extremities and blindness or other organic diseases or injuries. Veterans with service-connected blindness alone, or with loss or loss of use of both upper extremities, may receive a home adaptation grant of up to \$10,000.

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:

Increases in housing and home adaptation grants have been infrequent, although real estate and construction costs rise continually. Unless the amounts of the grants

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.



Adequate Fees for Compliance Inspectors:

The current limitation on fees for compliance inspectors makes it difficult to obtain the services of qualified inspectors in some instances.

VA assumes the responsibility to ensure that specially adapted housing is properly constructed in compliance with the construction contract and according to the needs of the disabled veteran. To ensure that specially adapted housing conforms to the pertinent specifications and standards, VA uses contract inspectors. Currently, VA pays a maximum of \$65 for compliance inspections. This amount is not sufficient to allow for geographic differentials and the variety of technical backgrounds of inspectors to ensure that competent inspections are performed.

Recommendation:

Congress should amend chapter 21 of title 38, United States Code, to authorize payment of reasonable fees, including travel reimbursements, for compliance inspections on housing being constructed or adapted under the specially adapted housing program.



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 servicemembers 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% of the average cost of a new automobile, and later 80%. 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% of average retail cost and a sufficient amount to pay the full cost of automobiles in the “low-price field.” By contrast, in 1997 the allowance was \$5,500, and the average retail cost of new automobiles was \$21,750, according to the National Automobile Dealers Association. The 1997 average cost of an automobile was 1,155% of the 1946 cost, but the automobile allowance of \$5,500 was only 343% of the 1946 award. Currently, the \$11,000 automobile allowance represents only about 42% of the average cost of a new automobile, which is \$26,163. To restore the comparability between the cost of an automobile and the allowance, the allowance, based on 80% of the average new vehicle cost, would be \$20,930.

Veterans eligible for the automobile allowance under 38 U.S.C. § 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% of the average cost of a new automobile in 2003. 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% of the average cost of a new automobile and provide for automatic annual adjustments in the future.



Home Loans

Increase in Amount of VA Guaranty:

Average housing costs in some areas have risen to amounts that make the maximum VA guaranty insufficient to allow veterans to purchase homes with VA-guaranteed mortgages.

To make home ownership easier for eligible veterans and others, the VA home loan guaranty program creates conditions in which private lenders extend credit under more favorable terms than would generally be extended in the commercial mortgage market. By guaranty of repayment, the VA protects lenders against loss. This VA obligation to ensure repayment allows lenders to make loans without borrower down payments and other safeguards that would generally be necessary under conventional lending practices. However, when the maximum amount of the VA guaranty does not keep pace with rising home costs, veterans who must rely on VA guaranties are frozen out of the home market or are limited in their ability to acquire suitable homes.

The maximum amount of the VA guaranty effectively limits the maximum loan that can be made without a down payment. When the total guaranty does not at least equal what the lender would require as a down payment on a loan not guaranteed (e.g., 25% of the total loan), the lender will not provide a VA-guaranteed loan unless the borrower can make up the difference with a down payment. With the current maximum guaranty of \$60,000, and the general requirement that 25% of the loan be covered by the

guaranty, persons wishing to purchase homes with VA-guaranteed mortgages are in effect limited to homes costing a maximum of \$240,000.

Until 1999, the VA loan limit was always significantly higher than the Federal Housing Administration (FHA) home loan limit. Since 1999, when FHA loans were indexed to the Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") conforming mortgage loan limit—which is adjusted annually to reflect increases in housing costs—FHA loan ceilings have risen substantially higher than the maximum loans for veterans. The FHA limit is 87% of the conforming loan limit. Starting January 1, 2004, the new Fannie Mae–Freddie Mac single-family loan limit will increase from \$322,700 to \$333,700, and the FHA limit will therefore increase to \$290,319.

Home loans for veterans should be more generous than those available to other citizens under the FHA. The IBVSOs recommend that the VA home loan guaranty be set to allow maximum loans at 90% of the Fannie Mae–Freddie Mac conforming loan limit, with automatic annual indexing to the conforming limit. For 2004 the amount of the maximum VA loan under

that formula would be \$300,330, which would require an increase in the maximum VA guaranty to \$75,082.50. The IBVSOs recommend that the maximum VA guaranty be increased to \$75,085 for 2004.

Recommendation:

To keep pace with the rising costs of housing, Congress should increase the maximum VA home loan guaranty to \$75,085 for 2004 and provide for automatic annual indexing to 90% of the Fannie Mae–Freddie Mac loan ceiling thereafter.



No Increase in, and Eventual Repeal of, Funding Fees:

Funding fees are contrary to the principles underlying our 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

sacrifices through service in the Armed Forces, should be entirely free. In addition, *The Independent Budget* finds 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

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.



Service-Disabled Veterans' Insurance (SDVI)

Lower Premium Schedule to Reflect Improved Life Expectancy:

VA should be authorized to charge lower premiums for 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. VA therefore offers disabled veterans life insurance at standard rates under the SDVI program. 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 SDVI to reflect current mortality tables.



Increase in Maximum SDVI Coverage:

The current \$10,000 maximum for life insurance under 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 servicemembers 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, some 87 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 over three quarters of a century later clearly does not provide

meaningful income replacement for the survivors of service-disabled veterans.

In the May 2001 report from an SDVI program evaluation conducted for VA, it was recommended that basic SDVI coverage be increased to \$50,000 maximum. The IBVSOs 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 (VMLI)*****Increase in VMLI Maximum Coverage:**

The maximum amount of mortgage protection under 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

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 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 38 U.S.C. § 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 § 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 compensation 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 the 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 a personal entitlement of the veteran, without whom there could never be any secondary entitlement to compensation by dependent family members. 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 38 U.S.C. § 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."

