

VA Disability Compensation Program

Legislative History

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Economic Systems Inc.



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1. EXECUTIVE SUMMARY

The Office of Policy, Planning, and Preparedness is the Department of Veterans Affairs (VA) point of contact for the Veterans Disability Benefits Commission, which was appointed to, among other things, conduct a comprehensive review of VA Disability Compensation benefits. A legislative history and literature review of VA's Disability Compensation Program was conducted to assist the Commission. The purpose of this document is to provide a comprehensive legislative history of the program, as reflected in the written and oral legislative records, from the beginning of World War I to the present day. More specifically, as part of the objectives of the study, this report:

- ▶ Focuses on program policies and features as opposed to the administrative processes for adjudicating claims
- ▶ Provides a chronological legislative history of the program
- ▶ Identifies recurring themes, issues, and concerns of a major policy nature
- ▶ Identifies perspectives of major stakeholders
- ▶ Describes Congressional intent related to the mission, purpose, and outcomes
- ▶ Traces the development and evolution of eligibility requirements, presumption of connection between aspects of military service and specific disabilities as well as how benefits themselves have changed over the years
- ▶ Provides an annotated bibliography including all relevant reference sources consulted.

The following sections provide information on key areas of disability compensation:

- ▶ Congressional Intent for Program Goals
- ▶ Eligibility Requirements
- ▶ Benefit Amounts
- ▶ Concurrent Receipt
- ▶ Disability Rating Schedule

Congressional Intent for Program Goals

In reviewing the legislation, committee reports and hearing testimony on VA's Disability Compensation Program, the study team investigated Congressional intent for a range of possible program goals. These goals, for example, could include:

- ▶ Provide compensation for the average impairments of earnings capacity resulting from such injuries in civil occupations
- ▶ Provide compensation for reduction in quality of life due to service-connected disability
- ▶ Provide incentive value for recruitment and retention.

There have been scores of bills and enacted legislation since WW I that have formed the current Disability Compensation Program. In this decades-long process it is important to recognize the role of three key participant bodies. First, the Congress through the House and Senate committees has been the final architect and builder in enacting the evolving legislation. Second, Veteran Service Organizations have been consistent participants in initiating and monitoring legislation as well as in providing testimony and other evidence in developing legislation. Third, the early Veterans Administration and the current Department of Veterans Affairs, as part of the Executive Branch, has collaborated with the Congress and Veteran Service Organizations in developing legislation. The contributions and interactions between these participants constitute the fundamental process of the evolving legislation.

The most dominant theme of Congressional intent, dating back to the World War I era, is that the program is intended to provide compensation for average impairment in earnings capacity. Furthermore, the loss of earnings capacity is not based on the disabled person's individual capacity but only on "average" capacity. The legislation does not specifically define how "average" is to be determined (i.e., there is no single permanent reference point specified in the law such as median earnings by a particular group). However, Senate and House reports sometimes contained calculations and tables showing costs and earnings for various workers as well as educational and occupational data on servicemembers.¹ There is a distinction between "lost earnings," which, for example, is a common element for damages in tort cases, and the average impairment of earning capacity, which for VA disability compensation benefits is an objective determination without regard to prior employment or military occupational specialty. The legislation does not currently provide guidance on tailoring compensation benefits to specific occupations that the veteran had been engaged in as a civilian prior to military service. In contrast to other disability compensation programs, the Disability Compensation Program for veterans also does not require the disabled veteran to actively strive to be employed. In addition, Disability Compensation benefits are not offset against post-military civilian employment earnings.

The legislation does not explicitly state that intent of the disability program is to compensate for reduction in quality of life due to service-connected disability. However, this intent is implicit because Congress has set forth certain presumptions of eligibility for disability compensation and higher benefit levels for certain disabling conditions such as loss of a limb that reflect humanitarian concern about quality of life. The quality of life factor may be a more critical issue than employability for amputees given advances in medical technology and emphasis on occupations not requiring physical labor.

¹ U.S. Senate Report 76-414 on "Pensions to Members of Regular Army, Navy, Marine Corps, and Coast Guard who Become Disabled," cited a 1937 Department of Labor report showing average weekly earnings in the U.S. to be \$26. The Senate Report did not indicate what population group this covered.

Congress' actions over the years have implied that it does not intend that the Disability Compensation Program become a source of extra income for the disabled veteran. Beginning with the first ban on concurrent receipt of disability compensation and other pay in 1891, Congress until 2003 consistently legislated against anything that might appear to be dual compensation for the same period of service.

With a partial end to the prohibition against concurrent receipt in 2003, it appears that Congressional intent has changed, and that disability compensation is no longer to be viewed strictly in terms of replacing service-impaired earning capacity. In arguing to end the prohibition against concurrent receipt, Rep. Maxine Waters of California was one of a number in Congress expressing the view that the prohibition is "denying them the benefits they have earned and deserve" (Congressional Record, October 1, 2003, p. H9090).

Eligibility Requirements

Disability compensation starts at the 0% disability rating. Receiving a 0% rating for multiple conditions can result in a 10% disability payment. However, a single 0% rating is generally not accompanied by disability payments. A 0% rating can provide improved access to health care and other VA benefits. The 10% threshold is not defined explicitly in the law, except that it must be a medical determination. Throughout much of the legislative history of disability compensation for veterans, the percentage determination is based on medical opinion without any specific reference to economic loss or indicating exactly how a given physical impairment translates into a given percentage.

In the early years of the rating schedule (1920s), Congress specified the classification of diseases for the rating schedule. Since that time, there are two ways that the rating schedule has been amended. First, it is changed through VA-initiated regulation, in which the percentage determination is under the authority of the VA Secretary, rather than the medical profession. Further, amending the rating schedule through VA regulatory action occurs through a formal regulatory process (C.F.R. Part 4) involving close consultation with the Congress and Veteran Service Organizations. Second, the rating schedule can also be amended by Congress through direct legislative action.

There are two provisions through which a veteran can receive disability compensation at the 100% rate. First, disabilities are evaluated and found through schedular review to be at the 100% level of disability. Second, if disabilities exist that preclude substantial gainful employment, but are evaluated at less than 100%, but one is at least 60% for the disability causing the unemployability, or there is at least a combined 70% service-connected rating with at least one disability at the 40% level, then a full 100% disability payment may be made.

Presumptions for disability compensation are generally tied to symptoms that appear within a specific period of time after leaving service. Exceptions would include some Agent Orange conditions. These have been codified in law. Early development of this body of law presumed a service-connection for certain tropical and respiratory diseases associated with military service during the Spanish American War in 1898. Eligibility requirements have changed over the years with new conditions added.

Through the years, Congress has expanded the list of presumptions and circumstances of presumption considerably and at an accelerating pace. The list has been framed by episodes of war, and considers environmental and biological hazards affecting soldiers. The list was expanded to include radiation exposure in the testing and detonation of nuclear devices in the mid-1940s. After the Korean and Vietnam eras, this list of presumptions was expanded to include disorders attributable to being held as prisoners of war.

Presumptions of service-connection were expanded to include exposure first to herbicides used in Southeast Asia (the Vietnam era) and more recently to possible nerve agents and other toxins that were present in the Persian Gulf Conflict. Presumption of service-connection now includes vaccinations against certain biological war hazards in preparation for operations in the Persian Gulf. Presumption of service-connection of inoculations was added in 38 U.S.C. 1118.

The growing body of presumptions is shifting to an empirical basis. Epidemiological studies are used to determine whether specific veteran cohort groups have a higher incidence of disease and disorders than control population groups. As this field develops, presumptions of eligibility for disability compensation increasingly moves into the realm of statistical probabilities, quite far from where Congress first began.

Yet, at the same time, the modern movement in this direction actually reflects Congress' experience over the years, when, moved by repetition of the same symptoms and accounts from diverse veteran constituent groups, Congress connected specific service with specific disabilities. In this sense, the law has not so much changed as it has evolved to keep pace with medical and epidemiological science and technology.

Disability Rating Schedule

The benefit amount for veterans' disability compensation is based on a percentage rating schedule that varies according to the severity of disability. The schedule assigns percentages for varying levels of severity associated with a medical diagnosis. Ratings for individual diagnoses vary from 0% to 100% in gradations of 10.

The origin of the first rating schedule can be traced back to the War Risk Insurance Act of 1917, which called for implementing a rating schedule. The "new" schedule was to be based on "the average impairment in earning capacity" caused by the disability. "Average impairment" was to be based on average loss of earnings for all occupations performing manual labor. If disabled individuals could overcome their handicap, their disability rating would not be reduced.

Legislation in 1924 provided that the rating schedule should still be based on the concept of "average impairment," but that it be tailored to recognize the effects of the disability on the pre-service occupation of the veteran. However, many veterans of World War I had never been employed prior to entering service. Legislation in 1933 led to abandoning the attempt to tailor the disability rating to the individual's occupation, reverting back to "average impairment of earnings capacity."

In 1939 Congress codified a new schedule of monthly disability payments, specifying benefits for disability ratings in increments of 10% (e.g., 10%, 20%, and so on through 90% and total disability). For the first time, this schedule was a strictly linear assignment of disability benefit compensation. For peacetime veterans, rates were set at 75% of the rates of compensation for war veterans. However, even though linear in its basic application, certain kinds of disabilities such as loss of a limb qualified a veteran for additional compensation.

In 1945 Congress enacted legislation to develop a new disability rating schedule. The new schedule was an extensive compilation of medical conditions, going into great detail and furnishing specific instructions on conducting evaluations and making interpretations. New diagnostic code numbers were assigned, and disabilities were indexed numerically under individual body systems with disabilities in each system identified by a code series. Policy was specified for interpretation of reports, application of the schedule, and ratings for hospitalization and convalescent periods.

Some observers such as GAO and OMB view the schedule as not having been fundamentally restructured since 1945 up to the present (U.S. General Accounting Office [GAO], January 1997). Numerous revisions or updates, though, have been made over time including adding new disabilities and diseases to the schedule.

Legislative authority for making changes is provided by 38 U.S.C. 1155, which requires the Administrator (Secretary), subject to Congressional approval, to “adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as is practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations.” The legislation also provided, again subject to Congressional approval, that the Secretary “shall from time to time readjust this schedule of ratings in accordance with experience.”

Benefit Amounts

In 1939, Congress published a rating and compensation schedule for peacetime veterans that became the basis for future increases in the rate of compensation for disabled veterans. This schedule was a simple list of compensable diagnoses and conditions that began at \$7.50 per month for a veteran with a 10% disability, increased by \$7.50 for each additional 10%, and topped out at \$75 per month for a 100% disability rating. Peacetime rates were set at 75% of those for war veterans; hence, a war veteran’s monthly compensation for a 100% disability rating would be \$100. Congress set the schedule of benefits on the basis of the average entry level earnings of an unskilled adult male working as a common laborer (Pub. L. No. 76-257).²

Because Congress modified the list for specific losses and conditions, the effective compensation schedule is complex. For example, the loss of the use of an eye, foot, or hand qualified a veteran for monthly compensation of \$18.75 per month. For what Congress

² This is discussed further in Section 3 of this report under Benefit Amounts and Disability Rating Schedule.

obviously regarded as the most severe losses, monthly compensation was as high as \$187.50. Thus, the schedule is not a straightforward linear schedule.

Congress could have built these exceptions into the rating schedule itself but did not. For example, if losing the use of an eye, hand, or foot is to be compensated an additional amount per month, one approach would be to build the additional compensation into the rating itself or similarly specify that a given disability rating be increased by 20 or 30 percentage points to achieve the desired level of compensation. For reasons not evident in the legislation nor in testimony and reports reviewed, Congress instead chose to provide explicit enhancements above and beyond the percentage disability schedule. Although Congress did not state it directly, it is reasonable to infer that Congress' intent was to compensate for loss of quality of life.

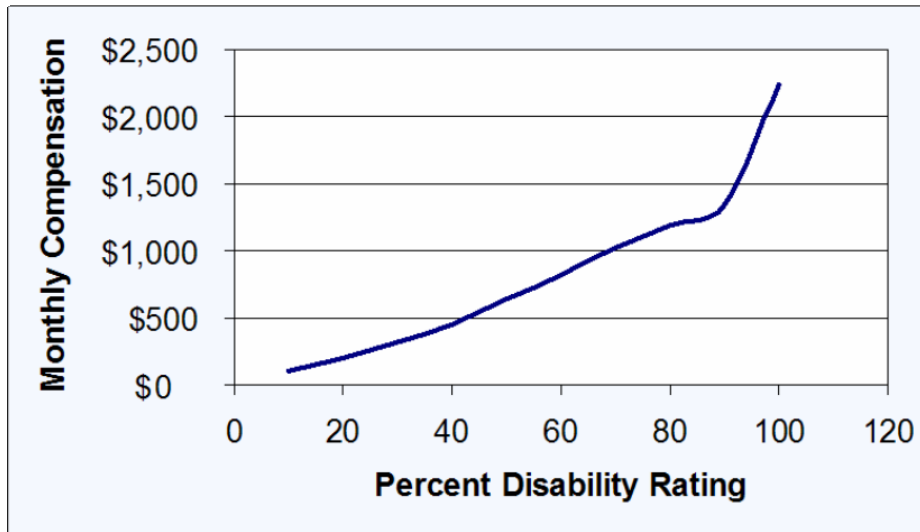
Over the years, Congress gradually increased the amount of compensation based on "cost of living." In 1933, Congress directed the Executive Branch of the Federal government to compute a cost of living index for increasing (or decreasing) disability compensation (Pub. L. No. 73-2). At the same time, Congress continued to legislate deviations from the basic schedule with specific payments for specific losses as well as for specific combinations of losses.

In addition, Congress modified the payment schedule by legislating the definition of total and permanent disability for specific combinations of disabilities. For example, in 1937, Congress defined any veteran who had lost both eyes, both feet, both hands, or any combination as totally disabled, medical ratings notwithstanding (Pub. L. No. 75-304).

In the 1950s, Congress departed from the original linear schedule and began to increase payments for those at the highest disability ratings. First Congress increased payments for veterans rated at 100% disabled, later provided additional compensation for those rated at 90% disabled or higher, and later elevated compensation for several levels of disability. This change was, *perhaps*, in response to a table in the Bradley Commission report ("President's Commission", 1956, Vol. 2., p. 257) that showed a sharp drop-off in median annual earnings among veterans whose disability ratings were above 50%, especially those at the 100% level.³ The most recent schedule of disability payments, effective December 1, 2003, is quite a departure from its 1939 origin, looking more like an exponential curve than a straight line, as shown in Figure 1. This graphically illustrates that disability compensation is not consistent across the rating schedule; compensation is disproportionately greater for veterans with higher disability ratings.

³ Review of hearings and reports does not reveal a connection between the Bradley Commission report and the change in the disability compensation schedule.

Figure 1. 2003 Monthly Compensation by Disability Rating



Source: Study Team Analysis

Overall, compensation is not proportional to disability ratings. Given additional compensation for specific losses and conditions, the benefit schedules begin in a linear fashion and then curve exponentially.

The effective scaling of disability compensation might reflect the idea that Congress disagrees with the linearity of the ratings. Or, it might reflect that Congress believes that a 50% loss, for example, is not five times worse in economic terms than a 10% loss. Instead, the rating schedule indicates that it is 6.1 times worse. According to the rating schedule, a 100% disability, rather than being 10 times worse than a 10% disability, is 21.1 times worse, based on the amount of compensation provided. Comparing each 10% increment against the base line, the multipliers are as shown in Table 1.⁴

⁴ It should be noted that these data are for the rating schedule itself and do not include additional compensation for specific impairments. Each rating group, for example, might contain a mixture of veterans who have losses that entitle them to additional benefits. Hence, at 100%, in addition to schedular compensation, a certain portion of veterans would be receiving awards for bilateral blindness or other specific losses. Hence, the effective multiplier actually in use might be well above the 21.1 shown. Different mixes of veterans at each level would contribute to different effective multipliers. An economic study of actual compensation would reveal the actual multipliers in effect at each percentage rating level.

Table 1. 2003 Compensation Multiplier for Disability Ratings

Disability Rating	Compensation Amount	Compensation Multiplier
10%	\$106	1.0
20%	\$205	1.9
30%	\$316	3.0
40%	\$454	4.3
50%	\$646	6.1
60%	\$817	7.7
70%	\$1,029	9.7
80%	\$1,195	11.3
90%	\$1,344	12.7
100%	\$2,239	21.1

Source: 2003 Disability Rating Schedule and Study Team Analysis

The result of the current formulation of disability compensation is that increased severity of disability translates into disproportionately greater compensation. This suggests Congress' intent is not just economic compensation; rather, the scale suggests compensation for loss in quality of life. Economic analysis, however, might show that that compensation does not make up for the entire loss of income that the veterans suffer due to disability.⁵

Concurrent Receipt

In the early 1890s, in dealing with disability compensation for veterans of the Mexican War, Congress expressed concern when it discovered that some veterans were drawing income from multiple sources (disability plus retirement pay) and sometimes even disability plus active duty pay. This concern led Congress in 1891 to enact the first prohibition against concurrent receipt.

The ban on concurrent receipt remained basically unchanged until 1944, when Congress passed Public Law No. 78-314. Under that law, retired servicemembers could elect to waive an amount of their retirement pay equal to their veterans' disability compensation payments. The exchange of one for the other was not a simple accounting transfer. Military disability compensation *is not* subject to Federal income taxes, while military non-disability retirement pay *is*. By electing to receive as much as possible in the form of disability compensation, a retiree's net income after taxes is higher.

Over the years, Congress repeatedly returned to the theme that prohibits concurrent receipt. Yet, inasmuch as disability compensation may be intended as replacement for reduced earnings capacity, Congress has de facto been inconsistent in the actual effective application of this over the years in a variety of ways.

⁵ This idea is supported by a finding based on the Bradley Commission report, that in 1955 each \$100 in income lost due to disability, the Disability Compensation Program compensated the veteran only \$76.60. This finding is detailed in the Literature Review companion to this report. We hasten to add, however, that these data are half a century old. With medical advances, prosthetics, occupational therapies, and other innovations, an economic correlation that existed 50 years ago likely has changed substantially.

Arguments for what many in Congress call “fairness” and “owing a debt to our veterans” have led to many attempts in overturning the ban on concurrent receipt that finally succeeded in 2003. In 1999, Congress included a provision in the National Defense Authorization Act for fiscal year 2000 to authorize a new monthly allowance to military retirees with severe service-connected disabilities rated at 70% or greater who had at least 20 years of service.

During the 107th and 108th Congresses, amendments were added to a number of bills, related and unrelated to other veterans’ issues that called for ending the ban on concurrent receipt.

Finally, in November 2003, Congress passed a compromise bill that phases in concurrent receipt for some disabled veterans over a ten-year period. Beginning in 2004, disabled veterans with at least a 50% disability rating and at least 20 years military service will be able to keep an increasing portion of their retirement pay until 2013. In 2013 they will be able to receive full retirement and disability compensation concurrently without any offset.

No sooner had that law passed than members of Congress began calling for a complete elimination on the ban, so that all disabled veterans will be able to keep all of their disability pay. Two pending pieces of legislation, H.R.3730 and H.R.3738 (both introduced in January 2004) would repeal the three limitations (50% or more disabled, 20 years or more of service, and 10 year phase-in). Both pieces of legislation were referred to the Subcommittee on Benefits in April 2004 of this year.

2. INTRODUCTION

This document traces the history of major legislative initiatives concerning disability compensation to veterans. Rather than describe every law concerning disability compensation to veterans, this history documents milestone developments and changes, showing the flow of legislation from World War I up to the present as well as the presumed intent of Congress in making and amending laws.

The history of VA's Disability Compensation Program includes more than 200 laws; 400 House, Senate, and Conference Reports; and over 10,000 pages of the Congressional Record spanning more than 90 years. While every attempt has been made to be both thorough and accurate, the limited timeframe of the project and the nature of much of the material—available only on microfilm, microfiche, or scanned images of old documents—may have inadvertently resulted in gaps, misinterpretation, and other errors. Given the large number of laws affecting the Disability Compensation Program, the scope, timeframe, and funding for this project make a complete review every document impossible. Therefore, this legislative history is a survey of legislation affecting the Disability Compensation Program, not an exhaustive catalogue of every nuance.

The United States has a long history of compensating veterans who, in the service of their country, were injured, incapacitated, or otherwise rendered incapable or less capable of providing for themselves. This history predates the formation of the United States and continued through the earliest days. According to an historical synopsis provided by VA:

The United States has the most comprehensive system of assistance for veterans of any nation in the world. This benefits system traces its roots back to 1636, when the Pilgrims of Plymouth Colony were at war with the Pequot Indians. The Pilgrims passed a law which stated that disabled soldiers would be supported by the colony.

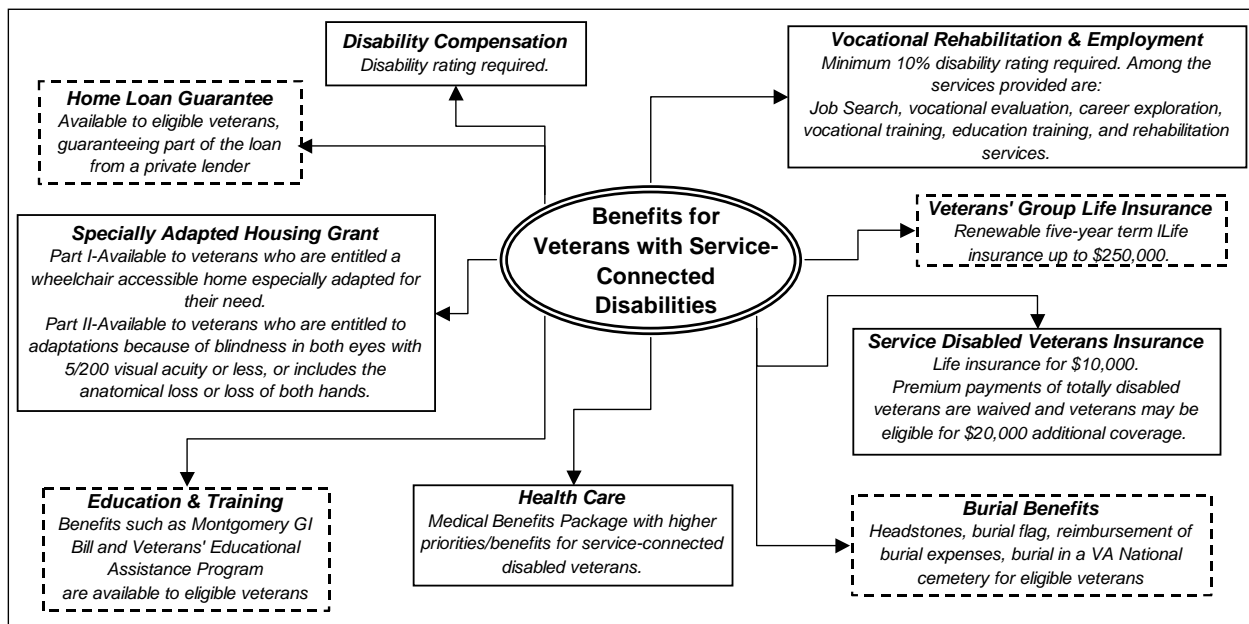
The Continental Congress of 1776 encouraged enlistments during the Revolutionary War by providing pensions for soldiers who were disabled. Direct medical and hospital care given to veterans in the early days of the Republic was provided by the individual States and communities. In 1811, the first domiciliary and medical facility for veterans was authorized by the Federal Government. In the 19th century, the Nation's veterans assistance program was expanded to include benefits and pensions not only for veterans, but also their widows and dependents.

After the Civil War, many State veterans homes were established. Since domiciliary care was available at all State veterans homes, incidental medical and hospital treatment was provided for all injuries and diseases, whether or not of service origin. Indigent and disabled veterans of the Civil War, Indian Wars, Spanish-American War, and Mexican Border period as well as discharged regular members of the Armed Forces were cared for at these homes.

Congress established a new system of veterans benefits when the United States entered World War I in 1917. Included were programs for disability compensation, insurance for servicepersons and veterans, and vocational rehabilitation for the disabled (U.S. Department of Veterans Affairs [VA], 2001).

The Veterans Disability Compensation Program is part of a larger set of benefits provided to veterans by VA. These include educational benefits, health care, rehabilitation, vocational training benefits, housing benefits, and life insurance, as shown in Figure 2. Except where noted, many of these benefits are also available to veterans whom are not service-connected, although service-connection can confer priority access or other special benefit.

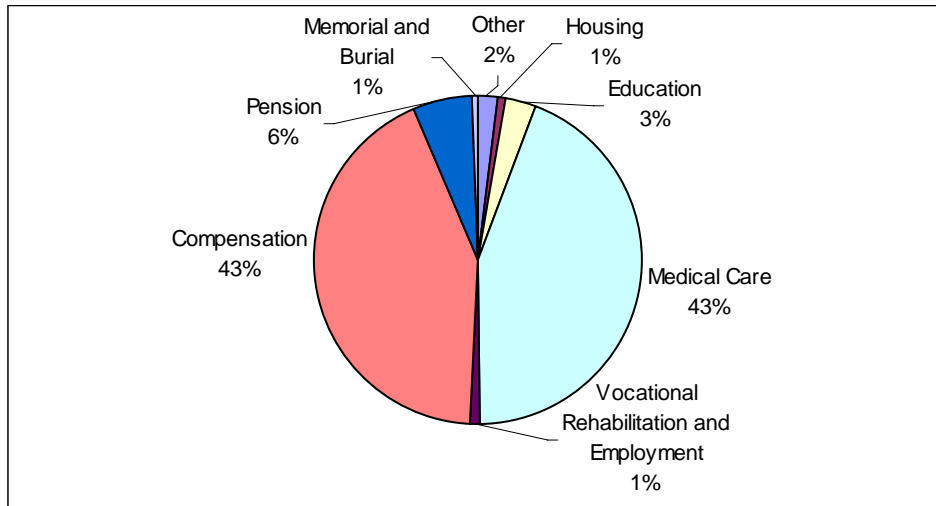
Figure 2. Veterans Benefits Provided by VA



Source: Study Team Analysis

The VA Disability Compensation Program is just part of the overall benefits set provided to eligible veterans. As shown in Figure 3, excluding administrative and other costs, the Disability Compensation Program represents over 43% of all benefits paid by VA in 2004. As a percentage of total benefits, this number is expected to rise in 2005 and beyond.

Figure 3. 2004 Benefit Outlays, Excluding Administrative Costs



Source: Fiscal Year 2005 Budget Submission to OMB

3. RECURRING THEMES AND CHANGES SINCE WWI

Looking at the flow of legislation from 1914 to present, several general patterns emerge. First, Congress, by its nature and largely by virtue of its Constitutional mandate to represent the people of the United States, very much appears to be a reactive body during most of this time, rather than proactive. Congress reacts to global events such as warfare and natural disasters; national events such as fluctuations in the economy, and the mood and will of the electorate; and local events such as the construction and allocation of VA resources. Congress also operates within the environment of constant changes in medical technology and techniques as well as changes in military technology.

Consistent, recurring themes and focal points include:

- ▶ Military conflict as a context for Congressional action
- ▶ Disability compensation levels
- ▶ Presumptions of service-connection
- ▶ Concurrent receipt

In this section, we look at each of these themes, showing the directions and trends taken by Congress. We highlight legislative themes in the context of each area. Additional legislative details are provided in Section 4.

Military Conflict as a Context for Congressional Action

Generally, legislation affecting the Veterans' Disability Compensation Program is woven around the fabric of military conflict and Congressional reaction to it. This is manifested through preparations for military actions or war, supporting the Executive Branch during military action or war, and recovery following military action or war. As military conflict gets under way, legislation often seems intended to create incentives for service. It also appears to try to provide reassurance that those who serve as well as their dependents, will be cared for, rewarded, and compensated for their service.

In advance of World War II, for example, Congress passed a series of laws expanding eligibility for disability compensation and presumption of service-connection. These include Public Law No. 75-648 in 1938 which expanded presumptions of service-connection; Public Law No. 75-758 and Public Law No. 76-18 in 1938 and 1939, which liberalized presumption of service-connection and extended and restored benefits previously removed by the Economy Act of 1933; and Public Laws No. 76-179, No. 76-196, and No. 76-198 in 1939, which further expanded and restored disability compensation rights.

As military operations build up, peak, wind down, and end, there is a perceptible cyclical pattern that appears to include the following elements, which occur roughly but not always in the following sequence:

- ▶ Provide new and increasing benefits to veterans who are disabled during wartime or their survivors.⁶
- ▶ Provide additional benefits as constituents and stakeholders let Congress know that the benefits do not go far enough
- ▶ Clarify and tighten legislation to prevent benefit misuse as well as to ensure that those entitled to benefits receive them
- ▶ Provide benefits for the rehabilitation and reemployment of returning servicemembers
- ▶ Provide increasing presumptions of service-connection and remedies for relief as “hidden” consequences of war start to emerge such as disease or after-effects of captivity
- ▶ Provide legislative mediation of the tension between VA and those with fiscal oversight either by providing additional appropriations, or by limiting or scaling back entitlements
- ▶ Provide additional benefits for widows and dependents as stakeholders make their plight more public
- ▶ Provide for long-term treatment of disabled veterans
- ▶ Expand and modify presumptions of service-connection in response to medical advances and scientific data
- ▶ Try to legislate fairness and fiscal responsibility by balancing different kinds of direct compensation and payments and implied compensation
- ▶ As aging veterans of a particular war or era approach retirement or death, provide additional recognition of their service

This by no means is a complete catalog of all of the different legislative phases and mini-phases, and not all elements are present for every war or military engagement. However, looking at the body of legislation between 1914 and 2004, we do find these elements emerging repeatedly in one form or another. In 2003, in passing a partial lifting of the ban on concurrent receipt of disability compensation and military retirement pay, many in Congress cited the current war as an argument in favor of lifting the ban. Rep. Corrine Brown of Florida in addressing the House on October 2, 2003, said:

⁶ We recognize the arguments of those who contend that “war” requires a declaration by Congress and that many military conflicts and engagements in U.S. history have lacked such a declaration. In this legislative history, however, rather than cataloging the myriad ways of characterizing such conflict, we will use “war” as to encompass declared and undeclared military engagements.

Right now, there are 140,000 Americans serving in Operation Iraqi Freedom. Now, more than ever, Congress needs to take action and fully fund concurrent receipt. We must promise this generation of servicemembers that they will be entitled to a full retirement for a career spent in the military. Today's soldier is tomorrow's veteran. We must show today's soldier that we will take care of him tomorrow (Congressional Record, October 2, 2003, p. E1955).

Benefit Amounts and Disability Rating Schedules

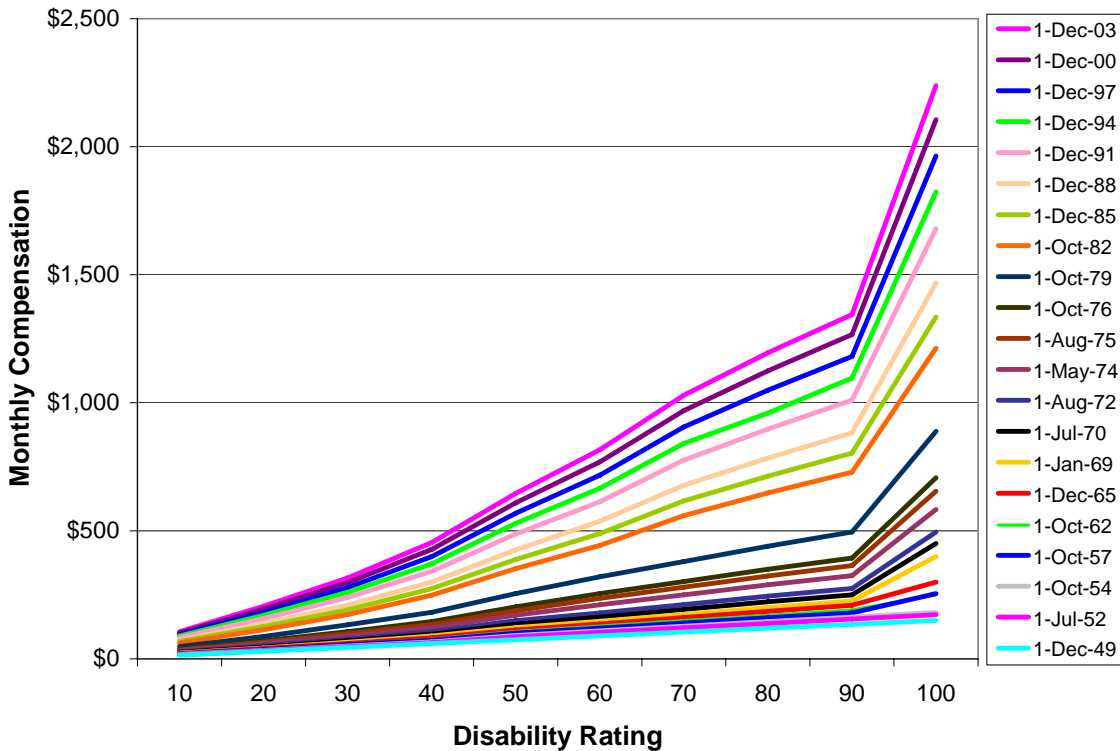
Over the years, one of the best indicators of the intent of Congress regarding the purpose of disability compensation has been how it sets compensation. The following section shows how compensation rates for specific disability percentage ratings have changed over time.

In August 1939, Congress published a rating schedule that was to become the basis for future increases in the rate of compensation to disabled veterans (Pub. L. No. 76-257). One of the most striking features of this schedule was its perfect linearity, beginning at \$7.50 per month for a veteran with a 10% disability, increasing by \$7.50 for each additional 10 percent, and topping out at \$75 per month for a 100% disability rating.

Even though basically linear, certain kinds of disabilities received additional compensation. For the loss of the use of an eye, foot, or hand, monthly compensation was \$18.75 per month. For loss of the use of both hands, both feet, or some combination thereof and in need of "regular aid and attendance," the monthly amount was \$112.50. At the high end, for severe disability, monthly compensation was \$187.50.

Although for losses such as those indicated, there were increases in compensation, as shown in Figure 4, the basic linear model persisted until 1957. Beginning in 1957, Congress introduced differentiation for veterans who were 100% disabled. This may be a response to the Bradley Commission report, which showed, among other things, that veterans' median annual earnings were substantially lower for those rated at 100% disabled.

Figure 4. Disability Compensation by Disability Rating Percent for a Single Veteran (1949-2003)⁷



Source: M21-1, Part 1, Appendix B, Section IX

Note: The lines represent legislation as layered from the earliest at the bottom to the most current at the top.

In 1962, differentiation was introduced for veterans with disabilities rated above 80%. The same relative difference was maintained in 1965 but beginning in 1969, the differences for those above 80% were made even sharper. In 1982, additional non-linearity was introduced, with the line kinking at the 50% point. The latest increases now show a benefit line that is quite a departure from 1939's linear distribution, suggesting that today's Congress does not make a proportional association between disability rating levels and the need for disability compensation. Rather, at higher levels of disability, disproportionately more compensation is provided through the rating scale. Given the historical focus on disability compensation as a replacement for earning ability, a reasonable inference is that Congress reasoned that at ratings above 50% disability, the ability to earn income is curtailed more severely than it is at lower disability rating levels, and that disability above 90% is the threshold for greatest need.

⁷ Rates shown are for "peacetime" veterans, which generally are set at 75% of the rates for "war" veterans.

Presumptions of Service-Connection

Some issues, unlike others, have become increasingly important over the years. Unlike basic questions of fairness, the timing of wartime/peacetime compensation gaps, and setting basic disability compensation levels, the issue of presumptions—both for disease as well as for Prisoner of War effects—has become increasingly complex.

Long before public health research and epidemiology became standard medical science, Congress was placed in a unique position relative to returning servicemembers. As the branch of government empowered to declare war, Congress was perhaps the first branch of government to hear the complaints of servicemembers returning from the war regarding how military service impacted their quality of life.

Each war in U.S. history has had its own unique set of problems and challenges that were followed by marked changes in the Disability Compensation Program. In the Civil War, for example, during winter campaigns, frostbite was a serious problem. Not until the War Risk Insurance Act of 1923, however, did Congress begin to lay the groundwork for a body of law that eventually would lead to presuming a service-connection that associated specific diseases and disorders with specific historic episodes of military service. In 1923, although Congress did not use the word “presumption,” they came very close in legislating to provide compensation to servicemembers with 10% or more disability due to tuberculosis or any neuropsychiatric disease (or aggravation of preexisting conditions) determined to be service-connected that developed within three years of discharge from the military.

In 1930, Congress first introduced the term *presumption* in connection with military service, saying “an ex-service man who is shown to have or, if deceased, to have had, prior to January 1, 1925, neuropsychiatric disease, spinal meningitis, an active tuberculosis disease, paralysis agitans, encephalitis lethargica, or amoebic dysentery developing a 10 per centum degree of disability or more in accordance with the provisions... shall be presumed to have acquired his disability in such service between April 6, 1917 and July 2, 1921...” (Pub. L. No. 71-522). Congress, by this time, had seen enough evidence and heard from enough doctors and constituents to conclude that the incidence of these disorders was so much higher among veterans from the stated period than in the general population that the presumption of service-connection was justified. In this, as in other laws, however, Congress stipulated that any such presumption of connection could be rebutted by “clear and convincing evidence.”

Presumption of service-connected causes for specific disabilities was subsequently expanded in 1930s. In 1937, Congress defined total and permanent disability for compensation to include the permanent loss of the use of both feet, both hands, both eyes (or any combination of the loss of two or more of these such as a foot and a hand or a foot and an eye), both ears, or all speech regardless of the specific cause of the disability (Pub. L. No. 75-304).

The following year, Congress expanded the definition of service-connection by saying that injury or disease would be presumed to have been incurred 'in line of duty' as long as the servicemember had active military or naval service, whether was on active duty or on authorized leave (unless caused by misconduct).

The period for establishing service-connection was also expanded in 1939 when Congress included authorized travel and training (Pub. L. No. 76-179).

In 1948, Congress passed a law establishing the service-connection presumption for chronic and tropical diseases when the onset of symptoms occurred within a year of separation from service. Passage of this law used the uncommonly high incidence of such diseases among returning veterans as a basis for establishing an automatic presumption of service-connection.

In 1950, presumption of service-connections was extended to include active pulmonary tuberculosis within three years from the date of separation from active service. In this instance, Congress specified that the disease had to produce at least a 10% degree of disability.

In 1962, Congress for the first time introduced a longer period during which presumption of service-connection of a disease could be established. In that year, Congress extended from three to seven years the presumptive period for connection with service for those developing multiple sclerosis.

In 1972, Congress established a presumption of service-connection for any former POW from WWII, the Korean War, or the Vietnam era who had been imprisoned for six months or more and who developed ischemic heart disease or beriberi heart disease. Psychosis was also presumed service-connected if manifested within 2 years (Pub. L. No. 91-376), with the 2-year time limit repealed in 1981 by Public Law No. 97-37. Problems with nutrition, forced labor, and other inhumane treatment were deemed to be strong reasons to presume that the conditions were the direct result of captivity. In 1981, the period for imprisonment needed to presume a service-connection was reduced from six months to 30 days.

In 1984, Congress expanded presumptions further, extending coverage to Vietnam era veterans who had been exposed to herbicides containing dioxin as well as to World War II veterans exposed to radiation from the detonation of a nuclear device either in connection with testing or the American occupation of Hiroshima or Nagasaki in Japan.

At the same time, while epidemiology was increasingly at the forefront in establishing the connection between certain environmental circumstances and the development of certain pathologies, Congress for the first time required VA to develop guidelines for using findings of epidemiological and clinical studies in examining the possible relationship between such exposure and the manifestation of adverse health effects to resolve claims for compensation. Through this act, Congress formalized its own experience in telling VA that population studies are relevant to the issue of presumption, suggesting that such studies are more relevant than the opinion of a single doctor without respect to cohort incidence.

In 1988, the field of presumptive service-connection law expanded dramatically when Congress passed a law providing a 40-year presumptive period for a long list of cancers associated with nuclear testing during the 1940s. This law introduced the phrases “radiation-exposed veteran” and “radiation-risk activity,” and added to the list POWs who were being held in Japan at the time of the nuclear detonations that ended World War II.

It should be noted that these presumptions did not yet include veterans of the extensive nuclear tests that were conducted during the 1950s. These veterans were not included until later, when the full scope of their exposure was revealed.

In 1991, Congress added exposure to herbicides to the list of risks for which a presumption of service-connection would be allowed. This included a variety of different herbicides, despite some attempts to limit it just to those containing dioxin. The law further directed VA to prescribe regulations providing that a presumption of service-connection is warranted whenever it is determined by VA that a positive association exists between the exposure of humans to a herbicide agent and the occurrence of a disease in humans. VA was directed to use sources that included medical literature and reports, experts, and the services of the National Academy of Sciences. Some saw this as a no-confidence vote on VA’s in-house medical resources, while others saw it as the inevitable convergence of information from a variety of sources to arrive at the soundest possible conclusions.

In 1994, the Gulf War Veterans’ Benefits Act extended and widened the field of presumptions. This Act legislated, in effect, a presumption of service-connection for an *undiagnosed illness* that occurred within an *as-yet unprescribed time frame*, taking into account the Gulf War Syndrome, whose symptoms continue to baffle the medical establishment. This law also legislated the presumption of a service-connection between radiation exposure during the detonation of a nuclear device and radiation-related illness in a veteran, regardless of the nation responsible for the nuclear device.

The list of Gulf War presumptions became more specific with a 1998 law that included biological, chemical, or toxic agents; an environmental or wartime hazards; or preventive medicine or vaccine associated with service in the southwest Asia theater of operations during the Persian Gulf War.

In 1998, Congress explicitly excluded any presumption of service-connection for disease caused by a servicemember’s use of tobacco products (just as it excluded conditions caused or exacerbated by the abuse of alcohol or drugs). The law also directed VA to look into the possibility of collecting payment for treatment from tobacco companies, should VA become liable for paying for such treatment.

In 2001, Congress repealed the 30-year manifestation period limitation for Vietnam veterans in the development of specific respiratory cancers. It also extended the presumptive period for disabilities associated with Persian Gulf War service until December 31, 2011, or later, as might be modified by VA. The latter included vaguely and unclearly defined illness and symptoms of undiagnosed illnesses.

And, most recently, in 2003, Congress completely eliminated the minimum internment period for some presumptive illness associated with POWs. Formerly 30 days, presumption of connection with internment is now automatic for any of the anxiety states covered, dysthymic disorder, complications of frostbite, and post-traumatic osteoarthritis. Congress also added cirrhosis of the liver to the presumptive list but did include a minimum 30 days internment for that presumption to be met.

In all of these presumptions, there are several patterns. First, the rate at which presumptions are being added has been accelerating. Congressional action has become more frequent, more deliberate, and more detailed. Second, periods of presumption are increasing at the same time that periods of exposure to risk are dropping. Finally, Congress is increasingly directing VA to avail itself of outside sources of expertise for making determinations of service-connection between disease and specific military service, and to use epidemiological studies and surveys to establish the connection between military service and various pathologies.

Concurrent Receipt

In 1891, with respect to disability compensation for veterans returning from the Mexican War, Congress objected to various manifestations of concurrent receipt of disability compensation and other service-related pay. This included combinations of disability and retirement pay as well as disability and active duty pay. In 1892 appropriations legislation for veterans' benefits, Congress enacted the first prohibition of concurrent receipt, prohibiting what it termed "dual compensation." In banning concurrent receipt, the legislation said:

That hereafter no pension [what is currently termed disability compensation] shall be allowed or paid to any officer, non-commissioned officer, or private in the Army, Navy or Marine Corps of the United States, either on the active or retired list (Congressional Record, 1891, 51st Congress, Session II, ch. 548, p. 1082).

During debate, Senators asserted that "longevity pay" for retired servicemembers was intended to be compensation in full for military service and that dual receipt of both disability payments and retirement pay associated with the same service would be prohibited. In making this successful argument, Senator Cockrell (Missouri) said:

Mr. President...when we created a retired list for non-commissioned officers and privates, we gave them three-fourths of their pay, longevity pay, and all that, it was understood that that was in lieu of [all other compensation for] all the military services that they had performed for us, and I know that that must have been the intention of Congress whenever a pension [or disability] bill has been passed... I want to know whether the Senate intends to establish the principle, that, in addition to paying an officer his full salary, his longevity pay, etc., we will give him a full pension

*[or disability payments] when he is on the active list. If that is to be allowed I want the taxpayers of the country to know it.*⁸

The complete ban on concurrent receipt was effectively modified in 1944. Under new provisions of that system, retired servicemembers were permitted to elect to waive an amount of their retirement pay equal to their veterans' disability compensation payments (Pub. L. No. 78-314). The exchange of one for the other was not a simple accounting transfer because military disability compensation *is not* subject to Federal income taxes while military non-disability retirement pay *is* taxable. By electing to receive as much as possible in the form of disability compensation, a retiree is rewarded for service by a higher net income after taxes.

Over the years, Congress repeatedly returned to the theme that prohibits concurrent receipt. In 1946, with Public Law No. 79-662, Congress extended the ban on concurrent receipt in saying that veterans may not receive both institutional care and full disability compensation at the same time. This reinforced the principle that disability compensation is for economic support rather than an award or compensation for injury sustained while in the service. The underlying theory is that institutional care is a form of room and board, obviating the implied need for Congress to provide that portion of disability compensation that might otherwise be used for food and housing. Offering further evidence of Congress' economic intentions, the law specifies different reductions in disability compensation for institutionalized veterans with and without dependents.

Yet, inasmuch as disability compensation may be intended as replacement for lost earnings capacity, Congress has de facto been inconsistent in the actual effective application of this over the years; this is shown in a variety of ways.

Special allowances for adaptive housing and automobiles to support coping with disabilities, for example, also effectively provide additional net income for some veterans indirectly. In 1948, as part of rapid series of legislative acts concerning a wide variety of veterans' issues, Congress passed an act that authorized VA to pay up to 50 percent of the cost for a disabled veteran to purchase, build, or modify existing housing to adapt it to accommodate his/her disability (Pub. L. No. 80-702). It is noteworthy that in passing this law, Congress did not stipulate any kind of reduction in compensation. Thus, in effect, this represented a new benefit, without any offset in other compensation.

Similarly, in 1946, 1948, and 1950, Congress appropriated funds and authorized VA to pay up to \$1,600 of the costs for disabled veterans of World War II to purchase specially adapted automobiles (Pub. L. No. 79-663, No. 80-785, and No. 81-798). Again, these laws did not stipulate any offset against other compensation. Like the housing purchase assistance law, this one effectively expands disability compensation benefits.

In both cases, since additional net income is not offset against other disability compensation payments or other payments from other sources, it represents an effective form of concurrent receipt, although the legislative literature does not label it as such.

⁸ Congressional Research Service, secondary resource cited in www.house.gov/nethercutt/veterans/concurrentreceipthistory.html

In 1950, Congress directly addressed the issue of concurrent receipt, this time for active duty pay and other pay (including pension, retirement, retainer and disability pay), with Public Law No. 81-844. That law stipulated that the servicemember may elect to receive either active duty pay, or the other compensation but not both, for any given period of service. This reflected a return to the theme of Congress prohibiting servicemembers from receiving dual pay of any kind for a given duty tenure.

This theme was re-emphasized in 1956 when Congress addressed Title 10, laws affecting the armed forces. 10 U.S.C. 1174 Chap. 59 includes the following provision:

Coordination of retired, separation, severance, readjustment, retainer and disability pay, such that the amount of disability pay must be deducted from other compensation,...

Again this language bars disabled veterans from concurrent receipt for the same period of service. Clarifying that this refers only to compensation for the same period of service, however, this section also says:

Notwithstanding the former, however, this does not prohibit concurrent receipt of disability and non-disability compensation that arises out of different periods of service.

Congress further refined the concept of concurrent receipt concerning periods of military service in 10 U.S.C. 1175, which says:

Voluntary separation incentive payments are deducted in an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

In 10 U.S.C. 1414 Chap. 71, Congress permitted concurrent receipt of retirement and disability compensation but provided that payments had to be offset so that total pay would not exceed the potential maximum from either source alone:

Concurrent receipt of retirement and disability compensation are permitted; however, payments must be offset such that total pay does not exceed either what retirement alone or disability compensation alone would be.

In 1999, Congress effectively created a limited form of concurrent receipt in a provision of the National Defense Authorization Act of 2000. This provision authorized special disability compensation to military retirees with severe service-connected disabilities rated at 70% or greater who had at least 20 years of service.

In 2000, the trend continued with a provision in the National Defense Authorization Act of 2001. This provision extended the benefit, making the special payments available to individuals retired for disability by their service, regardless of the percentage of disability rating.

In 2001, Congress increased the payment amounts and further expanded the special payments to include retirees with disabilities rated at 60% or more as a provision in the National Defense Authorization Act for fiscal year 2002.

In 2002, members of Congress continued the advance in the direction of concurrent receipt in passing the National Defense Authorization Act for fiscal year 2003. This provision called for concurrent receipt of military retirement pay and veterans' disability benefits for any retiree wounded by enemy combatants or who was rated at least 60% disabled as a result of injuries received during combat or during combat training. The law also provided for concurrent receipt for Purple Heart veterans with combat wounds who are rated at 10% disabled or more.

In moving closer to concurrent receipt, many in Congress argued for "fairness" and spoke of "owing a debt to our veterans." During the 107th and 108th Congresses, amendments were added to a number of bills, related and unrelated to other veterans' issues that called for ending the ban on concurrent receipt. Those efforts finally met with success in a compromise agreed to in the fall of 2003.

In November 2003, Congress passed a compromise bill that phases in concurrent receipt for some disabled veterans over a ten-year period. Beginning in 2004, disabled veterans with at least a 50% disability rating and with at least 20 years military service will be able to keep an increasing portion of their disability compensation until 2013. Then they will be able to receive full retirement and disability compensation concurrently.

For many in Congress, however, advocacy for full concurrent receipt continues. Two pending bills, H.R.3730 and H.R.3738 (both introduced in January 2004) would repeal the remaining limitations on concurrent receipt. Both bills were referred to the Subcommittee on Benefits in April 2004.

The National Defense Authorization Act for fiscal year 2005 contains an amendment that would eliminate the phase in for those with a 100% disability (H.R.4200), thereby authorizing full concurrent receipt effective January 1, 2005.

4. PUBLIC LAWS, CONGRESSIONAL REPORTS, AND TESTIMONY

In this section, we look at the chronology of laws affecting compensation to disabled veterans and their dependents. Figure 5 shows a timeline of key enacted legislation affecting disability compensation from World War I through 2004.

Figure 5. Timeline of Legislation Affecting Disability Compensation: 1917 – 2003

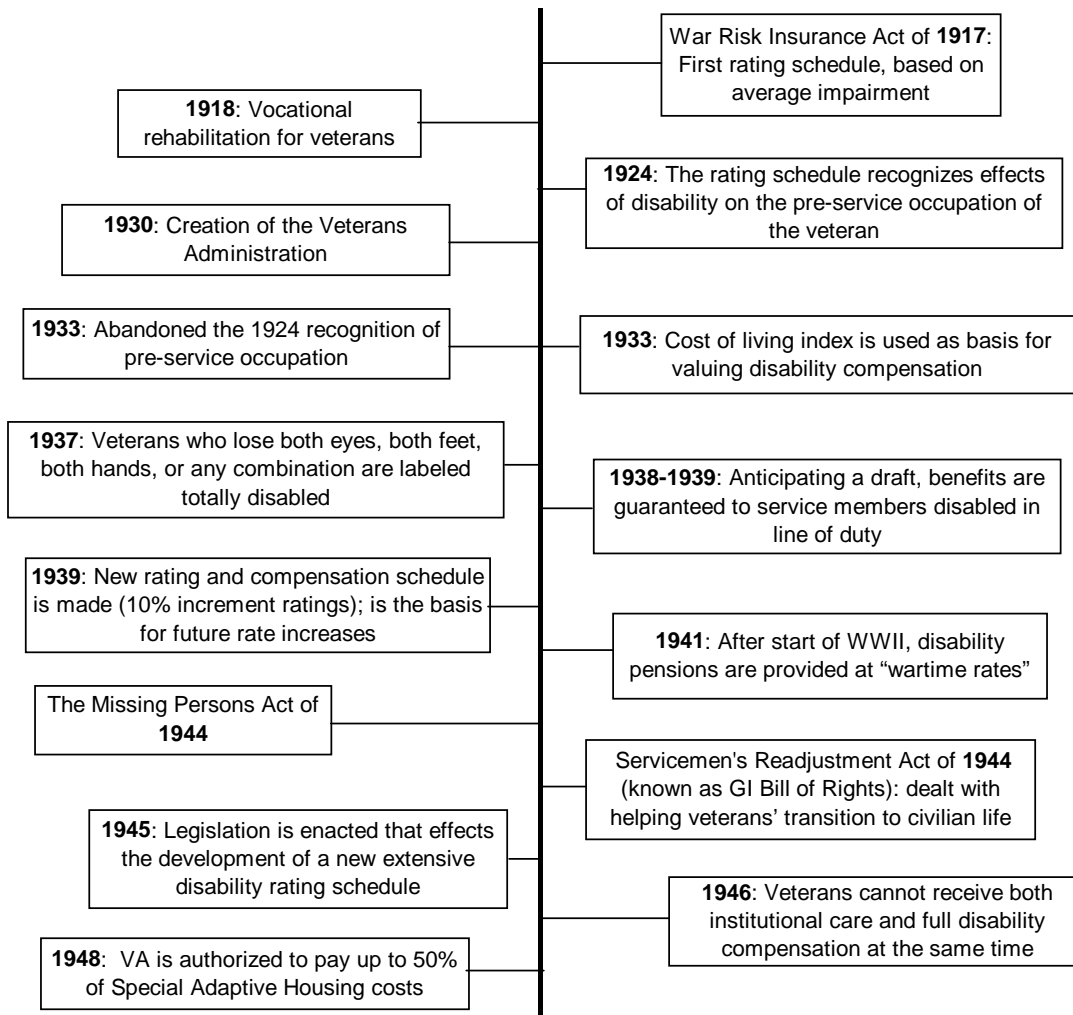
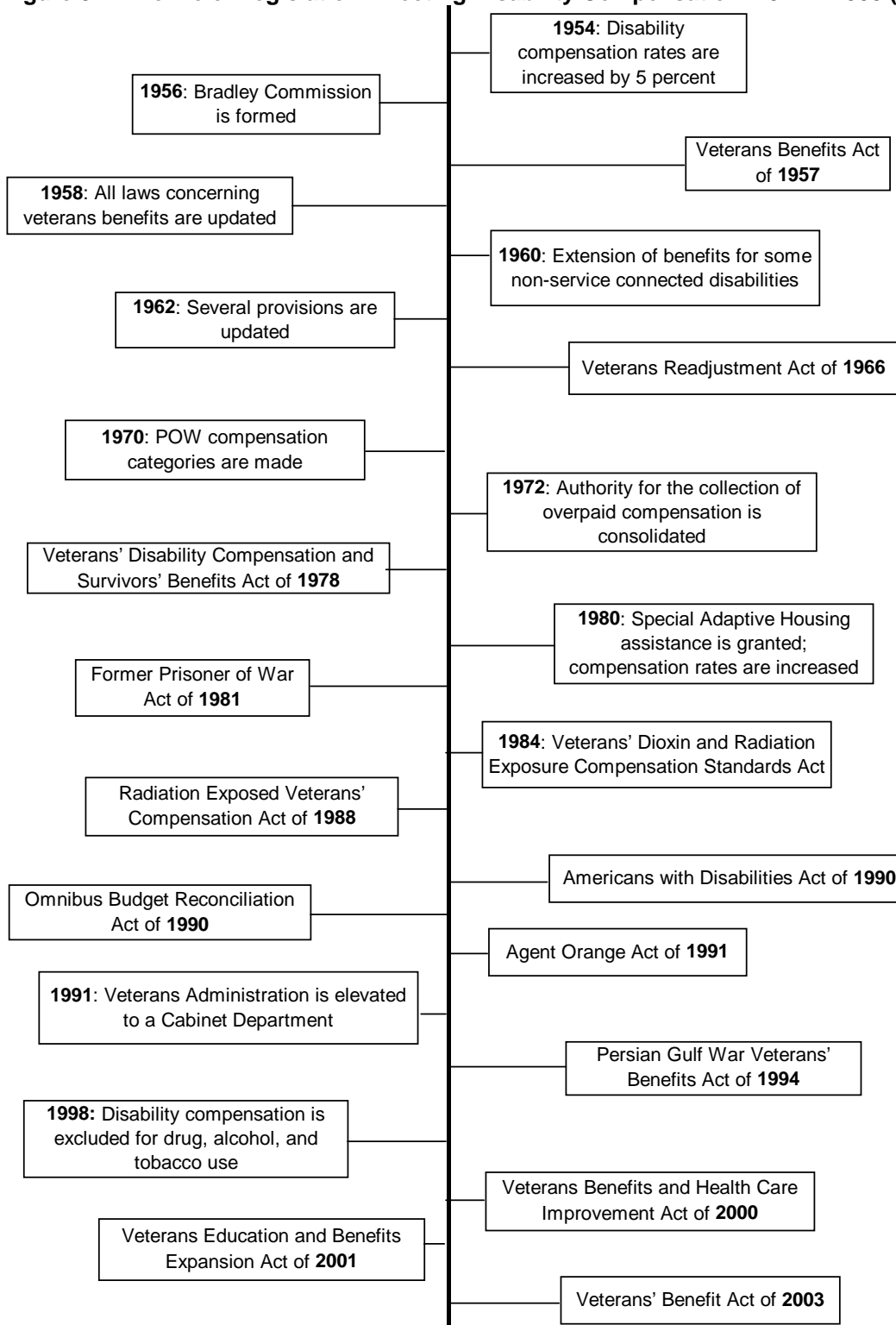


Figure 5. Timeline of Legislation Affecting Disability Compensation: 1917 – 2003 (continued)



The distinction between VA's programs that provide disability benefits is important. VA has two basic disability benefits programs—compensation and pension. The Disability Compensation Program pays monthly benefits to qualifying veterans who have service-connected disabilities (injuries or diseases incurred or aggravated while on active service in the military not due to willful misconduct, either in wartime or peacetime). Compensation amounts are based on the veteran's degree of disability, regardless of whether the veteran is employed or how much he or she earns. In contrast, the Pension Program assists permanently and totally disabled wartime veterans under age 65 who have low incomes and with disabilities that are not service-connected or those veterans who are 65 or over with low incomes. The payment amount is determined on the basis of financial need.

One of the challenges of this report on the history of veterans' disability benefits was to distinguish between these two programs in the early years, before a clear distinction was made. Legislation from around the time of World War I often and repeatedly used the word *pension* to refer to service-connected disability compensation. Therefore, in analyzing legislation, we had to be mindful of this refinement of terminology to determine whether or not a given legislative provision applied. The law is much clearer beginning in 1946. In 1946 (Pub. L. No. 79-494), Congress legislated that:

Under the laws administered by the Veteran' Administration monetary benefits, other than retirement pay, for service-connected disability or death shall be designated "compensation", and not "pension."

Legislation affecting the Veterans' Disability Compensation Program impacts on a number of topics. These are shown in Table 2 which only includes legislative changes and does not include regulatory changes made by the VA, in consultation with the Congress. There are two apparent trends evident in Table 2:

- ▶ The high frequency of legislation on the impact of economics on disability payments through the 1950s has recently decreased.
- ▶ The frequency of legislation on presumptions has recently increased.

Table 2. Legislation by Areas of Impact

Public Laws	Presumptions	Economic Impact of Disability/ Employment	Benefit Level	Disability Rating Schedule/Rate Adjustments ⁹	Concurrent Benefits	Special Populations (i.e., POWs, elderly, etc.)	Quality of Life	Recruitment and Retention
World War I through World War II (1914 – 1945)								
Pub. L. No. 63-193 (1914)		X						
Pub. L. No. 65-20 & No. 65-178 (1918)		X		X				
Pub. L. No. 66-11 (1918)				X				
Pub. L. No. 67-294 (1922)			X	X		X		
Pub. L. No. 67-370 (1922)		X	X	X		X		
Pub. L. No. 67-542 (1923)	X	X		X		X		
Pub. L. No. 68-242 (1924)		X		X				
Pub. L. No. 68-628 (1925)					X	X		
Pub. L. No. 69-178 (1926)			X	X	X			
Pub. L. No. 70-585 (1928)		X	X		X	X	X	
Pub. L. No. 70-323 & No. 70-889 (1928 & 1929)		X	X			X		X
Pub. L. No. 71-323 (1930)			X			X		
Pub. L. No. 71-522 (1930)	X							
Pub. L. No. 71-536 (1930)								
Pub. L. No. 72-212 (1932)					X	X		
Pub. L. No. 73-2 (1933)		X	X		X			
Executive Order (1933)		X	X		X	X		
Pub. L. No. 73-484 (1934)					X	X		
Pub. L. No. 74-269 & No. 75-357 (1935 & 1937)						X		
Pub. L. No. 75-304 (1937)		X	X	X	X	X	X	
Pub. L. No. 75-514 (1938)				X	X	X		
Pub. L. No. 75-648 (1938)	X							
Pub. L. No. 75-758 & No. 76-18 (1938 & 1939)	X							X
Pub. L. No. 76-179, No. 76-196, & No. 76-198 (1939)	X		X	X		X		
Pub. L. No. 76-257 (1939)		X	X	X			X	
Pub. L. No. 76-801 (1940)		X						

⁹ Does not include the annual enacting legislation that initiate veteran pension and disability compensation COLA adjustments. That information is presented in Table 3.

Table 2. Legislation by Areas of Impact (continued)

Public Laws	Presumptions	Economic Impact of Disability/ Employment	Benefit Level	Disability Rating Schedule/Rate Adjustments	Concurrent Benefits	Special Populations (i.e., POWs, elderly, etc.)	Quality of Life	Recruitment and Retention
Pub. L. No. 76-866 (1940)					X	X		
Pub. L. No. 77-140 (1941)					X	X		
Pub. L. No. 77-359 (1941)		X	X					X
Pub. L. No. 77-361 (1941)	X							
Pub. L. No. 78-144 (1943)					X			
Pub. L. No. 78-314 (1944)					X			
Pub. L. No. 78-408 (1944)	X					X		
Early Cold War Era (1945 – 1961)								
Pub. L. No. 79-458 (1945)		X		X				
Pub. L. No. 79-494 (1946)								
Pub. L. No. 79-662 (1946)		X	X		X			
Pub. L. No. 80-702 (1948)							X	
Pub. L. No. 80-748 (1948)	X							
Pub. L. No. 80-876 & No. 80-877 (1948)		X	X	X				
Pub. L. No. 79-662 (1948)		X	X	X	X			
Pub. L. No. 81-108 (1949)					X			
Pub. L. No. 81-573 (1950)		X						
Pub. L. No. 81-798 (1950)		X					X	
Pub. L. No. 81-844 (1950)					X			
Pub. L. No. 82-356 (1952)				X				
Pub. L. No. 83-311 (1954)				X				
Pub. L. No. 83-695 (1954)				X				
Pub. L. No. 83-696 (1956)				X		X		
10 U.S.C. (1956)					X			
Pub. L. No. 84-881 (1965)					X			
Pub. L. No. 85-56 (1957)					X			
Pub. L. No. 85-782 (1958)						X	X	
Pub. L. No. 85-857 (1958)		X	X					
Pub. L. No. 86-222 (1959)								
Pub. L. No. 86-501 (1960)								
Pub. L. No. 86-663 (1960)				X				
Vietnam War through Gulf War (1962 – 1992)								
Pub. L. No. 87-610 (1962)				X				
Pub. L. No. 87-645 (1962)	X			X				
Pub. L. No. 87-825 (1962)		X		X	X			

Table 2. Legislation by Areas of Impact (continued)

Public Laws	Presumptions	Economic Impact of Disability/ Employment	Benefit Level	Disability Rating Schedule/Rate Adjustments	Concurrent Benefits	Special Populations (i.e., POWs, elderly, etc.)	Quality of Life	Recruitment and Retention
Pub. L. No. 89-358 (1966)		X					X	
Pub. L. No. 91-376 (1970)	X					X		
Pub. L. No. 92-328 (1972)								
Pub. L. No. 95-479 (1978)		X	X	X	X		X	
Pub. L. No. 96-385 (1980)			X	X	X		X	
Pub. L. No. 97-37 (1981)	X				X	X	X	
Pub. L. No. 98-542 (1984)	X							
Pub. L. No. 100-321 (1988)	X							
Pub. L. No. 101-336 (1990)		X						
Pub. L. No. 101-508 (1990)		X	X	X	X			
Pub. L. No. 102-4 (1991)	X					X		
Pub. L. No. 102-83 (1991)								
End of Gulf War to the Present (1992 – 2004)								
Pub. L. No. 103-446 (1994)	X							
Pub. L. No. 104-204 (1997)	X				X			
Pub. L. No. 105-178 (1998)								
Pub. L. No. 105-206 (1998)	X							
Pub. L. No. 105-277 (1998)	X							
Pub. L. No. 105-368 (1998)				X				
Pub. L. No. 106-118 (1999)				X				
Pub. L. No. 106-419 (2000)		X			X	X	X	
Pub. L. No. 107-94 (2001)				X	X			
Pub. L. No. 107-103 (2001)	X				X			
Pub. L. No. 108-147 (2003)								
Pub. L. No. 108-183 (2003)	X				X			
Pub. L. No. 108-136 (2004)					X			
H.R.3730 & H.R.3738 (2004)		X			X			
H.R.348 (2003)	X					X		
H.R.3455 S.1846 (2003)	X							
H.R.631 (2003)	X							
H.R.4172 (2004)	X							
H.R.4179 (2004)	X							
H.R.4175 S.2483 (2004)			X	X				

World War I through World War II (1914 – 1945)

Prior to World War I, legislation applying to disabled veterans was contained in the General Pension Act of 1862, signed by President Lincoln. This Act provided compensation for the first time for diseases incurred in service, not just for combat-related injuries. This was prompted by public health conditions, in that more soldiers died from disease than from combat-related injuries during the Civil War (VA, 2004).

The advent of World War I saw the passage of new laws intended to support veterans whose service had resulted in impaired ability to provide for themselves and for their dependents. Although a tradition of disability compensation already existed in the United States, much of the modern Disability Compensation Program has its early foundations and underpinning in laws codified during this period.

War Risk Insurance Act of 1914 (Public Law No. 63-193)

Beginning with the War Risk Insurance Act of 1914 (Pub. L. No. 63-193), Congress sought to provide public insurance for what today is termed merchant marine commerce. The language of the law made clear the intent of Congress to provide insurance, especially during wartime, to an area of business that private insurers declined to cover and to provide such insurance at a rate consistent with private insurance rates. Initially, the War Risk Insurance Act covered just those businesses engaging in maritime commerce but did not cover military and naval servicemembers. This Act was amended, however, three years later providing benefits to veterans.

War Risk Insurance Act Amendments (Public Law No. 65-20 and Public Law No. 65-90)

In 1917, a series of amendments extended coverage first to merchant marine servicemen (Pub. L. No. 65-20, S. 2133, June 12, 1917), and later to U.S. military and naval servicemembers (Pub. L. No. 65-90, October 6, 1917). Basically, the amendments established a set of benefits for World War I veterans. The legislation resulted in the elimination of rank as a factor in determining the rate of compensation. Among other things, the amendments provided for low-cost voluntary insurance against death or disability, service-connected disability compensation, vocational rehabilitation, and medical and hospital care (initially through the Public Health Service).

Public Law No. 65-90 called for a disabilities rating schedule based on average impairment of the veteran's earnings capacity and compensation for service-connected aggravation of a condition that existed prior to military service. The ratings under the new schedule were to be based on average impairments of *earning capacity in civilian occupations*, not on the earnings capacity in each individual case. For disabled individuals who could overcome their handicap, the disability rating would not be reduced.

According to the 1971 Commission study, Economic Validation of the Rating Schedule (ECVARS):

“The schedule was to represent average impairments in earning capacity caused by specific injuries or combination of injuries. In this way the individual who overcame his handicap was not penalized but encouraged to reenter the labor force, with the knowledge that his payments would not be reduced or terminated. This change was in line with developments in the field of compensation for industrial injuries.”

These early laws set forth certain compensation amounts for specific disabilities and injuries, not only to military and naval servicemembers but to their dependents as well, excluding only death or disability resulting “by his own misconduct.” Except for that exclusion, the language of the law specifies eligibility (Article III, Section 300):

...death or disability resulting from personal injury suffered or disease contracted in the line of duty.

It is noteworthy that the law did not yet define the meaning of the phrase “line of duty.” That phrase was later defined and amplified by Congress.

In passage of this law, the language of the legislation also makes clear Congressional intent of replacing support and income. From Public Law No. 65-90:

Article III, Section 301: If the deceased leaves a widow or a child, or if he leaves a widowed mother dependent upon him for support, the monthly compensation shall be in the following amounts:

- (a) For a widow alone, \$25.*
- (b) For a widow and one child, \$35.*
- (c) For a widow and two children, \$47.50, with \$5 for each additional child up to two.*
- (d) If there be no widow, then for one child, \$20*
- (e) For two children, \$30*
- (f) For three children, \$40, with \$5 for each additional child up to two.*
- (g) For a widowed mother, \$20.*

The precision and variation in amounts makes clear Congress’ intent to provide *support* that compensates dependents for the loss of their provider. This is consistent with the original intent and purpose of the War Risk Insurance Act, which was to compensate wartime losses and mitigate the risks of wartime commerce. The underlying principle clearly was to replace compensation, not to reward service. Further evidence of this principle can be found in Section 312 of Public Law No. 65-90, which bars concurrent receipt of disability compensation and service or retirement pay:

Compensation under this article shall not be paid while the person is in receipt of service or retirement pay.

The same section also bars concurrent receipt of multiple sources of disability compensation:

Compensation because of disability or death... shall be in lieu of any compensation for such disability or death under the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purpose" approved September 7, 1916.

Vocational Rehabilitation Act of 1918 (Public Law No. 65-178)

With the end of World War I came additional concern and focus on ensuring that returning disabled servicemembers be provided a mechanism for, whenever possible, resuming productive economic lives. On June 27, 1918, (Pub. L. No. 65-178), Congress passed the Vocational Rehabilitation Act, which provided for "vocational rehabilitation and return to civil employment of disabled persons discharged from military or naval forces of the United States." The language of the law again makes it clear that Congressional intent was to try to restore the economic vitality of veterans who were disabled or incapacitated through their service during the war. Notably, Congress also specified in the preamble to the Act:

That if such person willfully fails or refuses to follow the prescribed course of vocational rehabilitation which he has elected to follow...the bureau shall... withhold any part or all of the monthly compensation due such person and not subject to compulsory allotment [to dependents].

Vocational Rehabilitation and Return to Civil Employment Act of 1918 (Public Law No. 66-11)

On July 11, 1919, Congress passed an amendment to the June 27, 1918 Act with Public Law No. 66-11. While much of this amendment was administrative in nature, there is interesting variation in how entitlement to disability compensation is defined:

...disability incurred, increased, or aggravated while a member of such [military] forces, or later developing a disability traceable in the opinion of the board to service with such forces...

Here, the earlier phrase "*line of duty*" has been replaced, effectively, by "*while a member*." Additionally, the definition of disability has been effectively expanded to include pre-existing conditions that might have been aggravated during service as well as disabilities that might not have appeared until after discharge.

According to the ECVARS report, the 1919 legislation also established temporary and permanent disability compensation rates, payable based on the degree of reduction in earning capacity resulting from the disability.

Relief to Soldiers and Sailors of the War with Spain, Philippines Insurrection, and Chinese Boxer Rebellion Act of 1922 (Public Law No. 67-294)

In passing Public Law No. 67-294, the 67th Congress (September 1, 1922), provided relief to soldiers and sailors of the War with Spain, Philippines Insurrection, and Chinese Boxer Rebellion campaign, and dependents. Much of this law deals with *pensions*. However, the question of what exactly Congress meant by pension arises. Section 2 of this law provides *that no person shall receive more than one pension for the same period*. However, Section 3 provides that:

All persons... who while in the military or naval service of the United States under the provisions of this Act and all other Acts relating to pensions of soldiers who served in the War with Spain, the Philippine Insurrection, or the Chinese Boxer Rebellion and in line of duty shall have lost both hands or both feet or been totally disabled therein or who while in such service and in like manner sustained injuries that proved the direct cause of the subsequent total disability of both hands or both feet, shall receive a pension at the rate of \$100 per month.

Thus, while the wording repeatedly refers to pensions, this latter part of Section 3 clearly establishes disability compensation, which goes beyond pensions *per se*. This amendment uses the “*while in the military*” or “*naval service*” phrasing and “*line of duty*” almost interchangeably. This establishes early support for the principle that disabilities incurred need not have occurred because of acts of war and the later notion that any injury that occurs while in service, even if off duty at the time, may later be the subject of disability claims.

The House Report indicated an important disagreement with the Senate in the extent of the measure in deciding which of two competing amendments to accept. H.R.1182 says:

Amendment No. 1 includes those who died of disability incurred in the service. The House recedes.

Amendment No. 2 includes those who died of disability incurred in the service. The house recedes and concurs with an amendment as follows: “Or died in service due to disability or disease incurred in the service” (U.S. House of Representatives, 1922, Conference Report 1182).

The amendment agreed to adding the words “or disease.” This was done at a time that Congress increasingly recognized that veterans had been placed in “harms way” not only through engagement with the enemy, but also through other ways as well.

War Risk Insurance Act Amendment of 1922 (Public Law No. 67-370)

Public Law No. 67-370, approved December 18, 1922 (which amended the War Risk Insurance Act), provided additional compensation for the services of attendants or nurses to veterans who are in constant need. The amount was not to exceed \$20 per month unless the disabled veteran was blind, legless, or armless, in which case the amount would not

exceed \$50. In an interesting departure from earlier intent which seemed to try to provide an explicit level of support, with efforts to make sure that net compensation would not be inflated by disability compensation, Congress with this amendment provides additional compensation for veterans who are more disabled than for those who are less disabled even though the articulated *need* (*constant need of attendance*) is the same in both cases.

War Risk Insurance Act Amendment of 1923 (Public Law No. 67-542)

On March 4, 1923, Congress passed a major amendment to the War Risk Insurance Act (Pub. L. No. 67-542). Among other provisions, this amendment provides for:

- ▶ The termination of any rights to insurance or compensation for any person discharged or dismissed from the military or naval forces on the grounds of mutiny, treason, spying, or any offense involving moral turpitude or willful and persistent misconduct, *if he has been found guilty by a court-martial* or if he is an enemy alien, conscientious objector, or a deserter unless he is determined to be insane at the time such acts were committed (such determination to be made by VA).
- ▶ Enemy aliens whose service was honest and faithful are entitled to the benefits of the War Risk Insurance Act.
- ▶ Compensation to military, Army Nurse Corps (female [sic]), and naval servicemembers (and dependents) whose conditions either were caused or exacerbated in the line of duty.
- ▶ Compensation to servicemembers causing 10% or more disability due to tuberculosis or any neuropsychiatric disease (or aggravation of preexisting conditions) develops within three years of discharge, extending the period of presumption from two years (although this does not bar direct service-connection if the facts of the case substantiate his claim).

Among other provisions of the amendment, these mark important changes in the evolution of disability compensation to veterans. The first of these made no distinction for different service tenures. Any of the offensive acts committed terminated rights to compensation, even if a veteran had served honorably at another time. This nuance marks a change from earlier legislation that separated military service episodes so that diverse compensation was associated with different service episodes.

At the same time, the first bulleted item (termination because of moral turpitude) appears to reflect Congressional concern over potential abuse of the system. The loss of all compensation for any act of moral turpitude reflected the 67th Congress' concern that morally culpable individuals not be rewarded in any way.

In contrast, the amendment also extends benefits to enemy aliens who served the United States. Coming as it did *after* the war, this provision both rewards those aliens for their service and offered an incentive for aliens to serve in future conflicts.

Additionally, the amendment reinforces the idea that conditions need not have first occurred during service. Coverage was extended for those servicemembers whose conditions were either caused or exacerbated in the line of duty. The amendment further extends coverage to women in the Army Nurse Corps.

A final significant observation about this amendment is the extension of coverage to *neuropsychiatric diseases* and the extension of the presumptive period from two years to three. A missing arm, blindness, and other obvious physical impairments are concrete and easy to identify. Neuropsychiatric disease, however, is neither. Adding this lays the groundwork for later legislation that builds a body of presumptions about the connection between military service and a number of disorders, some of which are harder to identify than others.

H.R.1704 does not provide the rationale for extending the presumptive period from two years to three. While not stating a rationale, it does make clear the intention to broaden the previously existing law which was being narrowly construed. In regards to both provisions expanding benefits the report states:

Section 2 of the bill amends Section 300 of the War Risk Insurance Act, so that a person who is suffering from a neuropsychiatric or tubercular disease developing within three years after separation from the service shall be considered to have acquired such disease while in the service. The present law limits the period to two years.

The word "pulmonary" is also stricken from the present law. The bill includes all persons suffering from neuropsychiatric, or tubercular diseases, provided they have been examined by a medical officer of the bureau or a legally qualified physician and found to be suffering from a disability due to these diseases of more than 10 percent degree within three years after separation from the active military or naval service of the United States (U.S. House of Representatives, 1923, H.R.1704).

World War Veteran's Act of 1924 (Public Law No. 68-242)

In 1924, through the World War Veteran's Act of 1924 (Pub. L. No. 68-242), Congress reorganized the Veterans Bureau and veterans' benefits programs, the need for which largely arose due to scandals during President Harding's administration. The 1924 legislation provided that the rating schedule should still be based on the concept of "average impairment" but that it be tailored to recognize the effects of the disability on the pre-service occupation of the veteran. However, many veterans of World War I had never been employed prior to entering service.

World War Veterans Act of 1925 (Public Law No. 68-628)

In 1925, Congress passed the World War Veterans Act of 1925 (Pub. L. No. 68-628), which was an amendment to the Act of 1924. Among other provisions, this second Act:

- ▶ Clarified the definition of dependent child to include children and grandchildren of veterans who are unmarried and under 18 years old or who are over 18 and permanently incapable of self-support by reason of mental or physical defect.
- ▶ Provided that disability claimants could bring their claims into the Superior Court of the District of Columbia or into the District Court of the United States.
- ▶ An earlier provision, which barred receipt of any compensation to those found guilty of certain offenses was modified such that disability compensation based on other periods of service, before or after, (i.e., other than the period for which the veteran was convicted) are not affected by such conviction (i.e., compensation for disabilities incurred during honorable service was no longer negated by a conviction relating to a different period of service).
- ▶ The willful misconduct clause was in effect rescinded for certain disabilities and did not apply to veterans suffering from paralysis, paresis, or blindness nor anyone who was helpless or bedridden.
- ▶ The Act of 1925 modified and increased the amounts of compensation paid to widows and dependent parents and children.
- ▶ The Act of 1925 extended and modified life insurance provisions originally set out in the War Risk Insurance Act.

The passage of the World War Veterans Act of 1925 shows the evolution and complexity of veterans' disability benefit law. It also shows the attempts of Congress to clarify areas of law in contention and the legislative attempt to expand veterans' benefits. Whereas an earlier law made clear that veterans convicted of certain acts of moral turpitude lost all rights to compensation, this Act in effect restored rights to compensation awarded during times of honorable service. The Act also reflects a less harsh view of the consequences of willful misconduct. Whereas earlier law rigidly said that a veteran could not receive disability for acts resulting from willful misconduct, this amendment said that certain classes of disabilities were exempt from the willful misconduct provision.

The language of this amendment suggests that, eight years after the World War, with the benefit of hindsight and reflection, Congress was entering an era characterized by greater appreciation for the services and sacrifices of veterans who had become disabled while serving the U.S.

Disability Pension Increase Act of 1926 (Public Law No. 69-178)

The Act of 1926 (Pub. L. No. 69-178), demonstrates the unclear area of law between what constitutes disability compensation and pension. The distinction discussed in the introduction notwithstanding, in 1926 the lines were more blurred:

All persons now on the pension roll, and all persons hereafter granted a pension, who while in the military or naval service of the United States and in line of duty, shall have lost one hand or one foot, or have been totally

disabled in the same, shall receive a pension at the rate of \$64 per month; that all persons who in like manner shall have lost an arm or at any point above the elbow, or a leg at or any point above the knee, or have been totally disabled in the same, shall receive a pension at the rate of \$75 per month..."

Despite the repeated use of the word *pension* in this law, it is clear that Congress was really talking about disability compensation (incurred while *in the line of duty*). This reinforces the need to be cautious in determining whether a given law applies to the Disability Compensation Program or to the Pension Program as well as to be alert for when, in time, the distinction becomes fundamental. In 1926, the distinction was not evident.

The World War Veterans' Act of 1928 (Public Law No. 70-585)

The World War Veterans' Act of 1928 (Pub. L. No. 70-585) established a six-year statute of limitation for access to the courts over veterans' disability claims. The Senate Report states the rationale, which was based on statutes of limitations for suit on contracts of insurance. While different from disability claims, the Senate Report nonetheless chose to use as a reference point:

Section 1 of the bill amends Section 19 of the Act by establishing a uniform statute of limitations for suits on contracts of insurance. At the present time, under the conformity Act, the statutes of limitations of the various States apply. The periods of limitations in these statutes vary from 3 to 20 years, the average being 6 years. The committee believes that the average statute of limitation, namely six years, should be applied to these suits, with an additional year from the date of passage of this amendatory Act for all suits (U.S. Senate Report, May 26, 1928, Senate Report 1297, p. 1).

Hence, the six-year period is not based on any medical rationale relating to the length of time during which conditions might be likely to manifest. Rather, it is an attempt to provide uniformity for administrative purposes and is based on the average statute of limitation for claims the Senate committee, as applied by state statutes.

This Act also provided for the suspension of payments to veterans' and dependents' guardians who appear to be abusing their fiscal responsibility vis-à-vis the administration of compensation benefits. Congress' intent in passing this part of the amendment to the original Act of 1924 was to prevent perceived abuses of the system.

At the same time, this amendment extended certain benefit payments to non-disabled children through the age of 21, or long enough to complete education and other training, recognizing this as an obligation that a disabled parent would fulfill had not the service-connected disability intervened. This provision was not unanimously embraced by both houses. The Senate Report stated its objection, largely on cost grounds:

This allowance was to be continued until such children reach the age of 21 years or terminate their attendance at school. The estimated cost of this

provision was \$1,007,900. Your committee, after careful consideration of the matter, did not feel that this wide departure from past procedure in dealing with the dependents of deceased veterans was warranted... It was not believed by your committee that sufficient good would result from the amendment as proposed by the House of Representatives to warrant its adoption (U.S. Senate Report, May 26, 1928, Senate Report 1297, p. 4).

Double Pension for Servicemembers Disabled Due to Submarine and Aviation-Related Injuries, 1928 and 1929 (Public Law No. 70-323 and Public Law No. 70-889)

The 1928 and 1929 Acts (Pub. L. No. 70-323 and No. 70-889) provided for double pension for servicemembers (and widows and dependents) disabled (or killed) due to submarine and aviation-related injuries, respectively. Congress at times appears to be concerned with replacing compensation but at other times appears concerned with providing incentives and rewards for service. This Act reflects the latter. While these are very brief laws, by both contemporary and modern standards, they are part of an early history of Congress' intent that compensation to disabled veterans be more than just replacing lost income. Clearly, there can be no economic justification for the distinction between aviation/submarine duty disabilities and disabilities resulting from other kinds of service. Therefore, it appears that Congress intends that veterans be rewarded for undertaking the risks inherent in these lines of duty as well as to provide future incentives for others to undertake risks in emerging or not-yet-conventional aspects of military service.

However, the enactment of such legislation was not expected to be costly to the government, which influenced their passage, as indicated in the House Report on the Submarine Act:

It is not believed that there will be many beneficiaries under this Act, and in fact, there have only been two submarine disasters within the last nine years, and at this rate, it appears that only a small proportion will receive the benefits of this Act, and the committee feels that this bill is a just one and recommends it for favorable consideration of the House (U.S. House of Representatives, February 8, 1928, H.R.599).

U.S. Civil War Servicemembers Who Served Less than 90 Days, 1930 (Public Law No. 71-323)

In 1930, continuing to blur the lines between disability and pension compensation (Pub. L. No. 71-323), Congress passed a law providing for \$75 in compensation for U.S. Civil War servicemembers who served less than 90 days and were *discharged for a disability incurred in the service and in the line of duty*. Congress' intent with this law was to close an earlier gap that had excluded those who had served for less than 90 days. In effect, however, since such service was not long enough to have vested for a pension, Congress was also providing for disability compensation payments.

World War Veterans' Act of 1930 [Presumption of Service-Connection for Certain Diseases and Disorders] (Public Law No. 71-522)

Another 1930 law (Pub. L. No. 71-522), which amended the World War Veterans' Act of 1924, advanced Congress' theory of the presumption of service-connection for certain diseases and disorders:

...an ex-service man who is shown to have or, if deceased, to have had, prior to January 1, 1925, neuropsychiatric disease, spinal meningitis, an active tuberculosis disease, paralysis agitans, encephalitis lethargica, or amoebic dysentery developing a 10 per centum degree of disability or more in accordance with the provisions... shall be presumed to have acquired his disability in such service between April 6, 1917 and July 2, 1921, or to have suffered an aggravation of a preexisting neuropsychiatric disease, spinal meningitis, tuberculosis, paralysis agitans, encephalitis lethargica, or amoebic dysentery in service between said dates, and said presumption shall be conclusive in cases of active tuberculosis disease and spinal meningitis, but in all other cases said presumption shall be rebuttable by clear and convincing evidence...

In the law, the language about presumptions continues for conditions resulting in higher degrees of disability. However, Congress' intent here is clear and serves to continue and expand Congress' role in deciding to presume a service-connection for certain disorders.

World War Veterans' Act of 1930 (Public Law No. 71-536)

Also in 1930, with the World War Veterans' Act of 1930 (Pub. L. No. 71-536), Congress authorized the President to create the Veterans Administration, consolidating and coordinating all federal government activities affecting veterans.

The law also expanded VA authority to consider non-medical evidence in considering disability claims. The Senate Report states:

Section 1 of the bill amends Section 5 of the Act by directing that regulations relative to evidence shall provide that due regard be given to lay and other evidence not of a medical nature in connection with the adjudication of claims. It is the feeling of the committee that in certain border-line cases a more liberal evaluation of lay testimony would enable the bureau to grant relief under the law. Although under existing law the bureau has the authority to consider such evidence in its proper light, it is felt that this amendment will constitute the express will of Congress regarding such evidence, and will enable the director of the bureau to issue more elastic regulations with regard thereto (U.S. Senate Report 1128, 1930).

Removing Limitation on the Amount of Retired Pay, 1932 (Public Law No. 72-212)

In 1932, while establishing limitations on the amount of retirement pay from all sources (Pub. L. No. 72-212), Congress notably excluded regular or emergency commissioned officers retired for disability incurred in combat with an enemy of the United States. Thus, while at times concerned about the concurrent receipt of disability and other forms of compensation, Congress made this exception. Thus, at least in 1932, Congress was not wholly opposed to concurrent receipt.

Economy Act of 1933 (Public Law No. 73-2)

In a major shift, largely due to the Great Depression and a need for fiscal restraint by the federal government, Congress passed the Economy Act of 1933, to maintain the credit of the United States Government (Pub. L. No. 73-2). This law repealed all existing legislation concerning veterans' benefits and authorized the President to replace them through executive order. The law also provided that after 1935, all such executive orders would become law in effect, granting the Executive Branch powers not included in the U.S. Constitution. The goal of this delegation of law-making authority was government savings through the reduction of veterans' benefits and of the pension rolls.

The Constitutionality of this provision was challenged shortly thereafter with the result that the law was amended. The amendment stipulated that executive orders would not become effective until 60 calendar days after their submission to Congress. The amendment also stipulated that the authority to make law by executive order would expire two years after the enactment of the Economy Act.

Among other provisions, this law established minimum and maximum monthly *pension* that could be paid for death and disability. For death, the rate was \$12 to \$75, and for disability, the rate was from \$6 to \$275. The law further gave the Executive Branch the authority to differentiate among three classes of disabilities and deaths:

- ▶ Disabilities and death incurred or aggravated in the line of duty in war-time service
- ▶ Disabilities and death incurred or aggravated in the line of duty in peace-time service
- ▶ Disabilities and death not incurred in service

Congressional intent here was to establish a theory and basis for differentiating compensation for different circumstances of disability and death. Prior to this enactment, distinctions often were ambiguous and had no single, concise point of law that established a basis for differences. Hence, as one examines the flow of laws between 1914 through 1933, Congress made and reversed the changes.

Providing the authority to differentiate based on circumstances of service also indicates Congress' intent to do so is appropriate. From an economic standpoint, the circumstance of how a disability occurred is irrelevant. A job impairment that causes one's income to be

\$100 per month lower than otherwise is not somehow higher because the disability resulted during war than had it been incurred in peace time or, if it had been incurred while the member was not in the service. By making clear distinction, Congress' clear intent was to lay a legislative foundation for providing rewards and incentives based on how and when disability or death occurs.

Another significant change introduced by the Economy Act of 1933 was to provide a mechanism by which to automatically adjust compensation to reflect underlying economic realities. The law directed the President to compute a cost of living index, and that all compensation (except for that paid for through employee contributions to various insurance or other plans) be indexed to the cost of living. Among other effects, this permitted certain forms of compensation to be reduced if the cost of living fell rather than only increase over time.

Additionally, Legislation in 1933 abandoned the attempt to tailor the disability rating for the individual's occupation, reverting completely back to the "average impairment of earnings capacity."

Executive Order, Veterans Regulation, Number 1, March 20, 1933

The Economy Act was quickly followed in 1933 by Executive Order, Veterans Regulation, Number 1, on March 20, 1933. Part I stipulates death and disability payments for conditions incurred during war, Part II covers those conditions incurred during peace-time service, and Part III covers those not the result of service. An example demonstrates the non-economic nature of these distinctions. To a widow with no children, monthly compensation was:

- ▶ Part I entitlement: \$30
- ▶ Part II entitlement: \$22
- ▶ Part III entitlement: \$15

To the disabled veteran with a 10% disability, monthly compensation was:

- ▶ Part I entitlement: \$8
- ▶ Part II entitlement: \$6
- ▶ Part III entitlement: Nothing (no compensation for less than total disability)

For veterans with a total (100%) disability, monthly compensation was:

- ▶ Part I entitlement: \$80
- ▶ Part II entitlement: \$30
- ▶ Part III entitlement: \$20

Clearly reflecting Congressional intent, this Executive Order provides different monetary payments for identical disabilities, based on the circumstances under which they were incurred. Furthermore, it should be noted that the patterns are not entirely consistent. Among widows, a Part II entitlement is 73 percent of a Part I entitlement, and a Part III entitlement is 50 percent of a Part I entitlement. For veterans with a 10% disability, the corresponding ratios are 75 percent and 0 percent. And, for veterans totally disabled, the ratios are 37.5 percent and 25 percent. Whatever the rationale for the base rates established in 1933, it was not based on economics or proportional calculations.

Compensation of Widows and Children, 1934 (Public Law No. 73-484)

While the Economy Act effectively established indexing for compensation paid directly to veterans, it did not do so for compensation paid to survivors and dependents. This was codified in a 1934 law (Pub. L. No. 73-484) that provided for the compensation of widows and children of persons who died while receiving monetary benefits for disabilities associated with military service in World War I or who served in Russia prior to April 2, 1920.

Economy Act Amendments, 1935 and 1937 (Public Law No. 74-269 and Public Law No. 75-357)

In 1935 (Pub. L. No. 74-269), Congress amended the Economy Act. With this Act, Congress restored to veterans of the Spanish War all benefits that had been taken away under the Economy Act. In a 1937 law (Pub. L. No. 75-357), Congress also repealed Executive Order 6098, to protect pension benefits to peacetime veterans placed on the rolls after March 19, 1933. Together, these laws emphasized the readiness and willingness of Congress to amend executive orders they might deem excessive, or in response to constituents' requests. While transferring operations to the Executive Branch, Congress made clear its intention to have the final word when it comes to veterans' compensation issues.

Liberalization of Laws Pertaining to Service-Connected Benefits, 1937 (Public Law No. 75-304)

In another move towards liberalization of laws pertaining to service-connected benefits, in 1937 Congress moved to clarify earlier language that had been construed to remove some entitlement to disability or death compensation (Pub. L. No. 75-304). Among other things, this law stated:

Notwithstanding the provisions of Public Law Numbered 73-484 ... in no event shall the widow, child, or children otherwise entitled to compensation under the provisions of that Act be denied such compensation if the veteran's death resulted from a disease or disability not service-connected, and at the time of the veteran's death he was receiving or entitled to receive compensation, pension, or retirement pay for 20 per centum disability or more presumptively or directly incurred in or aggravated by service in the World War.

This law also specified the benefit amount for widows based on their age. For example, under age 50, a widow would receive \$30 per month, a widow age 50 to 65 would receive \$37.50, and a widow age 65 and over would receive \$45. Congress' intent was not to provide an age premium but rather reflected the perception and reality that a woman's ability to replace lost income varied with age and that younger women were more capable of mitigating lost income than were older women.

This Act also extended the definition of total and permanent disability servicemembers who—*without prejudice to any other cause of disability—had suffered the permanent loss of the use of both feet, both hands, both eyes (or any combination of the loss of two or more of these such as a foot and a hand or a foot and an eye), both ears or all speech.* The notable extension here is that Congress was now awarding permanent disability status to servicemembers whose disability was not necessarily service-connected, if the extent of the disability was deemed sufficiently severe. Although the language of the law clearly exhibits a humanitarian tone, this extension shows the pendulum of presumption now moving even further from a rigid requirement that losses be due to combat.

The Senate Report recommending favorable action for this law detailed the estimated cost at \$7,916,000. However, it does not state the rationale for the increased liberalization. Rather, the report states simply that the purpose of this law is “to liberalize the provisions of existing laws governing service-connected benefits for World War veterans and their dependents...” (U.S. Senate (1937). Senate Report 1147, 1937).

Liberalization with Respect to Widows, 1938 (Public Law No. 75-514)

The pendulum moved even further in the same direction the next year (Pub. L. No. 75-514), when in 1938 the same Congress replicated much of the language of the earlier liberalization with respect to widows, only dropping the degree of disability to 10 per centum.

Expansion of Presumptions of Service-Connection, 1938 (Public Law No. 75-648)

Later in 1938, legislation (Pub. L. No. 75-648) liberalized the question of presumption even further by saying:

An injury or disease will be deemed to have been incurred ‘in line of duty’ when the person on whose account benefits are claimed was, at the time the injury was suffered or disease contracted, in the active service in the military or naval forces, whether on active duty or on authorized leave, unless it appears that the injury or disease has been caused by misconduct on his part.

H.R.1965 indicated that this change had broad support by a number of government agencies and stakeholder organizations:

This bill...has the endorsement of the Bureau of the Budget, the Veterans Administration, the War Department, the Navy Department, the Treasury Department (Coast Guard), Veterans of Foreign Wars, Reserve Officers’

Association of the United States, and the Military Order of the World War (U.S. House of Representatives Report, March 17, 1938, H.R.1965, p. 2).

The law goes on to stipulate a number of circumstances that would circumvent the presumption such as *if it appears that the person... was avoiding duty by deserting the service by absenting himself without leave*, or if he or she was serving a court martial sentence during that time, or if they had been relieved of duty for cause.

In making this change, Congress' intent is made clear by H.R.1965:

The general purpose of the bill is to provide relief for the many deserving cases where direct service-connected disease or disability was incurred in line of duty on furlough or leave of absence which under the existing law for pension purposes is considered to interfere materially with the performance of regular routine of duty is not deemed to have incurred in line of duty, even though the same disease or disability would have been suffered if the disabled person was on actual duty, in both instances the man being in the active military or naval service. In such cases the inequity of denying benefits because his disability was incurred while on authorized leave is apparent, and this bill will correct this inequity (U.S. House of Representatives Report, March 17, 1938, H.R.1965, p. 2).

Even so, the 75th Congress' willingness to extend service-connection to this extent was a wide departure from the actions of other recent Congresses. While not explicitly stated, it is not unreasonable to presume a connection between this attempt to liberalize service-connection presumptions was related to military and political developments at the time in Europe and in the Pacific, and the rising perception that the U.S. might soon be engaged in another war, and the need to ensure prospective servicemembers that they would be taken care of if incapacitated while serving.

Liberalization of Presumption and Extension and Restoration of Benefits, 1938 and 1939 (Public Law No. 75-758 and Public Law No. 76-18)

The 75th and 76th Congresses, through laws enacted during 1938 and 1939, continued this liberalization of presumption, extension, and restoration of benefits through Public Law 75-758 and Public Law 76-18. The latter, anticipating a draft, proactively provided for the presumption of service-connection and guaranteeing benefits to servicemembers disabled or killed *in line of duty... while so employed*. The purpose of this language, realizing perhaps the need to do so proactively, was to assure the public at large that Congress would provide for those who might be pressed into service through an involuntary draft. Again, in retrospect, these movements can be seen as part of the larger preparation leading up to World War II.

Restoration of Disability Compensation Rights (Public Law No. 76-179, Public Law No. 76-196, and Public Law No. 76-198)

Laws passed later in 1939 (Pub. L. No. 76-179 and No. 76-196) expanded and restored disability compensation rights. The former extended service-connection presumption to include military injury while traveling to or from a duty station as well as while receiving authorized training without pay. The latter restored to certain World War I veterans (suffering with paralysis, paresis, or blindness, or who were helpless or bedridden) benefits that had been legislated away by earlier acts of Congress. Public Law No. 76-198, served to specify increased rates of compensation to disabled and deceased veterans and their dependants and survivors.

Codification of New Schedule of Monthly Disability Payments, 1939 (Public Law No. 76-257)

In August 1939, with Public Law No. 76-257, Congress codified a new schedule of monthly disability payments, specifying rates for disability percentages in increments of 10% (e.g., 10%, 20%, and so on through 90% and total disability). For the first time, this schedule was a strictly linear assignment of disability benefits compensation, starting at \$7.50 per month for a veteran with a 10% disability and increasing by \$7.50 for each additional 10 percent, topping out at \$75 per month for a veteran who was 100% disabled.

A key discussion in laying the foundation for this legislation was the question of equity between disabled veterans who had served in combat (“war veterans”) and those who had not (“peacetime veterans”). In an April 19, 1939 statement of the Regular Veterans Association contained in S.414, J.E. Nieman, their National Education Director, said:

We are here, gentlemen, to ask for disabled Regulars 90 percent of the rate granted disabled war veterans.

We present to you the proposition that a man is just as much disabled in the service of his country if he be a Regular as if he be a war veteran. He needs just as much food, just as much medical attention. His ability to earn a living is no greater than the war veteran. We submit that he deserves comparative treatment when he becomes disabled in the line of duty (U.S. Senate Report 414, p. 6)

The Senate Report contained data on earnings, education, occupations, and other factors as well as graphs showing the cost of goods purchased by wage workers and lower-salaried workers to support the amounts of compensation being sought.

Ultimately Congress set the rates for peacetime veterans at 75% of the rates used for war veterans. For a totally disabled peacetime veteran, compensation of \$75 per month matched the average entry-level earnings of an unskilled adult male working as a common laborer. In 1939, the average hourly wage of such workers was 50 cents per hour, and the average workweek was 37.5 hours (40 hours minus five thirty-minute lunch breaks), or 18.75 per week, which is \$75 per month (U.S. Bureau of the Census, 1940). While none of the House and Senate reports cites this as the source of the numbers used for the 1939

compensation schedule, these amounts are in line with those contained in the reports. Hence, Congress' clear intent was that disability compensation rates be set so as to provide economic compensation for disabled veterans.

Even though linear in its basic application, certain kinds of disabilities were to receive additional compensation. For the loss of the use of an eye, foot, or hand, monthly compensation, for example, would increase by \$18.75 per month (an average week's earnings). For someone who had lost the use of both hands, both feet, or some combination thereof and was in need of regular aid and attendance, the monthly "pension" was \$112.50; and for the loss of both hands and a foot, or both feet and a hand, or blindness the rate was \$131.25. At the high end, for severe disability, monthly compensation would be as high as \$187.50, or 2.5 times the amount for someone rated as 100% disabled.

The legislative history for this law does not explicitly state a rationale for the extra awards. Although one might infer that the extra awards are to compensate for loss in quality of life, without a clear statement of Congress' intent, this is speculation.

Second Revenue Act of 1940 (Public Law No. 76-801)

In October 1940, Congress passed the Second Revenue Act of 1940, Title VI of which was the National Service Life Insurance Act (Pub. L. No. 76-801, Chap. 757). Among numerous other provisions, Section 602(n) of this Act provides for the waiver of premiums for disabled veterans. Inasmuch as this was insurance for which the veteran himself does not have to pay, it was de facto compensation.

War and National Defense Act of 1940 (Public Law No. 76-866)

Also in October 1940, Congress passed the War and National Defense Act of 1940 (Pub. L. No. 76-866, Chap. 893, 54 Stat. 1193). Among other provisions, this law provided for the apportionment of benefits to dependents not living with the veteran. In particular, Section 3 provided:

Where a disabled person, entitled to pension, compensation or emergency officers' retirement pay under laws or regulations administered by the Veterans Administration, and his wife are not living together, or where the child or children are not in the custody of the disabled person; or where, in death cases, the child or children are not in the custody of the widow, the amount of the pension, compensation or emergency officers' retirement pay may be apportioned as may be prescribed by the Administrator of Veterans' Affairs.

Discharge or Retirement of Enlisted Men, 1941 (Public Law No. 77-140)

In June 30, 1941 (Pub. L. No. 77-140, Ch. 263, 55 Stat. 394), Congress passed a law to provide for the discharge or retirement of enlisted men of the Regular Army and of the Philippine Scouts in certain cases. In addition, to the overarching purpose, Section 4 of this law addresses the issue of concurrent receipt. It allows veterans the choice to waive either disability compensation or pension/retirement, so the veteran does not have concurrent

receipt of both. It does not prohibit concurrent receipt per se but suggests that it cannot be done.

Pensions at “Wartime Rates,” 1941 (Public Law No. 77-359)

Within days after the declarations of war against Japan, Germany, and Italy, Congress moved to provide pensions at “wartime rates” for servicemembers disabled in the line of duty during war (Pub. L. No. 77-359). While earlier liberalization of laws had gone toward extending presumptions of service-connection, thereby tending to equalize disability compensation to some extent, this law reaffirmed the extra measure owed to those who serve during times of heightened risk.

Service-Connection Standardization and Uniformity, 1941 (Public Law No. 77-361)

A law passed on December 20, 1941 (Pub. L. No. 77-361, Chap. 603, 55 Stat. 847) was enacted to facilitate standardization and uniformity of procedures related to determining service-connection of injuries or diseases alleged to have been incurred in or aggravated by active service in a war, campaign, or expedition. Among other things, it provided that:

...where a veteran is seeking service-connection for any disability, due consideration shall be given to the places, types, and circumstances of his service as shown by his service record, the official history of each organization in which he served, his medical records, and all pertinent medical and lay evidence.

For any veteran who engaged in combat with the enemy in active service with a military or naval organization of the U.S. during some war, campaign, or expedition, the Administrator of VA is authorized and directed to accept as sufficient proof of service-connection of any disease or injury alleged to have been incurred in or aggravated by service in such war, campaign, or expedition, satisfactory lay or other evidence of service incurrence or aggravation of such injury or disease, if consistent with the circumstances, conditions, or hardships of such service, notwithstanding the fact that there is no official record of such incurrence or aggravation in such service, and, to that end shall resolve every reasonable doubt in favor of such veteran.

...service-connection of such injury or disease may be rebutted by clear and convincing evidence to the contrary. The reasons for granting or denying service-connection in each such case shall be recorded in full.

While the VA generally was already doing what this law required, the law sought to extend presumption in favor of combat veterans in a more uniform way. This law affirms Congressional intent that whenever possible, service-connection determinations be resolved in favor of veterans who served in combat. The Senate Report makes this clear:

...the bill as drafted is not considered to be objectionable from an administrative standpoint, and would give legislative sanction to the policy

of resolving every reasonable doubt in favor of the veteran (U.S. Senate Report 902, December 12, 1941, p. 1).

The report goes on to say that to establish a service-connection in peacetime is generally simpler because records are better maintained. During combat, however, records often either are not created, due to combat conditions, or are lost. Hence, the change requires that due consideration be given to additional factors. The report states directly Congress' intent:

It is the intention of this committee that this legislation should make a matter of law the pronounced policies of the Veteran' Administration and make clear the obligation of employees engaged upon duties pertaining to determination of service-connection the necessity for the fullest consideration of all evidence and formulation of decisions in line with the policies to which this bill, if enacted, will give legislative sanction (U.S. Senate Report 902, December 12, 1941, p. 3).

Uniform Administrative Provisions, 1943 (Public Law No. 78-144)

On July 13, 1943, Congress passed a law designed to provide more adequate and uniform administrative provisions in veterans' laws pertaining to compensation, pension, and retirement pay payable by the VA (Pub. L. No. 78-144, Chap. 233). Among other provisions, this law says that a disabled veteran may renounce an entitlement and may later make a claim but that the claim would be treated as a new claim. This law again addresses the question of concurrent receipt. It says:

Not more than one award of pension, compensation, or emergency officers' or regular retirement pay, shall be made concurrently to any person based on his own service. ... Pension, compensation, or retirement pay on account of his own service shall not be paid while the person is in receipt of active service pay.

Concurrent Payment, with Waiver, 1944 (Public Law No. 78-314)

Also during this period, in May of 1944, Congress passed a law to provide for payment of pensions and compensation to certain persons who are receiving retirement pay (Pub. L. No. 78-314). Specifically, this law says that a veteran *can* receive concurrent retirement and disability compensation; however, the veteran must waive a portion of the retirement pay equal to the disability compensation, that is, no net gain:

...That any person who is receiving pay pursuant to any provision of law relating to the retirement of persons in the regular military or naval service, and who would be eligible to receive pension or compensation under the laws administered by the Veterans Administration if he were not receiving such retired pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired pay is paid of a waiver of so much of his retired pay and allowances as is equal in amount to such pension or compensation.

To prevent duplication of payments, the department with which any such waiver is filed shall notify the VA of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired pay.

Taken together, these acts of law demonstrate the 78th Congress' intent, consistent with much established law, that disabled veterans not concurrently receive compensation that nets them more money than had the disability not been incurred.

Missing Persons Act of 1944 (Public Law No. 78-408)

The Missing Persons Act of 1944 (Pub. L. No. 78-408), passed in mid-1944 provided for pay and allotments for war "casualties," which extend to those who were missing and presumed either to have been captured or killed. Much of the language of the law is concerned with questions of fraud and effective desertion. Congress clearly was concerned that dependents of the missing should not be compensated if it were later determined that the missing were alive and well and whose missing status had been due to an attempt to avoid service. At the same time, this law stipulated a period of one year for presumption of death for those who were missing. It further left to the discretion of VA department heads the question of whether to attempt recovery of erroneous payment or overpayment of benefits if the missing person were later found to be alive. The latter was provided in the absence of fraud or criminality.

This law is characteristic of Congress throughout the World War I to World War II era, which on the one hand sought to reassure and reward those harmed while serving and on the other hand sought to protect the public against misuse of the system.

Early Cold War Era: End of World War II through the Beginning of the Vietnam War (1945 – 1961)

Congress began this era with the passage of the GI Bill (Servicemen's Readjustment Act of 1944), which dealt with helping veterans' transition to civilian life and with the problems of preventing the economy from suffering from a post-war recession or depression. Key provisions of the 1944 GI Bill were providing educational benefits and home loan mortgage benefits.

Ratings and Awards Schedule, 1945 (Public Law No. 79-458)

Public Law No. 79-458, affected the development of a new extensive disability rating schedule in 1945. As stated in the ECVARS report:

World War II brought new insight into disability and injury problems and their treatment. Adopted by Public Law 79-458, the 1945 schedule was an extensive compilation, going into great detail and furnishing specific instructions on essentials of evaluations and interpretations. New diagnostic code numbers were assigned and disabilities were indexed numerically under systems, with disabilities in each system identified by a code series. Policy was clearly set forth for interpretation of reports,

application of the schedule and ratings for hospitalization and convalescent periods. (p.15)

Some observers view the 1945 schedule as not being fundamentally restructured since 1945 up to the present (Office of Management and Budget [OMB], 2004). Numerous revisions or updates, though, have been made over time including adding new disabilities and diseases to the schedule. Legislative authority for making changes is provided by 38 U.S.C. 1155, which requires the Administrator to “adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as is practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations.” The legislation also provided that the Administrator “shall from time to time readjust this schedule of ratings in accordance with experience. However, in no event shall such a readjustment in the rating schedule cause a veteran’s disability rating in effect on the date of the readjustment to be reduced unless an improvement in the veterans disability is shown to have occurred.”

Compensation and Pension Distinguished, 1946 (Public Law No. 79-494)

One of Congress’ shortest pieces of legislation during this era is perhaps one of the most significant in terms of clarifying the distinction between compensation and pension. In 1946 (Pub. L. No. 79-494), Congress legislated that:

Under the laws administered by the Veteran’ Administration monetary benefits, other than retirement pay, for service-connected disability or death shall be designated “compensation,” and not “pension.”

Prior to this time, the language of each statute was critical to understanding and distinguishing whether a particular law was dealing with pensions or disability/death compensation.

Veterans’ Pension, Compensation or Retirement Pay During Hospitalization, 1946 (Public Law No. 79-662)

In August 1946, Congress passed a law relating to veterans’ pension, compensation, or retirement pay during hospitalization, institutional, or domiciliary care (Pub. L. No. 79-662, Chap. 869, 60 Stat. 908). For hospitalized veterans (in VA’s care) with any kind of compensation above a certain amount, this Act reduces that compensation by 50%. For example, for single veterans with \$30 in monthly compensation, no reduction occurs. Above \$30, he is limited to receiving 50% of his compensation or \$30, whichever is higher. So, for example, if his compensation is between \$30 and \$60, he will receive \$30/month. Above \$60/month, he will receive 50%. If his monthly compensation is \$80, the hospitalized veteran will receive \$40, instead of \$80, until he is discharged from the hospital.

In effect, this law goes again to the question of concurrent receipt; Congress is saying that veterans should not receive both institutional care (of any sort) and full disability compensation at the same time. This reinforces the idea that disability compensation is for economic support rather than as compensation for injury sustained while in the service.

Adaptive Housing, 1948 (Public Law No. 80-702)

In June of 1948, as part of a flurry of legislative acts concerning a wide variety of veterans' issues, Congress passed an Act that authorized the VA to pay up to 50% of the cost for a disabled veteran to purchase, build, or modify existing housing to adapt it to accommodate their disability (Pub. L. No. 80-702). It is noteworthy that in passing this law, Congress did not stipulate any kind of reduction in compensation. Thus, in effect, this represented a new entitlement without any offset in other compensation.

Service-Connection Presumption for Chronic and Tropical Disease, 1948 (Public Law No. 80-748)

Also in June 1948, Congress passed a law establishing the service-connection presumption for chronic and tropical disease, the onset of symptom(s) of which occur within a year of separation from service (Pub. L. No. 80-748). Moreover, the law stipulated that the period can be more than a year if *acceptable treatises* indicate a longer incubation period. Notable also in this law is the increasingly long list of diseases included. Moreover, it granted to the VA the authority to expand the list, saying "*and such other chronic diseases as the Administrator of Veterans' Affairs may add to this list.*" These are important provisions because this law greatly expanded VA's authority to determine the period and circumstances of service-connectedness and unspecified chronic diseases that might later be encountered by veterans.

Peacetime Disability Compensation, 1948 (Public Law No. 80-876 and Public Law No. 80-877)

On July 2, 1948, Congress approved a law setting the rate of disability compensation associated with peacetime service to 80% of the rate for wartime service (Pub. L. No. 80-876). This Act was approved on the same day as another law (Pub. L. No. 80-877), which provided for increases in disability compensation for veterans with dependents. The combination of these two laws marks a new approach to more complex legislation that previously required intricate phrasing to distinguish among different classes of entitlement. The law in effect places a higher value on disabilities incurred during war than those incurred during peacetime, regardless of the ultimate economic impact on the veteran. Such non-economic-based differentiation is in keeping with Congressional intent from other eras and is equally out of keeping with Congressional intent in others.

Benefits for Reserve Forces and Dependents, 1949 (Public Law No. 81-108)

In June of 1949, Congress passed legislation that codified and extended benefits to reserve forces veterans and dependents who were disabled or killed while on active or training duty for periods of less than 30 days (Pub. L. No. 81-108). The rates of compensation were set the same as compensation to regular military components. At the same time, the issue of concurrency is again revisited, with Congress saying that if the veteran is also entitled to a pension or retirement pay, then *he shall elect which benefit he shall receive*. Interesting, while some legislation carefully requires that certain benefits be offset, this law does not. Instead, it simply allows the veteran to choose which benefit to receive. The end effect is the

same to the veteran. However, the administrative costs to the government are reduced since there is no concurrent receipt, thereby reducing the number of checks government has.

Presumption of Service-Connection for Active Pulmonary Tuberculosis, 1950 (Public Law No. 81-573)

On June 23, 1950, Congress passed a law amending veterans regulations establishing a further presumption of service-connection for active pulmonary tuberculosis (Pub. L. No. 81-573). Technically, this amendment should not have been necessary since the law had given VA authority to expand both the list of diseases as well as the presumptive period as needed. However, it appeared that Congress was concerned that certain veterans with tuberculosis were not being given the benefit of presumption. The amendment states:

...active pulmonary tuberculosis developing a 10 per centum degree of disability or more within three years from the date of separation from active service, shall, in the absence of affirmative evidence to the contrary, be deemed to have been incurred in or aggravated by active service.

Specially Adapted Automobiles, 1950 (Public Law No. 81-798)

In 1950, Congress voted to authorize VA to pay up to \$1,600 of the costs for disabled World War II veterans (who had lost one or both legs above the ankle) to purchase specially adapted automobiles (Pub. L. No. 81-798). Seemingly not a significant piece of legislation, this law did not stipulate any offset against other compensation. Like the housing purchase assistance law passed in June 1948, this in effect expands disability compensation benefits.

Notably, while expanding veteran disability compensation, this law actually was intended to finish the work begun by the original law as well as to correct an oversight. Public Law No. 79-663 in 1946, supplemented in 1948 by Public Law No. 80-785, appropriated funding for assisting disabled World War II veterans in purchasing automobiles. While the first two laws specified a \$1,600 per-vehicle allowance, neither placed a limitation on the number of cars a veteran could purchase. According to the Senate Report, by 1950 there were still about 500 disabled veterans who qualified for the allowance under the existing legislation but who had not yet received it due to inadequate funding. The 1950 law appropriated additional money but further specified one assisted automobile purchase per veteran. From S.2273:

It is estimated that there are about 150 cases remaining for the year of 1950, which cannot be approved, and approximately 350 cases for 1951. This bill would provide the sum of \$800,000, which would be needed to care for these cases. The committee believes that the law should be extended for 1 year in view of the fact that some of the disabled veterans entitled to automobiles are still in the hospital.

The only change made to the law would be to permit the veteran to pay the difference in cost of an automobile over and above the \$1,600, which was not permitted under the law which expired on June 30, 1950 (U.S. Senate Report 2273, August 14, 1950, p. 2).

Actually, the latter is not correct, since this was not the only change made to the law, since the earlier laws did not explicitly limit the benefit to one car per veteran. Available House and Senate reports did not reveal the rationale for the specified amount of \$1,600 nor why that amount remained fixed across three legislative sessions rather than rising with the cost of living.

Prohibition on Concurrent Receipt of Active Duty Pay and Other Pay, 1950 (Public Law No. 81-844)

A 1950 law (Pub. L. No. 81-844) again addressed the issue of concurrent receipt, this time for active duty pay and other pay (including pension, retirement, retainer, and disability pay). This law stipulates that the servicemember may elect to receive either his or her active duty pay or the other compensation but not both for any given period of service. This reflected a continuing concern on the part of Congress that a servicemember not receive dual pay of any kind for a given duty tenure.

Disability Compensation Rate Increase, 1952 (Public Law No. 82-356)

In 1952, Congress detoured slightly from the idea of applying an across the board increase in disability compensation (Pub. L. No. 82-356). This law increased disability compensation rates by 5 percent for disabilities rated at 49% or less, and 15 percent for disabilities rated at 50% or more. According to the Conference report, this provision was not in contention in conference, so no change was made to the original House or Senate bills. The logic underlying the 5/15 difference was not revealed in the Conference report (U.S. House of Representatives, March 12, 1952, H.R.4394 and May 6, 1952, H.R.1846).

Protection for Existing Disability Ratings, 1954 (Public Law No. 83-311)

In 1954, Congress provided protection for existing total disability or permanent total disability ratings in effect for 20 or more years, except when shown to be fraudulent (Pub. L. No. 83-311). In this law, Congress prohibited the reduction of any such rating. The Senate Report clarifies Congress' rationale, which is related to both economic security and quality of life:

The effect of the bill would be to prevent future physical examination in the case of veterans who have had such a disability rating for 20 or more years. Under existing laws, veterans who have a total or permanent total disability rating based on conditions other than disabilities resulting from blindness or anatomical losses were apprehensive that an examination ordered at some future date may not adequately represent their true condition of health and that, as a result of such examination, a reduction in rating may cause them to lose the benefits provided for such total or permanent total disability. In the course of 20 or more years, veterans become accustomed to rely upon such benefits for the support of themselves and their dependents and are in constant uncertainty as to their future security. The enactment of the bill will eliminate such fear of loss and give veterans having total or permanent total disabilities which have persisted for 20 or more years assurance that they will not be

deprived of benefits in their old age when continuance of support is most needed (U.S. Senate Report 1027, February 24, 1954, p. 1).

Increase in All Monthly Disability Compensation, 1954 (Public Law No. 83-695).

Later in 1954, Congress reverted to an across the board increase in almost all monthly disability compensation, increasing the rates by 5 percent, adjusted to the nearest dollar amount (Pub. L. No. 83-695). While the increase applied across the board to the compensation schedule, the Senate Report points out some specific departures. For example, while compensation for bilateral anatomical loss (e.g., two eyes, two feet, two hands, or any combination thereof) increased by 5 percent, compensation for unilateral anatomical loss (e.g., a single hand, eye, foot, or loss of use of a “creative organ”) remained unchanged (U.S. Senate Report 1986, July 27, 1954). The same law also increased the statutory maximum monthly payment from \$400 to \$420.

Armed Forces Reserve Act Amendments, 1956 (Public Law No. 83-696)

In July 1956, Congress amended the Armed Forces Reserve Act of 1952, providing a lump sum readjustment payment for reservists who were involuntarily released from activity duty due to disability (Pub. L. No. 83-696). This law also provided the reservist with the right to elect *either* readjustment pay or disability compensation but not both.

United States Code Title 10 (1956)

On August 10, 1956, Congress passed a number of amendments to 10 U.S.C. Several sections in Subtitle A, Part II, Chapters 59 and 71 applied to veterans. Looking first at Section 1174 of Chapter 59, among other things this section provides:

Coordination of retired, separation, severance, readjustment, retainer and disability pay, such that the amount of disability pay must be deducted from other compensation...

Again this bars disabled veterans from concurrent receipt for the same period of service. The law goes on to clarify:

Notwithstanding the former, however, this does not prohibit concurrent receipt of disability and non-disability compensation that arises out of different periods of service...

In other words, coordination is per period of service and not netted for all periods of service, assuming the servicemember served multiple distinct times.

Looking next at 10 U.S.C. 1175, Subtitle A, Part II, Chap. 59, among other things this section provides:

Voluntary separation incentive payments are deducted in an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding, no deduction may be made from voluntary separation

incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

This applies the same logic and language to voluntary separation incentive payments.

10 U.S.C. 1414, Subtitle A, Part II, Chap. 71, provides:

Concurrent receipt of retirement and disability compensation are permitted; however, payments must be offset such that total pay does not exceed either what retirement alone or disability compensation alone would be.

Servicemen's and Veterans Survivor Benefits Act of 1956 (Public Law No. 84-881)

In 1956, the Servicemen's and Veterans Survivor Benefits Act established a new program of dependency and indemnity compensation for service-connected death occurring on or after January 1, 1957. Family or spouses receiving VA disability compensation, pension, or Federal Employees' Compensation Act (FECA) benefits by reason of death before January 1, 1957, had the right to elect which payments to receive.

The Veterans' Benefits Act of 1957 (Public Law No. 85-56)

The Veterans' Benefits Act of 1957 (Pub. L. No. 85-56) became law on January 1, 1958. This was comprehensive legislation that consolidated various veterans' benefit laws. Although the main purpose of the Veterans' Benefits Act was organizational, Congress intended several substantive changes to the veterans' benefits laws. However, the legislation contained several clauses preserving benefit eligibility for servicemembers otherwise affected by the changes. A May 16, 1957, letter to the Chairman of the Senate Committee on Finance from the Administrator of Veterans Affairs concerning the bill (H.R.53, 85th Cong., 1st Sess.) which ultimately became the Veterans' Benefits Act of 1957, among other things noted that, "in each of the 'benefit' titles, provision is made for extending entitlement to all classes of persons who prior to the enactment of the bill had an eligibility status for the benefit, notwithstanding specific service requirements of the bill." (VA memorandum, April 1, 1998)

Among other provisions, the Veterans' Benefits Act of 1957 provided for:

- ▶ Section 315: Wartime disability and statutory rates
- ▶ Section 316: Wartime rates and additional compensation for dependents
- ▶ Section 322: Wartime death compensation
- ▶ Section 335: Peacetime disability compensation
- ▶ Section 336: Peacetime disability compensation for dependents

- ▶ Section 337: Wartime rates payable for disability in peacetime service in certain cases
- ▶ Section 342: Peacetime death compensation
- ▶ Section 343: Wartime rates payable for death in peacetime service in certain cases
- ▶ Section 351: Compensation for people disabled or exacerbated as the result of medical treatment for a service-connected disability

Other specific provisions of this law included:

The decisions of the Administrator on any question of law or fact under any law administered by the Veterans Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise.

Section 3101 provides, in part, that payments made to, or on account of, a beneficiary under any law administered by the Veterans Administration shall be exempt from taxation.

Section 1005 stipulates reduction of retirement pay in an amount equal to the disability compensation award.

For the first time, the term “accrued benefits” was used to denote benefits that were due and unpaid at the time of the veteran’s death.

Additional Aid and Attendance, 1958 (Public Law No. 85-782)

In 1949, a provision was added to the United States Code, providing that additional compensation for aid and attendance would be discontinued in most cases where a veteran was being furnished nursing or attendant’s service in connection with hospital treatment or institutional or domiciliary care furnished by the Veterans Administration. In 1958, in what looks like a mirror image provision to the 1949 law, Public Law No. 85-782 explicitly provided for payment of an aid and attendance allowance to certain severely disabled veterans during periods in which they were not hospitalized at Government expense.

Veterans Benefits, Title 38, 1958 (Public Law No. 85-857)

A major development in legislation during this era was the further consolidation, update and amendment of laws relating to veterans as part of 38 U.S.C. (Pub. L. No. 85-857). Three chapters of Title 38 are of particular interest here:

- ▶ 38 U.S.C. Chapter 11 - Compensation for Service-Connected Disability or Death
- ▶ 38 U.S.C. Chapter 53 - Special Provisions Relating to Benefits

► 38 U.S.C. Chapter 61 - Penal and Forfeiture Provisions

Amendment to Title 38, 1959 (Public Law No. 86-222)

In 1959, the following was added to Title 38 (Pub. L. No. 86-222):

...the case of any forfeiture under this section there shall be no authority after September 1, 1959 (1) to make an apportionment award pursuant to subsection (b) or (2) to make an award to any person of gratuitous benefits based on any period of military, naval, or air service commencing before the date of commission of the offense.

This amendment provided that forfeiture of benefits due to an offense cannot be applied to compensation benefits when the entitlement was determined before the offense.

Prohibit the Severance of Service-Connection in Effect for Ten or More Years, 1960 (Public Law No. 86-501)

In 1960, through Public Law 86-501, Congress passed legislation limiting VA's authority to correct erroneous determinations of service-connection. This law moved "to prohibit the severance of service-connection [which] has been in effect for ten or more years except under certain limited conditions." A determination of service-connection in force for ten or more years generally could not be severed, even if it was "clearly and unmistakably erroneous." It should be noted that this change protected only determinations of service-connection and not the disability evaluation itself. The new law did not limit VA's authority to correct erroneous VA determinations per se with respect to any issue of fact or law other than the determination of service-connection (i.e., whether disability or death resulted from a disability incurred or aggravated in service).

According to the Senate Report:

It should be pointed out that this bill merely freezes the determination of service-connection, that is to say the finding by the Veterans Administration that the disability was incurred or aggravated by military service. It does not freeze the percentage rating which represents the degree of the disability and governs the amount of compensation payable therefore. Thus a veteran with a disability rating of 10 percent may later be medically determined to be 80 percent disabled and have his rating and compensation increased accordingly. Likewise, a rating and amount of compensation payable could be reduced as the degree of disability declined (U.S. Senate Report 1394, May 19, 1960, p. 1).

In a May 19, 1960 letter to the chair of the Senate Finance Committee, Bradford Morse, the Deputy Administrator objected to this provision, stating:

Under existing procedure, service-connection once granted is not severed unless it is shown to have resulted from clear and unmistakable error. The bill would require the perpetuation of such error if it were not discovered

until the lapse of 10 or more years after service-connection of the disability. The mere fact that a veteran has enjoyed benefits for 10 or more years to which he had no entitlement does not appear to be a valid reason for imposing on the Government the burden of continuing such benefits throughout his lifetime and for granting benefits to his surviving dependents (U.S. Senate Report 1394, May 19, 1960, p. 1).

Nonetheless, the bill was passed. The Senate Report makes clear that ratings may be changed but service-connection not severed. In the case of an existing service-connection with a rating below 10%, or if a rating of 10% were reduced to below 10%, there would be no compensation provided. However, the disability would remain service-connected. Should the disability rise to 10% or more, then the original claim of service-connection would not need to be resubmitted.

Extension of Benefits for Some Non-Service Connected Disabilities, 1960 (Public Law No. 86-663)

Also in 1960, Public Law No. 86-663 further amended Title 38. The amendment provides additional disability compensation of \$265 per month for veterans with total service-connected disability if 1) the veteran has an additional disability ratable at 60% or more, or 2) the veteran is permanently housebound.

Vietnam War through the First Gulf War (1962 – 1992)

The period from 1962 through 1992 is marked by expanding disability compensation and presumption of service-connection. Some changes were in response to the unique circumstances of World War II, the Korean War, testing of nuclear devices during the 1940s and 1950s as well as providing for veterans returning from the Vietnam War. Most legislation during the 1970s and 1980s tended to deal with complications of earlier military actions and activities the full consequences of which were not realized until many years later.

Bilateral Blindness and Kidney Loss, 1962 (Public Law No. 87-610)

In 1962, Congress extended disability compensation to those with bilateral blindness or kidney loss where the loss of one eye or kidney is service-connected and the loss of the other is not (Pub. L. No. 87-610). For purposes of disability benefits compensation, this change treats the loss of the second organ as though it were service-connected. Prior to the enactment of this legislation, a veteran who had incurred blindness in one eye while in the service and then, following separation from service, suffered non-service connected blindness in the other eye or who had lost the use of one kidney due while in the service and then subsequently developed non-service connected dysfunction of the other kidney was entitled to compensation only for unilateral disability. This extended and built upon Congress' growing acceptance of the inseparability of certain disabilities, regardless of when they might have occurred.

Extension of Presumption of Service-Connection for Multiple Sclerosis, 1962 (Public Law No. 87-645)

Another change in 1962, (Pub. L. No. 87-645), among other things, extended the presumption of service-connection from 3 to 7 years for multiple sclerosis. Additionally, this law increased monthly rates of compensation. At this point in the evolution of the law, it is noteworthy that Congress was once again specifying compensation rates piecemeal rather than either indexing or applying a given percentage across the board. Applying a straight cost-of-living increase to compensation rates does not re-emerge until 1983. In explaining the reasoning underlying the increases, the Senate Report says:

This bill seeks to provide increases in the rates of service-connected disability compensation to reflect the changes which have occurred in the cost of living since the last compensation increase in 1957 as well as to more adequately compensate the seriously disabled veterans (U.S. Senate Report 1806, August 3, 1962, p. 1).

In explaining the rationale for the change from 3 to 7 years for the presumptive period for multiple sclerosis, the Senate Report concludes:

Section 3 of the bill increases the presumptive period for multiple sclerosis from 3 to 7 years. The committee took this action based on information obtained from the National Institute of Health that it was the opinion of its scientific staff that 7 years was not an unreasonable period to recognize as the interval between onset and diagnosis in multiple sclerosis and the committee would be justified in enacting legislation providing for a 7-year presumptive period for this disease (U.S. Senate Report 1806, August 3, 1962, p. 5).

Notwithstanding Congress' statement on their rationale, J. S. Gleason, Jr., Administrator for VA submitted a July 19, 1962 report stating VA's opposition to increasing the presumptive period from 3 to 7 years. The report stated:

The mentioned report to your committee on H.R.879 pointed out that from a medical viewpoint the present provisions of the law and regulations on this subject are considered quite liberal, and ample provision is made for those diseases that have a long incubation period. In addition, there are administrative provisions whereby chronic diseases generally incurred within a reasonable time after the present presumptive period following military service can be and are handled on an individual basis where there is a likelihood that the condition or disease had its inception during military service. Accordingly, the Veterans Administration opposed Section 3 of H.R.879, and for the same reasons does not believe that there is justification for the enactment of Section 3 of H.R.10743 (U.S. Senate Report 1806, August 3, 1962, p. 7).

The Budget Bureau¹⁰ also opposed the increase in the presumptive period as well as the degree of increases in compensation for those rated as 10%, 20%, or 30% disabled. In a July 6, 1962 letter to the chair of the Senate Finance Committee, the Budget Bureau's Assistant Director for Legislative Reference termed the increases "excessive," and called for deletion of the multiple sclerosis presumption increase from the bill. While cost considerations were the obvious reason for their objection, unlike VA, the Budget Bureau did not provide an answer to the Senate committee's stated medical/scientific rationale (U.S. Senate Report 1806, August 3, 1962, p. 8).

Amendments to Title 38, 1962 (Public Law No. 87-825)

Again in 1962, (Pub. L. No. 87-825), as part of the evolution of Title 38, Congress passed an amendment that attempted to correct and clarify a number of provisions. Among other provisions, this amendment to the law inserted or changed provisions relating to:

- ▶ The marriage, divorce, or death of a dependent of a payee
- ▶ The change in income or corpus of an estate
- ▶ The discontinuance of school attendance
- ▶ The termination of a temporary increase in compensation for hospitalization or treatment
- ▶ An erroneous award based on an act or omission of the beneficiary or with his knowledge and an erroneous award based solely on administrative error or error in judgment
- ▶ Changing the effective date [of compensation benefits] by reason of death or by reason of marriage or remarriage, from the date of death, or the day before the date of marriage or remarriage, respectively, to the last day of the month before such death, marriage, or remarriage occurs
- ▶ [Eliminated] provisions relating to attaining age 18 or 21, as applicable, and to fraud on the part of the beneficiary or with his knowledge
- ▶ [Repealed] a subsection that related to the effective date of a reduction or discontinuance in rates of compensation, dependency, and indemnity compensation or a pension award

Among other things, this serves to demonstrate that the law can never be called "finished" and is continuously changed based on changing times, needs, and the mood of Congress and its constituents.

¹⁰ The Budget Bureau later evolved into the Office of Management and Budget (OMB).

Veterans' Readjustment Act of 1966 (Public Law No. 89-358)

In 1966, Congress passed and the President approved Public Law No. 89-358, the Veterans' Readjustment Benefits Act of 1966, better known as the "Cold War GI Bill." Its most commonly recognized contribution to veterans' benefits at large was in the area of post-military education. However, its key contribution to the evolution of veterans' disability benefits compensation was to effectively extend coverage to all who served after April 21, 1898 (special provisions already in effect covered those who served before that date). The new provision stated:

Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898.

POW Presumptions, 1970 (Public Law No. 91-376)

In 1970, Congress passed Public Law No. 91-376, which advanced veterans' disability compensation rights in several ways. First, it established a presumption of service connection for seven categories of diseases and conditions, including beriberi heart disease, which develop to a 10% degree of disability at any time after active service in the case of a veteran held as a prisoner of war in World War II, the Korean Conflict, or the Vietnam War, who suffered from dietary deficiencies, forced labor, or inhumane treatment in violation of the Geneva Conventions. According to the Veterans Benefits Administration Program Guide 21-2:

The Medical Follow-up Agency of the Institute of Medicine, National Academy of Sciences, issued a study in 1992 which reported the results of a medical examination survey of former World War II and Korean Conflict POWs and comparable control groups. That study found what it termed a noteworthy association between ischemic heart disease and earlier reporting of localized edema of feet, ankles and legs—presumably due to beriberi heart disease (wet beriberi)—while in captivity. After reviewing this study the Secretary has determined, in keeping with the intent of Congress to provide a presumption of service-connection for former prisoners of war, that the term beriberi heart disease found in 38 U.S.C. 1112(b)(2) includes ischemic heart disease if the former prisoner of war suffered localized edema during captivity. We have amended 38 C.F.R. Sect. 3.309(c) accordingly (Veterans Benefits Administration Program Guide 21-2, July 12, 1994).

Waiver of Debt for Disabled Veterans, 1972 (Public Law No. 92-328)

On June 30, 1972, Congress passed Public Law No. 92-328, which consolidated authority for waiver of VA benefits and home loan program debts into what was then 38 U.S.C. 3102 (which later became Section 5302 as the result of Public Laws No. 102-40 and No. 102-83). VA benefit debts include the overpayment or erroneous payment of pension, compensation (including for death and disability), Dependency and Indemnity Compensation (DIC), burial allowance, plot allowance, subsistence allowance, education (including debts from work-

study and education loan defaults), insurance benefits, clothing allowance, automobile or other conveyance allowance, and adaptive equipment allowance. The legislation also established a single standard of *equity and good conscience* to determine whether the collection of a debt should be waived:

There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Secretary whenever the Secretary determines that recovery would be against equity and good conscience... (38 U.S.C. 5302 (a) Chap. 53)

The social and legal theory underlying granting waivers consider that the veteran might not become aware of the overpayment until months or years later and, by then, might not be financially able to repay, even over time. Thus, overpaying and then collecting the overpayment, paradoxically, often left veterans worse off than if they had not received the overpayment. Congress agreed that if overpayment was through no fault of the veteran, then a liberal waiver policy would be appropriate.

As later amended, the law precluded waiver consideration if any indication of fraud, misrepresentation, material fault, or lack of good faith on the part of the recipient was found in connection with the creation of the debt. This language was later changed by Public Law No. 101-237 (December 18, 1989), which removed the elements of *material fault and lack of good faith* from the law and replaced them with the element of *bad faith*.

Veterans' Disability Compensation and Survivors' Benefits Act of 1978 (Public Law No. 95-479)

In 1978, Congress passed the Veterans' Disability Compensation and Survivors' Benefits Act of 1978 (Pub. L. No. 95-479). With respect to veterans' disability benefits compensation, this law:¹¹

- ▶ Provided that if a veteran entitled to the regular aid-and-attendance allowance is in need of a higher level of care and without such care would require residential institutional care, such veterans shall receive an increased allowance.
- ▶ Increased the monthly rate of compensation payable to a veteran whose service-connected disability is rated at less than 100% and who has suffered the service-connected loss of one extremity and a non-service connected loss of the paired extremity, provided each loss is ratable at 40% or more.
- ▶ Authorized dependency allowances to be paid for veterans rated 30% and above.
- ▶ Increased the clothing allowance for certain disabled veterans.
- ▶ Increased the rates of DIC (dependency and indemnity compensation) for the surviving spouses and dependent children of disabled veterans.

¹¹ Law summary from Thomas: <http://thomas.loc.gov/cgi-bin/bdquery/z?d095:H.R.11886:@@LJ|TOM:/bss/d095query.html>

- ▶ Provided for the payment of benefits to the surviving spouses and children of totally disabled veterans if at the time of the veteran's death the rating had been in effect for ten years or five years from the date of discharge and the marriage was in effect two or more years immediately preceding the veteran's death.
- ▶ Exempted persons eligible for compensation under laws administered by the Veterans Administration (VA) but for the receipt of retirement pay for certain government service from taxation in an amount equal to the amount of such VA compensation.
- ▶ Increased from \$800 to \$1,100 the allowance payable for the funeral and burial of veterans whose deaths are service-connected.
- ▶ Increased the automobile assistance allowance for certain disabled veterans.
- ▶ Required the Administrator, in consultation with the Secretary of Defense, to study disability compensation awarded to, and health-care needs of, veterans who are former prisoners of war and to report to the President and Congress on the results of such study by February 1, 1980.

Veterans' Disability Compensation and Housing Benefits Amendments of 1980 (Public Law No. 96-385)

In 1980, Congress passed a law to amend 38 U.S.C. (Pub. L. No. 96-385) to provide a cost-of-living increase in the rates of disability compensation for disabled veterans and in the rates of dependency and indemnity compensation for survivors of disabled veterans as well as for other purposes. It is noteworthy that, even though indexing was first enacted in 1933, as late as 1980 (and beyond), Congress still passes often-detailed changes in the law every few years to manage the rates of increase as opposed to setting up an automatic mechanism.

Among other things, this law specifically:

- ▶ Increased the rates of veterans' compensation for: (1) wartime disability compensation, (2) additional compensation for dependents, and (3) clothing allowances paid to certain disabled veterans. Provided such increases at 14.3 percent for veterans rated 50% or more disabled and 13 percent for veterans rated 10% through 40% disabled.
- ▶ Provided specially adapted housing assistance to severely disabled veterans, due to blindness or loss, or loss of use, of both upper extremities (including both hands), limited to a maximum of \$5,000. Directs that such assistance be granted to any veteran not more than once.
- ▶ Limited the amount of compensation for a service-connected disability for any veteran imprisoned in a Federal, State, or local penal institution (except as a part of a work-release program) as a result of conviction of a felony. Authorized the Administrator of Veterans' Affairs to apportion and pay to such veteran's spouse,

children, or dependent parents the compensation such veteran would have received but for such veteran's incarceration.

There were several noteworthy features of this amendment to Title 38. First, as often is Congress' practice over the years, the amendment provided differential compensation increases for veterans whose disability ratings are above 50%. This is noteworthy because the rates at each 10% rating level are higher than the preceding rating level to begin with. Such changes in the law serve to amplify and increase existing differences in the tiered rate structure.

Second, the law stipulated that assistance in obtaining or adapting housing to meet a disabled veteran's needs can be granted only once. This is noteworthy because it is not the first time such an amendment had been needed. For example, when assistance in obtaining specially adapted automobiles was first introduced in 1948, a "one-per-disabled veteran" amendment was needed two years later to prevent what Congress saw as abuses of the benefit.

The third item of note in this legislation concerns disability compensation to felons. The theory here, as is the theory behind reduced disability compensation to veterans who are in long-term VA health care facilities, is not to further penalize the disabled veteran but rather to prevent effective dual compensation for living expenses. Since imprisonment provides room and board, and since disability compensation is intended to assist with living expenses, Congress deemed it inappropriate to additionally provide compensation that would otherwise be used for such. Without this provision, it could be argued, the imprisoned disabled veteran could actually amass a considerable savings not available to the non-imprisoned disabled veteran whose compensation actually *is* used to purchase room and board.

Former Prisoner of War Act of 1981 (Public Law No. 97-37)

In 1981, Congress passed the Former Prisoner of War Act (Pub. L. No. 97-37). Among other things, with respect to the Disability Compensation Program, this law:

- ▶ Directed the Administrator of Veterans' Affairs to establish an Advisory Committee on Former Prisoners of War to consult concerning the administration of benefits and activities related to veterans held as prisoners of war (POWs).
 - Required that such committee include former POWs, disabled veterans, and individuals who are recognized authorities in certain fields of medicine.
 - Directed the Committee to submit to the Administrator for transmittal to Congress a biennial report on such programs and activities.
- ▶ Reduced from six months to 30 days the minimum period of imprisonment necessary to trigger the presumption that specified diseases and disabilities, including psychosis manifest to ten percent, are confinement-related.
- ▶ Entitled former POWs to hospital, nursing home, and domiciliary care.

- ▶ Entitled such veterans to priority in the furnishing of medical services.
- ▶ Directed the Administrator to conduct outreach programs to inform former POWs of changes in benefits.
- ▶ Required VA's Administrator, after consulting with the Advisory Committee, to conduct and report to Congress on the disposition of claims and on a further study of the health of former POWs.

This Act reflected Congress' growing concern with POW issues. At the same time, this occurred in the larger context not only of recently released POWs but of MIAs as well. Congress also showed concern about how to care for them when and if they were found and returned to the U.S.

Veterans' Dioxin and Radiation Exposure Compensation Standards Act, 1984 (Public Law No. 98-542)

In 1984, Congress passed the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, amending 38 U.S.C. (Pub. L. No. 98-542, 98 Stat. 2725). This bill provided a presumption of service-connection for the occurrence of certain diseases related to exposure to herbicides or other environmental hazards or conditions in veterans who served in Southeast Asia during the Vietnam era. Along with other provisions, this law, which notably had 206 co-sponsors, provided the following:

- ▶ Directed the Administrator of Veterans Affairs to establish guidelines and criteria for resolving claims for benefits resulting from a service-connected death or disability based on a veteran's exposure during service on active duty to (1) herbicides containing dioxin in Vietnam during the Vietnam era or (2) ionizing radiation from the detonation of a nuclear device either in connection with testing or the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946.
- ▶ Required the Administrator to include guidelines for using findings of epidemiological and clinical studies examining the possible relationship between such exposure and the manifestation of adverse health effects to resolve claims for compensation.
- ▶ Directed the Administrator to determine which of the following diseases would be considered service-connected when individual cases are being adjudicated (1) soft tissue sarcoma, porphyria cutanea tarda, or chloracne if developed after a veteran's departure from Vietnam and (2) leukemia, malignancies of the thyroid, female breast, lung, bone, liver, skin, and polycythemia vera.
- ▶ Set forth procedures for the development of such regulations, including consultations with the Advisory Committee on Environmental Hazards and the Scientific Council.

- ▶ Established the Veterans' Advisory Committee on Environmental Hazards to make findings, evaluations, and recommendations concerning scientific evidence relating to possible adverse health hazards from dioxin or ionizing radiation exposure.
- ▶ Directed the Secretary of Defense, in cooperation with the Director of the Defense Nuclear Agency, to prescribe guidelines for specifying the minimum standards governing the preparation of radiation dose estimates for use in VA disability claims. Directed the Secretary of Health and Human Services to review the current state of the art in determining previous radiation exposure and to report to the Administrator and the Veterans' Affairs Committees of Congress by July 1, 1985, on such review.
- ▶ Required the Administrator to provide for the preparation of an independent radiation dose estimate when conflicting figures are presented by a claimant and the VA.
- ▶ Amended the Veterans' Health Programs Extension and Improvement Act of 1979 to direct the Administrator to evaluate the need for amending existing regulations under this Act upon the annual reporting of the results of the epidemiological study on the effects of exposure to Agent Orange required by such Act.
- ▶ Amended the Veterans' Health Care Amendments of 1983 to evaluate the need for amending existing regulations under this Act upon the annual reporting of the results of the epidemiological study on the effects of exposure to ionizing radiation required by such Act.
- ▶ Directed the Administrator to pay disability compensation or survivors benefits to a veteran or the survivors of a veteran who served on active duty in Southeast Asia during the Vietnam era and suffers or suffered from porphyria cutanea tarda or chloracne manifest within one year of service. Prohibited the payment of benefits where there is affirmative evidence that such disease was incurred from another source. Based such rates of compensation on those paid for wartime disability or service-connected death. Deemed such compensation service-connected for all purposes. Authorized the payment of such benefits only during fiscal years 1985 and 1986.

The passage of this amendment demonstrates the increasing complexity of providing for the care and treatment of disabled veteran in a technologically more complex wartime environment and foreshadowed the amplification of such concerns that would occur ten years later, and beyond, following the first Persian Gulf War. Hearings were characterized by presentations representing, among others, scientific viewpoints and findings (Senate Hearing 98-480, April 1983).¹²

¹² At U.S. Senate Hearing 98-480, four papers were inserted into the record, reflecting the degree to which the Committee's decision was influenced by science:

With 206 co-sponsors, this bill had strong support among Congress' constituents and veterans groups. Part of the reason for this strong sponsorship was the perception that this legislation would face strong opposition or a veto threat. Ultimately, language that "prohibits the payment of benefits where there is affirmative evidence that such disease was incurred from another source" had the effect of reducing opposition and allowed passage.

Radiation Exposed Veterans' Compensation Act of 1988 (Public Law No. 100-321)

In 1988, Congress passed the Radiation Exposed Veterans' Compensation Act (Pub. L. No. 100-321, 102 Stat. 485). This law:

- ▶ Amended Federal veterans' benefits provisions to establish (for purposes of eligibility for such benefits) a presumption of service-connection for the following diseases suffered by any radiation-exposed veteran:
 - (1) leukemia (other than chronic lymphocytic leukemia);
 - (2) thyroid cancer;
 - (3) breast cancer;
 - (4) cancer of the pharynx;
 - (5) cancer of the esophagus;
 - (6) cancer of the stomach;
 - (7) cancer of the small intestine;
 - (8) cancer of the pancreas;
 - (9) multiple myeloma;
 - (10) lymphomas (except Hodgkin's disease);
 - (11) cancer of the bile ducts;
 - (12) cancer of the gall bladder; and
 - (13) primary liver cancer (except if cirrhosis or hepatitis B is indicated).

MacMahon, Brian (et al.), "Panel on Feasibility and Desirability of Performing Epidemiological Studies on U.S. Veterans of Hiroshima and Nagasaki", prepared for National Research Council (p. 382-392).

Kato, Hiroo (et al.), "Studies of the Mortality of A-Bomb Survivors" Radiation Research, 1982, with graphs, tables, and bibliography (p. 407-428).

Schull, William J. (et al.), "Genetic Effects of the Atomic Bombs: A Reappraisal" Science, September 1981, with tables and bibliography (p. 429-436).

National Research Council, "Multiple Myeloma Among Hiroshima/Nagasaki Veterans" prepared for DNA, June 1983 (p. 437-449).

- ▶ Required all of such diseases, in order to be considered service-connected, to have become manifest to a degree of ten percent or more within **40 years** [emphasis added] after the last date on which the veteran participated in a radiation-risk activity, except that such period shall be the 30-year period beginning on such date in the case of leukemia.
- ▶ Defined radiation-exposed veteran as a veteran who participated in a radiation-risk activity while serving on active duty. Defined radiation-risk activity as (1) onsite participation in the atmospheric detonation of a nuclear device; (2) the U.S. occupation of Hiroshima or Nagasaki, Japan, between August 6, 1945, and July 1, 1946; or (3) internment as a prisoner of war in Japan during World War II which resulted in the opportunity for radiation exposure.
- ▶ Amended the Veterans' Dioxin and Radiation Exposure Compensation Standards Act to require the Veterans' Advisory Committee on Environmental Hazards to submit to the Senate and House Veterans' Affairs Committees periodic reports regarding results of scientific studies relating to possible adverse health effects of exposure to ionizing radiation.

It is worth noting that, early in the development in the law concerning presumption of connection with military service, Congress wrestled with whether a presumption of a year or two might be excessive. With increasing medical understanding of how slowly some diseases develop and the use of large-scale population incidence studies to help establish the statistical association between disease and specific military service periods (and attendant exposure to hazardous materials or conditions), presumption periods continue to increase. In this case, the presumption period was extended to include onset of symptoms within 40 years so as to include veterans diagnosed as late as the mid-1980s.

This legislation occurred against a backdrop of increasing revelations of the extent to which veterans had been used as guinea pigs (Moore, 1995) and outcry by stakeholders that the government take responsibility as well as make amends. While the list of different kinds of cancer might seem long, there are those who say the list is not long enough. For example, the list did not include colon cancer while it does include cancer of the stomach and small intestine. As recently as 1989, veterans of nuclear tests in the 1950s were having disability claims of service-connection turned down by VA (Moore, 1995).

The law also was not unopposed. Citing his objection, Senator Robert Dole said:

I would be remiss, though, in not pointing out why I, as well as 27 of my Republican colleagues, voted against Senate passage of this bill. This vote certainly should not be interpreted as any lack of concern or compassion, but rather a vote requested on by the administration, who seeks, as we do, to legislate responsibly on this issue.

Under S. 1811, 13 diseases would be covered by presumptions, many of which have been proven to be more related to an individual's lifestyle than radiation. In case after case, the VA has been steadfast in their opposition to a presumption of causation that does not take into account the scientific

evidence regarding the level of radiation exposure that would be required to eventually produce associated cancers. This position does not preclude, though, the timely presumptions from diseases that are more directly associated with radiation exposure (Congressional Record, May 25, 1988, pp. S6543-4)

Americans with Disabilities Act of 1990 (Public Law No. 101-336)

In 1990, in an Act that some said was similar in effect and scope of the Civil Rights Act of 1964, Congress passed the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336). While this law did not explicitly mention veterans and does not specifically deal with the Disability Compensation Program, it included disabled veterans among the then estimated 43 million Americans with disabilities. The explicitly stated purposes of this law were to:

- ▶ Provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- ▶ Provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- ▶ Ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
- ▶ Invoke the sweep of congressional authority, including its power to enforce the fourteenth amendment¹³ and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Omnibus Budget Reconciliation Act of 1990¹⁴ (Public Law No. 101-508)

A number of different changes to laws surrounding the Disability Compensation Program were made in Title VIII of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508). These included:¹⁵

- ▶ Subtitle A
 - Compensation - Provides that compensation payments to a veteran who has no spouse, child, or dependent parent, who is rated by the Secretary of Veterans Affairs as incompetent, and whose estate is valued in excess of \$25,000, shall cease until the value of such estate is reduced to less than \$10,000.

¹³ Among other provisions, the fourteenth amendment is often referred to as the "equal protection" amendment, which has been interpreted by the U.S. Supreme Court as giving the federal government broad authority to ensure various rights in each of the states of the U.S.

¹⁴ This law is listed as H.R.5835, even though it was ultimately published as Public Law No. 101-508.

¹⁵ Congressional Research Service summary, <http://thomas.loc.gov/cgi-bin/bdquery/z?d101:H.R.05835:@@D&summ2=m&>

- Provides for lump-sum reimbursement of such withheld payments if an incompetent veteran is later rated as competent for more than 90 days. Terminates such provision as of the end of fiscal year 1992.
 - Provides a 5.4 percent cost-of-living-adjustment ceiling for fiscal year 1991 on veterans' disability compensation rates.
- ▶ Subtitle B
- Provides for medical care cost recovery by VA for non-service connected medical services provided in a Department facility to a veteran who has a service-connected disability and is entitled to health care under a private health plan.
 - Directs the Secretary to require a veteran with a service-connected disability rated at 50% or less to pay the United States two dollars for each 30-day supply of medication furnished to such patient on an outpatient basis for the treatment of non-service connected disability or condition.
- ▶ Subtitle C
- Limits the basic entitlement of eligibility for the veterans' rehabilitation programs to veterans having a service-connected disability rated at 20% or more.
- ▶ Subtitle F
- Amends the Internal Revenue Code to authorize the use of Internal Revenue Service tax return data for income verification purposes in the determination of a veteran's eligibility for needs-based pension benefits or the payment of certain compensation benefits.
 - Directs the Secretary to notify each applicant for compensation or a needs-based pension benefits program that income information furnished to the Secretary by such applicant may be compared with information obtained by the Secretary from the Secretary of Health and Human Services (from Social Security records) or from the Secretary of the Treasury (from income tax return information).
 - Terminated the authority of the Secretary of Veterans Affairs to collect such information as of the end of fiscal year 1992.
 - Directed the Comptroller General to conduct a study of the effectiveness of such information and notice requirements and to report the results to specified congressional committees no later than January 1, 1992.

- Prohibits a finding that an injury or disease occurred in the line of duty (and is therefore compensable under veterans' benefits provisions) if such injury or disease is the result of the person's abuse of alcohol or drugs.
- Directs the Secretary to periodically compare Department information regarding persons for whom compensation or pension benefits are currently being paid with records from the Department of Health and Human Services in order to ensure that compensation and pension benefits are terminated for deceased individuals and that overpayments of any compensation or pension due to lack of notice of death are reimbursed to the Department in a timely manner.

Noteworthy in this legislation is Subtitle F, which among other things, essentially directed VA to conduct an information experiment to determine whether tax and other records of veteran claimants could be used to reduce or eliminate payments under the Disability Compensation Program. The authority to do this began in 1990 and ended in 1992.

Agent Orange Act of 1991 (Public Law No. 102-4)

In passing the Agent Orange Act of 1991 (Pub. L. No. 102-4), Congress created a presumption of service-connection for veterans exposed to Agent Orange. Along with other provisions, this law:

- ▶ Presumes the following diseases to be service-connected and resulting from exposure to dioxins and other herbicide agents during service in Vietnam during the Vietnam era unless there is affirmative evidence to the contrary (1) non-Hodgkins lymphoma, each soft-tissue sarcoma (with certain exceptions), and chloracne or other consistent acneform diseases becoming manifest to a degree of disability of 10% or more and (2) those additional diseases that the Secretary determines warrant such a presumption by reason of having a positive association with a herbicide agent if they become manifest within the appropriate period.
- ▶ Directed the Secretary of Veterans Affairs to prescribe regulations providing that a presumption of service-connection is warranted whenever it is determined by the Secretary that a positive association exists between the exposure of humans to a herbicide agent and the occurrence of a disease in humans. Required the Secretary to take into account reports received from the National Academy of Sciences (NAS) as well as other sound medical and scientific information. Outlined procedures to be followed by the Secretary in weighing evidence and report information and making conclusions for or against the positive association and, therefore, the service-connection presumption. Provided for the issuance of final regulations listing the diseases for which positive associations have been found or removing the presumption for a disease.
- ▶ Directed the Secretary to enter into an agreement with NAS under which NAS shall review and summarize the scientific evidence (and its strength) concerning

the association between exposure to a herbicide agent during service in Vietnam and each disease suspected to be associated with such exposure. Provided for NAS (1) scientific determinations concerning diseases; (2) recommendations for additional studies to resolve areas of uncertainty relating to herbicide exposure; (3) subsequent reviews; and (4) reports, at least biennially, to the Secretary and the Senate and House Veterans' Affairs Committees. Terminates the agreement ten years after the fiscal year of the first report from NAS.

- ▶ Directed the Secretary to enter into an agreement with another body if the Secretary cannot reach an agreement with NAS within two months after enactment of this Act.
- ▶ Amended the Veterans' Benefits Improvement Act of 1988 to direct the Secretary to annually furnish updated information on health risks associated with exposure to herbicide agents during service in Vietnam during the Vietnam era.
- ▶ Extended through 1993 the eligibility for hospital, nursing home, or domiciliary care and medical treatment of individuals who served in Vietnam and who have been determined to have been exposed to dioxin or a toxic substance in a herbicide as the result of such service and of veterans exposed to ionizing radiation while serving between September 11, 1945 and July 1, 1946.
- ▶ Directed the Secretary to compile and analyze, on a continuing basis, all clinical data obtained by the Department of Veterans Affairs in connection with examinations and treatment furnished to veterans by the Department after November 3, 1981, for exposure to herbicide agents in Vietnam and which is likely to be useful in determining the exposure to such agents and the disabilities suffered. Required an annual report on such compilations and provided funding.
- ▶ Directed the Secretary, for facilitating research on the effects of exposure to herbicides used in Vietnam, to establish and maintain a system for the collection and storage of voluntarily contributed blood and tissue samples of veterans who served there. Provided for (1) specimen security; (2) authorized use; (3) limitations on acceptance of samples; and (4) authority based on specific funding.
- ▶ Directed the Secretary to establish a scientific research feasibility studies program for conducting research on health hazards resulting from (1) exposure to dioxin; (2) exposure to other toxic agents in herbicides used in Vietnam; and (3) active military service in Vietnam during the Vietnam era. Outlines program and report requirements. Directs the Secretary to consult with NAS.
- ▶ Directed the Secretary, upon the request of a Vietnam veteran who has applied for Department medical care and filed a claim for or is in receipt of disability compensation, to obtain a blood sample to conduct a test for the presence of a specified dioxin. Provided for notification to the veteran of test results and significance and required such blood sample to be maintained as part of the

collection of blood and tissue samples required under this Act. Made conforming amendments and provides for alternative effective dates.

In the process of passing this law, Congress rejected a number of amendments that would have narrowed its scope to deal, for example, only with herbicides containing dioxin. Instead, the following language prevailed, extending the presumption essentially to *any* herbicide. Under this language, exposure was to:

...an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

The phrase *any other chemical compound in an herbicide agent* makes the presumption very inclusive. Effectively, however, the following language in the law limits the presumption only to herbicide agents used by the U.S. and its allies in Vietnam:

For purposes of this section, the term `herbicide agent' means a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era.

Therefore, presumably, although there have never been any suggestions that they did so, this would not cover any herbicides used *by* North Vietnam or their allies, nor would it cover any exposure elsewhere in Southeast Asia.

Another provision in the law called for VA to conduct outreach programs. While the main effects of Agent Orange were well reported in the media, the far reaching nature of the full effects, some of which were yet to be discovered, were not. Moreover, Congress allowed for the likelihood that a number of Vietnam era veterans might not know they had been exposed or that exposure was affecting their lives.

On January 29, 1991, a week before the bill became law, Rep. Nancy Pelosi summarized the reasons for law:

Vietnam veterans exposed to Agent Orange have been forced to cope with both life-threatening illness and the belief that they had served a government which had not fulfilled its obligation to the Nation's veterans. These veterans demand and deserve the support of Congress.

This bill would provide permanent disability compensation to Vietnam veterans who suffer from cancers currently known to be a result of exposure to Agent Orange. The bill would also direct the National Academy of Sciences to conduct a comprehensive review of the long-term health effects of herbicide exposure so that additional Agent Orange - related diseases can be identified (Congressional Record, January 30, 1991, p. E349).

Department of Veterans Affairs Codification Act, 1991 (Public Law No. 102-83)

The Department of Veterans Affairs was created in March of 1989. In 1991, Congress moved to further revise and codify laws pertaining to the cabinet department. This Act (Pub. L. No. 102-83, 105 Stat. 378):

- ▶ Revised Federal provisions that previously established the Department of Veterans Affairs as an executive department.
- ▶ Changed the name of the Department of Veterans Benefits to the Veterans Benefits Administration.
- ▶ Stated that the Veterans Benefits Administration shall be responsible for the following programs of the Department (1) compensation and pension programs; (2) vocational rehabilitation and educational assistance programs; (3) veterans' home loan programs; (4) veterans' and servicemembers' life insurance programs; and (5) outreach and other veterans' services programs.
- ▶ Redesignated the Veterans Health Services and Research Administration as the Veterans Health Administration.
- ▶ Required the Secretary of Veterans Affairs to establish a commission to recommend individuals to the President whenever a vacancy occurs in the positions of Chief Medical Director and Chief Benefits Director of the Department. Included the Veterans' Canteen Service and the Board of Contract Appeals within the Department.
- ▶ Revised the definition of an "administrative reorganization" within the Department requiring prior congressional notification.
- ▶ Revised and codified provisions relating to the authority and various duties of the Secretary.

This law contained no specific provisions affecting presumptions or disability compensation per se. However, it did direct the new department to submit a biennial report (in odd-numbered years) that includes, among other things, an assessment of the needs of former prisoner of war veterans with respect to compensation, health care, and rehabilitation.

End of Gulf War to the Present (1992 – 2004)

The post-Persian Gulf War era is also the era of the new Department of Veterans Affairs. The Persian Gulf War brought with it a number of difficult-to-diagnose conditions, syndromes, and diseases. The presumption of service-connection of these would become a matter of much scientific, social, and political debate.

Persian Gulf War Veterans' Benefits Act, of 1994 (Public Law No. 103-446)

In 1994, Congress passed the Persian Gulf War Veterans' Benefits Act (Pub. L. No. 103-446, Title 1, 108 Stat. 4645). Among its many provisions, this law:

- ▶ Directed the Secretary of Veterans Affairs to develop and implement a uniform and comprehensive medical evaluation protocol that will ensure appropriate medical assessment, diagnosis, and treatment of Persian Gulf War (War) veterans who are suffering from illnesses the origin of which are unknown but may be attributable to service in the Southwest Asia theater of operations during the War.
- ▶ Required the protocol to include an evaluation of complaints relating to illnesses involving the reproductive system. Required a report to the Senate and House Veterans' Affairs Committees if the protocol has not been developed within 120 days after enactment of this Act.
- ▶ Required the Secretary to ensure that information collected through the protocol is collected and maintained in a manner that permits the effective and efficient cross-reference of such information with information collected and maintained through the comprehensive clinical protocols of the Department of Defense (DOD) for War veterans.

This provision reflected Congressional and public concern at the time that VA was rejecting claims of service-connection between certain conditions and service in the Gulf War. Not only did it direct VA to quickly look into the complaints (i.e., within 120 days) but also to include complaints and illnesses involving the reproductive system, an issue, which was also the subject of debate at the time.

As was the case for radiation and Agent Orange exposure, Congress directed VA to let veterans know what was being done and to let them know of a possible service-connection of certain health issues:

- ▶ Directed the Secretary to implement a comprehensive outreach program to inform War veterans and their families of the medical care and other benefits that may be provided by the Department of Veterans Affairs (VA) and DOD arising from service in the War.
- ▶ Requires such outreach program to include (1) a semiannual newsletter distributed to veterans listed on the Persian Gulf War Veterans Health Registry and (2) the establishment of a toll-free telephone number to provide War veterans' and their families' information on the Registry, health care, and other benefits provided by the VA.

As was the case with exposure to radiation, Agent Orange, and other toxic substances, exposure to unspecified toxins in the Persian Gulf region were widely reported. VA faced the dual problem of veterans whose claims had already been denied and who therefore needed

to be invited back into the process as well as veterans who might not have made a connection between current health issues and their service in the Gulf.

Section 106 of this Act established a presumption of service-connection and *undiagnosed illness* that occurred within an as-yet *unprescribed* time frame:

- ▶ Authorized the Secretary to pay compensation to any War veteran suffering from a chronic disability resulting from an undiagnosed illness that (1) became manifest during service on active duty during the War or (2) became manifest to a degree of 10% or more within a presumptive period (such period to be prescribed by the Secretary) after such service.
- ▶ Required a report and appropriate regulations.

Section 107 directed VA to also investigate the possibility that health issues had spread to Gulf War veterans' family members:

- ▶ Directed the Secretary to conduct a study of the health status of spouses and children of War veterans, including diagnostic testing and appropriate medical examinations.
- ▶ Required the Secretary to develop standard protocols and guidelines for such testing and examinations in order to ensure the uniform development of the medical data.
- ▶ Required study results to be entered into the Registry. Required the Secretary to (1) conduct appropriate outreach activities in connection with the study; (2) make the protocols and guidelines developed under such study available outside the VA; and (3) provide study reports to the Congress.

In performing large-scale population diagnosis of the effects of certain health risk actors, epidemiology has played an increasing role. Often, health officials do not know that an association exists until data are collected and analyzed and compared with unexposed population groups. In keeping with this new tool in large-scale diagnosis, Section 109 authorized VA to perform a survey to attempt to assess the scope of the problem. Section 110 authorized VA to conduct an epidemiological study to a similar end:

- ▶ (Sec 109) Authorized the Secretary to carry out a survey of the incidence and nature of health problems occurring in War veterans and their families.
- ▶ (Sec 110) Authorized the Secretary to carry out an epidemiological study on the health consequences of service in the War if the National Academy of Sciences (NAS) includes in a required report a finding that a sound basis exists for such a study. Required certain oversight. Authorized appropriations.

Additional provisions in the law specifically affecting the Disability Compensation Program included the following:

- ▶ (Section 111) Limited the cost-of-living increases for fiscal year 1995 for various veterans' compensation to the percentage increase under Title II (Old age, survivors, and disability insurance) of the Social Security Act beginning on December 1, 1994.
- ▶ (Section 302) Directed the Secretary to take any necessary action to provide for the expeditious treatment of benefit claims that have been remanded from either the Board or the U.S. Court of Veterans Appeals (Court).
- ▶ (Section 303) Allowed for the screening of appeals to (1) determine the adequacy of the record for decisional purposes or (2) develop a record found to be inadequate for decisional purposes.
- ▶ Established the Veterans' Claims Adjudication Commission to study and report to the Congress on the VA system for the disposition of claims for veterans' benefits. Provided Commission funding for fiscal year 1995.
- ▶ Presumed a service-connection (and, therefore, eligibility for veterans' disability compensation) between radiation exposure during the detonation of a nuclear device and radiation-related illness in a veteran whether or not the nation conducting the nuclear test was the United States.
- ▶ (Section 505) Added to the list of herbicide-exposure related diseases and illnesses presumed to be service-connected and therefore compensable through veterans' disability compensation if they become manifest to a disability degree of 10% or more (1) Hodgkin's disease; (2) porphyria cutanea tarda; (3) respiratory cancers; and (4) multiple myeloma.
- ▶ (Section 508) Directed the Secretary to enter into an agreement for the Medical Follow-Up Agency of the Institute of Medicine of the NAS to convene a panel to evaluate the feasibility of carrying out a study of the relationship of exposure to certain ionizing radiation while participating in military service and the presence of certain birth-related defects and illnesses in the children of such exposed individuals.
- ▶ Made eligible under the veterans' home loan program former members of the Selected Reserve who were discharged or released before completing six years of service because of a service-connected disability.

A document included in the Congressional Record, entitled Discussion of the Reported Bill (August 8, 1994), explains the reasons for this legislation:

The reported bill has four main purposes. The primary purpose is to provide disability compensation on a presumptive basis to certain veterans of the Persian Gulf War who suffer chronic disabilities resulting from undiagnosed illnesses attributed to their service in the Persian Gulf.

The second purpose of this legislation is to require the Secretary of Veterans Affairs to work with the Secretaries of Defense and Health and Human Services to develop, at the earliest possible date, uniform case assessment protocols and case definitions or diagnoses of the mystery illnesses...

The third purpose of the reported bill is to direct the Secretary to implement an aggressive outreach program for the benefit of Persian Gulf war veterans and their families.

The fourth purpose of the reported bill would be to ensure that appropriate research activities and accompanying surveys of Persian Gulf veterans are properly funded and undertaken by the VA (Congressional Record, August 8, 1994, p. H7085).

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Public Law No. 104-204)

In 1997, as part of a larger appropriations bill, (Pub. L. No. 104-204) two sections expanded veterans' disability rights. The first, Section 421, amended Federal veterans' benefits law to establish a benefits program to provide health care, vocational training and rehabilitation, and monetary allowances to cover the special needs of certain children of Vietnam veterans who were born with the birth defect spina bifida, possibly as the result of the exposure of one or both parents to herbicides during active service in the Republic of Vietnam during the Vietnam era.

The second, Section 422, amended Federal veterans' benefits law to revise the requirement of service-connected treatment for a qualifying additional disability or a qualifying death caused by faulty veterans' medical care or by veterans' training and rehabilitation services. Specifically, the new language reads:

(a) Compensation under this chapter and dependency and indemnity compensation under chapter 13 of this title shall be awarded for a qualifying additional disability or a qualifying death of a veteran in the same manner as if such additional disability or death were service-connected. For purposes of this section, a disability or death is a qualifying additional disability or qualifying death if the disability or death was not the result of the veteran's willful misconduct and--

(1) the disability or death was caused by hospital care, medical or surgical treatment, or examination furnished the veteran under any law administered by the Secretary, either by a Department employee or in a Department facility as defined in section 1701(3)(A) of this title, and the proximate cause of the disability or death was--

(A) carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the

Department in furnishing the hospital care, medical or surgical treatment, or examination; or

(B) an event not reasonably foreseeable; or

(2) the disability or death was proximately caused by the provision of training and rehabilitation services by the Secretary (including by a service-provider used by the Secretary for such purpose under Section 3115 of this title) as part of an approved rehabilitation program under Chapter 31 of this title.

While expanding service-connection in some areas, some in Congress regarded the bill as denying potential veterans' benefits. Speaking on the eve of this bill's passage, on September 24, 1996, Rep. Bob Stump of Arizona said:

The appropriations bill strips the House Veterans' Affairs Committee of our plan to achieve significant savings without hurting higher priority veterans' programs, and denies veterans the potential of using that \$500 million for other benefits improvements for service-connected veterans.

Frankly, we should be able to do better for these men and women who served us in uniform (Congressional Record, September 24, 1996, p. E1724).

Transportation Reauthorization Bill, 1998 (Public Law No. 105-178)

In 1998, as is often done, a major funding bill included a number of unrelated provisions. In this case, certain provisions relating to the Disability Compensation Program were included in a larger transportation bill (Pub. L. No. 105-178, Title VIII, Subtitle B). In recognition and in anticipation of the enormous expense of VA possibly having to pay disability compensation for and having to treat the medical consequences associated with tobacco, Congress expanded disability compensation exclusions for drug and alcohol use to include tobacco:

- ▶ Subtitle B: Veterans' Benefits - Veterans Benefits Act of 1998 - Amended Federal veterans law to prohibit payment of compensation for a service-connected disability if the disability results from the use of tobacco products.

This law amended sections 1110 (wartime) and 1131 (peacetime) of 38 U.S.C., which specify compensation for disabilities incurred or exacerbated while in the service so that both now end as follows:

...but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs, or use of tobacco products.

This provision came over the strong objections of some in Congress but was inspired by an OMB projection that indicated that smoking-related claims would cost the Federal government \$17 billion. Speaking on this matter, Senator Rockefeller of West Virginia said:

In arriving at its \$17 billion estimate, the administration, for some unexplained reason, estimated that 500,000 veterans would apply for tobacco-related claims every year, Mr. President. It is absurd; it is ridiculous. It is a shell game. It was intended to pay for some of their other programs. And in the process, they wanted to cut off disability claims for veterans who are owed them. It is make-believe (Congressional Record, June 05, 1998, p. S5688).

The law also contained a statement of the sense of the Congress that:

The Attorney General or the Secretary of Veterans Affairs, as appropriate, should take all steps necessary to recover from tobacco companies amounts corresponding to the costs which would be incurred by the Department of Veterans Affairs for treatment of tobacco-related illnesses of veterans, if such treatment were authorized by law...

The Congress should authorize by law the treatment of tobacco-related illnesses of veterans upon the recovery of such amounts.

The primary rationale for this provision was to save the government money. An OMB report indicated a potential savings of \$17 billion over a six-year period, an amount disputed by CBO (Congressional Budget Office), which indicated savings closer to \$10.5 billion.

The projected savings notwithstanding, Rep. David Obey of Wisconsin, in objecting to this effective reduction in coverage in disability compensation, expressed the will of a number of different stakeholder groups:

Mr. Speaker, over 50 veterans groups and other groups oppose these cuts in disability benefits to sick and disabled veterans, or to sick and disabled veterans who have legitimate service-connected claims. The organizations that oppose this action are the Veterans of the Vietnam War; Vietnam Era Veterans Association; Vietnam Veterans of America; the Air Force Sergeants Association; American Ex-Prisoners Of War; American Paraplegia Society; Association of the U.S. Army; Blinded Veterans Association; Brotherhood Rally of all Veterans Organization; Catholic War Veterans, U.S.A.; The Enlisted Association of the National Guard of the United States; Jewish War Veterans of the U.S.A.; Legion of Valor of the U.S.A.; Military Chaplains Association of the U.S.A.; Military Order of the Purple Heart; National Amputation Foundation; National Association for Uniformed Services; National Association of County Veterans Service Officers; National Association Of Military Widows; National Coalition For Homeless Veterans; Noncommissioned Officers Association; Nurses Organization of Veterans Affairs; Polish Legion of American Veterans; The Retired Officers Association; Society Of Military Widows; U.S. Merchant Marine Veterans of World War II, and so on, and so on (Congressional Record, May 20, 1998, p. H3585).

IRS Restructuring and Reform Bill, 1998 (Public Law No. 105-206)

Shortly after the passage of Public Law No. 105-178, a provision in yet another unrelated bill (Pub. L. No. 105-206, Title IX 9014, 112 Stat. 685, 865) was added to attempt to clarify provisions that excluded the presumption of service-connection when a disability results from the use of tobacco. This change to the law, in effect, nullified an earlier amendment to 38 U.S.C. 1101 inserting the following instead:

Sec. 1103. Special provisions relating to claims based upon effects of tobacco products:

(a) Notwithstanding any other provision of law, a veteran's disability or death shall not be considered to have resulted from personal injury suffered or disease contracted in the line of duty in the active military, naval, or air service for purposes of this title on the basis that it resulted from injury or disease attributable to the use of tobacco products by the veteran during the veteran's service.

(b) Nothing in subsection (a) shall be construed as precluding the establishment of service-connection for disability or death from a disease or injury which is otherwise shown to have been incurred or aggravated in active military, naval, or air service or which became manifest to the requisite degree of disability during any applicable presumptive period specified in section 1112 or 1116 of this title.

Some members of Congress thought that the exclusion of tobacco represented unfair treatment of veterans, and that, in some ways, the military had invited servicemembers to smoke. Sen. Paul Wellstone of Minnesota expressed that view:

This, again, has to do with what I talked about earlier today on the floor of the Senate--compensation to veterans with tobacco-related illnesses.

There was the hope on the part of the veterans community--the Chair, I think, would be interested in this--that there would be compensation to veterans having to do with addiction to tobacco. That is to say, in many ways it was handed out like candy. These veterans say, 'Look, if there are going to be rules for compensation, the same rules should apply to us.' That seems fair to deal with some of the health care struggles and illnesses with which they have to deal.

That was the first preference. I want to go on to add--now I am speaking for myself--if not direct compensation for veterans, then at least the money that is saved by not providing that compensation should go to veterans. The Office of Management and Budget, I think, estimated savings of something like \$17 billion. I personally think that is too high an estimate, but that is a whole other issue. But if not the \$17 billion for compensation, then at least it seems to me that money ought to go to veterans' health care (Congressional Record, July 8, 1998, p. S7670).

Persian Gulf War Veterans' Act of 1998 (Public Law No. 105-277)

Title XVI of the 1999 Omnibus Appropriations Bill (Pub. L. No. 105-277) deals with presumptions concerning disabilities incurred during the Persian Gulf War.

- ▶ Presumes to be service-connected (and therefore compensable or treatable under Federal veterans' benefits provisions) any illness that:
 - (1) the Secretary of Veterans Affairs determines to warrant such a presumption based upon a positive association with exposure to a biological, chemical, or toxic agent, an environmental or wartime hazard, or preventive medicine or vaccine associated with service in the southwest Asia theater of operations during the Persian Gulf War and
 - (2) becomes manifest in a Gulf War veteran within a period to be prescribed by the Secretary. Requires such presumption even though there is no record of evidence of such illness in the veteran during the period of service.
- ▶ Required the Secretary to make such determinations based on sound medical and scientific evidence and to take into account reports submitted by the National Academy of Sciences (NAS) as required under this Act. Required the Secretary to make determinations regarding presumptions of service-connection for covered illnesses within 60 days after receipt of a NAS report.
- ▶ Directed the Secretary to enter into an agreement with NAS under which NAS shall identify:
 - (1) the agents, hazards, or medicines to which Gulf War veterans may have been exposed and
 - (2) the illnesses that are manifest in such members. Required NAS, in making such identification, to consider certain pesticides, nerve agents, repellents, compounds, radiation, particulates, endemic diseases, and vaccines. Required NAS to submit to the congressional veterans and defense committees (designated committees) a report specifying all agents, hazards, or medicines considered. Directed NAS, after such identification, to determine whether a statistical association exists between exposure to such agent, hazard, or medicine and the illness. Required NAS to separately review potential treatment models for such illnesses, make recommendations for additional studies, and perform subsequent reviews of available evidence and data. Required periodic reports from NAS to the Secretary, the Secretary of Defense, and the designated committees concerning NAS activities.
- ▶ Terminated requirements and activities under this Act ten years after NAS submits its first report.
- ▶ Required the Secretary of VA to enter into an agreement with an alternative scientific organization if agreement cannot be reached with NAS.

Provisions in this law were the subject of much debate, both before and after passage. In objecting to one provision, Rep. Lane Evans of Illinois said:

Many of the provisions contained in this measure are deserving of support--these include aid to farmers, support for education and other worthy programs. However, I do have some serious reservations about one provision--Division D--Persian Gulf War Veterans Act of 1998. This measure incorporates text from S. 2358, including compensation legislation for Gulf War veterans that would attempt to override a compromise developed by both bodies' authorizing committees. This provision was inserted over objections in both Chambers in an effort to conciliate one member of the other body...

The compromise included parts of S. 2358, and of my bill, H.R.3279, that allows the use of epidemiological models to determine what conditions ought to be compensated with regard to Persian Gulf War veterans. I considered this step to be a major gain for veterans. I sincerely believe that, in overriding the compromise, we will do a great disservice to our Gulf War veterans.

H.R.4110 allows the prevalence of illnesses veterans experience to serve as a basis for compensation determinations. This model--one supported by the Presidential Advisory Committee on Gulf War Illnesses--is thought by many scientists to provide an approach that gives veterans the benefit of the doubt. Even if veterans are unable to prove that their illnesses resulted from any of a host of possible causes, as the language in S. 2358 and now, would require them to do, conditions that they experienced more frequently than their peers could serve as a basis for compensation.

By including the text of S. 2358 in the Omnibus and Emergency Appropriations Bill of 1998, those who have wrought the Omnibus and Emergency Appropriations Bill of 1998 have violated not only the spirit, but the letter, of the agreement of the authorizing committees. This is nothing less than a travesty of the legislative process. This is nothing less than using strong arm tactics to achieve the will of one. This is wrong, plain and simple (Congressional Record, November 12, 1998, p. E2316).

Veterans Programs Enhancement Act of 1998 (Public Law No. 105-368)

Each year, Congress has passed cost-of-living increases in the rates of disability compensation paid to veterans. Beginning in 1998, however, with Public Law No. 105-368, Congress began requiring VA to publish the rates of increase at the same time as publication of rate increases under Title II, Old Age, Survivors and Disability Insurance (OASDI), of the Social Security Act (U.S. House of Representatives, July 15, 1998, House Report 105-627).

Veterans' Compensation Cost-of-Living Adjustment Acts of 1999 through 2004 (Public Law No. 106-118)

The following year, with the passage of Public Law No. 106-118, Congress further tied the veterans' Disability Compensation Program rate increases to OASDI. The House Report indicated that this law:

...would increase, effective December 1, 1999, the rates of compensation for service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for surviving spouses and children of veterans who die of service-connected causes, as well as the additional amounts for dependents and survivors, and clothing allowances for certain veterans. The percentage of increase would be the same as that automatically received by Social Security recipients (U.S. House of Representatives,, June 25, 1999, House Report 106-202).

Congress has made a nearly identical provision in each Veterans' Compensation Cost-of-Living Adjustment Act since that time, most recently with the pending Act for 2004, in H.R.4175 and S.2483, which are identical House and Senate bills (see below, under Pending Legislation). Adjustment rate increases are shown in Table 3.

Table 3. History of Service-Connected Disability Compensation Increases, 1975 to Present

Fiscal Year	Effective Date	Increase (Percent)	Benefit Amount (1969=\$100) ¹⁶
1976	August 1975	11.8	158.55
1977	October 1976	8.0	171.23
1978	October 1977	6.6	182.53
1979	October 1978	7.3	195.86
1980	October 1979	9.9	215.25
1981	October 1980	14.3	246.03
1982	October 1981	11.2	273.58
1983	October 1982	7.4	293.82
1984	April 1983	3.5	304.11
1985	December 1984	3.2	313.84
1986	December 1985	3.1	323.57
1987	December 1986	1.5	328.42
1988	December 1987	4.2	342.22
1989	December 1988	4.1	356.25
1990	December 1989	4.7	372.99
1991	December 1990 ¹⁷	5.4	393.13
1992	December 1991	3.7	407.68
1993	December 1992	3.0	419.91
1994	December 1993	2.6	430.83
1995	December 1994 ¹⁸	2.8	442.89
1996	December 1995 ¹⁸	2.6	454.41
1997	December 1996	2.9	467.59
1998	December 1997 ¹⁸	2.1	477.41
1999	December 1998 ¹⁸	1.3	483.62
2000	December 1999 ¹⁸	2.4	495.23
2001	December 2000 ¹⁸	3.5	512.56
2002	December 2001 ¹⁸	2.6	525.89
2003	December 2002 ¹⁸	1.4	535.88
2004	December 2003 ¹⁸	2.1	547.13
2005	December 2004 ¹⁸	1.5 ¹⁹	555.34

Source: U.S. Senate Committee on Veterans' Affairs, Report on S.2483, Veterans Compensation Cost-Of-Living Adjustment Act of 2004, Senate Report 108-351, p. 5.

¹⁶ Amount shown is with respect to 1969 buying power so that the effective rates from different years can be compared.

¹⁷ 1990 Payment of the December 1990 increase was delayed until January 1992 by section 8005(b) of Public Law No. 101-508.

¹⁸ December 1994-1995 and 1997-2005 increases are rounded to the next lower dollar amount pursuant to sections 2(c)(2) of Public Law No. 103-418 and Public Law No. 104-57, section 8031 of Public Law No. 105-33 and section 205 of Public Law No. 107-103, and section 706 of Public Law No. 108-183.

¹⁹ Congressional Budget Office estimate.

Veterans Benefits and Health Care Improvement Act of 2000 (Public Law No. 106-419)

The Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. No. 106-419, Title III, 114 Stat. 1822) expanded veterans' rights under the Disability Compensation Program in a number of ways:

- ▶ Included a stroke or heart attack incurred or aggravated during the performance of inactive-duty training or while traveling to or from such training, for members of the reserves as a service-connected and therefore compensable injury under veterans' disability compensation provisions.
- ▶ Provides monthly veterans' disability compensation for female veterans who lose one or both breasts as a result of a service-connected disability.
- ▶ Authorizes the payment of veterans' disability compensation for veterans who are disabled during participation in a compensated work therapy program.
- ▶ Revises provisions concerning a limitation on the payment of benefits to incompetent institutionalized veterans to increase from \$1,500 to five times the amount payable to a fully disabled, service-connected veteran the amount that such a veteran may retain and still qualify for payments.
- ▶ Directs the Secretary of Defense to contract with the National Academy of Sciences to carry out periodic reviews of the dose reconstruction program of the Defense Threat Reduction Agency (radiation exposure reconstruction). Requires an Academy report to Congress.

The late 1990s and early 2000s have seen several amendments to veterans' disability compensation laws that begin to address the issue of veterans' disabilities either being exacerbated by or caused by treatment itself. This law adds to the growing list compensation when the veteran is disabled during participation in a rehabilitative work therapy program.

Since World War I, almost every Act of Congress that has created or added to the list of disabilities connected with service have appeared to have a basis in economic compensation. The underlying theory seems to be that if a service-connected disability somehow impairs the veterans' ability to earn a living, then it is the duty of the U.S. to help mitigate the disability by providing cash compensation. The economic basis was strongly emphasized in 1990 when Congress linked a 100% disability to total unemployability rather than medical conditions or criteria, although it should be strongly noted that this was with respect to the VA Pension Program and not the VA Disability Compensation Program.²⁰

In this Act of 2000, however, in providing disability compensation for the loss of one or both breasts, Congress clearly intends the program to extend to quality of life as well. The news is filled with "cancer survivor" tributes to women who undergo radical mastectomies and then

²⁰ In Public Law No. 101-508, Congress asserted a presumption of total disability for veterans with lifetime unemployability. Note that this presumption expressly deals with eligibility for the VA Pension Program, not the Disability Compensation Program. However, it breaks new ground by asserting a connection between total disability and total unemployability.

resume their careers. In many cases, of course, because of extensive cancer and complications of treatment, a woman's ability to work and make a living may be impaired by factors associated with the loss of breast(s). However, in extending coverage in this way, Congress clearly is going beyond economics to quality of life. Sen. John D. Rockefeller IV of West Virginia articulated Congress' rationale for this compensation:

Section 302 will provide special monthly compensation to female veterans who have lost a breast due to service-connected conditions. Special monthly compensation is an additional monthly monetary benefit provided above regular compensation for loss, or loss of use of a part of a veterans' body, that yields an additional disability that another loss would not, such as loss of sight or hearing, loss of use of the veterans' legs, or loss of a creative organ. The loss of a breast to a woman veteran is consistent with the other disabilities where special monthly compensation is provided (Congressional Record, October 12, 2000, p. S10514).

Veterans' Compensation Rate Amendments of 2001 (Public Law No. 107-94)

As introduced and passed House, the original law H.R.2540 covered a variety of veterans' benefits. As passed Senate and enacted into law, however, Public Law No. 107-94 narrowed to become the Veterans' Compensation Rate Amendments of 2001, which provided a cost-of-living adjustment (COLA) for veterans' disability benefit programs. H.R.2361 and S.1090 also addressed the COLA. Broader veterans' benefits were enacted in H.R.1291, which later became Public Law No. 107-103 near the end of 2001. According to the House Report:

Increase in rates of disability compensation and dependency and indemnity compensation—Section 101 of the bill would increase, effective December 1, 2001, the rates of compensation for service-connected disabilities and the rates of dependency and indemnity compensation (DIC) for surviving spouses and children of veterans who die of service-connected causes, as well as the additional amounts for dependents and survivors, and clothing allowances for certain veterans. The percentage of increase would be the same as that automatically received by Social Security recipients.

The Committee annually reviews the service-connected disability compensation and DIC programs to ensure that the benefits provide reasonable and adequate compensation for disabled veterans and their families. Based on this review, the Congress acts annually to provide a cost-of-living adjustment (COLA) in compensation and DIC benefits. The Congress has provided annual increases in these rates for every fiscal year since 1976 (U.S. House of Representatives, 2001, House Report 106-156, p. 4.).

In speaking of this amendment, Sen. Arlen Specter of Pennsylvania summarized its intent:

The increase...will ensure that the purchasing power of compensation and survivor benefits is not compromised by inflation (Congressional Record, December 20, 2001, p. S13930).

Veterans Education and Benefits Expansion Act of 2001 (Public Law No. 107-103)

In a pattern of increasing and expanding benefits to veterans, Congress passed Public Law No. 107-103 on December 27, 2001. Title II of this Act expanded rights under the veterans' Disability Compensation Program in a number of substantive areas:

- ▶ Repealed the 30-year manifestation period limitation, following service in the Republic of Vietnam during the Vietnam conflict, required for veterans' disability benefits coverage for certain respiratory cancers (U.S. Senate Report 107-86, October 15, 2001).²¹
- ▶ Extended the period for the presumption of a service-connection between certain herbicide-related disabilities and service in Vietnam to 20 years (formerly ten) after NAS transmits to the Secretary its first report required under the Agent Orange Act of 1991 containing medical analyses and information with respect to such disabilities and their relation to such service.
- ▶ Extended the presumptive period for disabilities associated with Persian Gulf War service until December 31, 2011, or such later date as prescribed by the Secretary. Includes within such disabilities any chronic multi-symptom illness of unknown etiology characterized by two or more of the currently listed symptoms. Includes additional signs or symptoms that may be considered a manifestation of an undiagnosed illness.
- ▶ Repeals the limitation on the payment of benefits to incompetent, institutionalized veterans.

In speaking in support of this legislation, on December 11, 2001, Rep. Cynthia A. McKinney of Georgia, among other things, explains why the presumption time periods were being changed:

Agent Orange has rained havoc on the lives of thousands of Vietnam veterans, causing cancer, diabetes, and birth defects. Thankfully, for most veterans suffering from their exposure to this herbicide, benefits were made available. Unfortunately, a seemingly arbitrary 30-year time limit was placed on the presumption of service-connection for respiratory cancers--among the most deadly types of cancer. Those veterans who

²¹ No House, Senate, or Conference reports were available on Thomas for this law. However, according to Senate Report 107-86, a related law that contained the same provision, a statement by the Deputy Secretary of Veterans Affairs said, "VA is currently studying the scientific merits of removing the 30-year respiratory cancer presumption, and we defer taking a position pending the outcome of that review." We infer that the results of that study affirmed removing the 30-year limitation.

suffered from respiratory cancers that appeared 30 years after their service were denied service-connection, and thus benefits and assistance for these diseases. In effect, the U.S. government told them that they were on their own.

In a recent study, the Institute of Medicine stated that there was no evidence that a time limit could be placed on the presumption of service-connection, and this bill rightly makes that correction to past law. No longer will veterans who suffer respiratory cancers have to worry about their government forgetting about their service and neglecting their needs. Rare is it that common sense prevails in Congress to help those in greatest need, but I believe that this provision and this bill, achieve such status. I thank the Veterans Committee Chairman and Ranking Member for their dedicated attention to the plight and troubles of America's veterans, for including the Agent Orange provision in the Veterans Benefits Act of 2001, and for passing this important piece of legislation (Congressional Record, December 11, 2001, p. E2365).

At the same time, this legislation made additional changes to existing law:

- ▶ Limited the payment of veterans' compensation and dependency and indemnity compensation for veterans who (1) were incarcerated on October 7, 1980, for a felony and (2) remain incarcerated for conviction of such felony after the date of enactment of this Act.

Veterans' Compensation Cost-of-Living Adjustment Act of 2003 (Public Law No. 108-147)

This law (Pub. L. No. 108-147), made veterans' disability compensation rates of increase the same as increases provided under the Social Security Act. The House Report indicates Congressional intent and purpose of this law:

Provide effective December 1, 2003, a cost-of-living adjustment to the rates of disability compensation for veterans with service-connected disabilities and to the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. The percentage amount would be equal to the increase for benefits provided under the Social Security Act, which is calculated based upon changes in the Consumer Price Index (U.S. House of Representatives, May 19, 2003, H.R. 108-108).

The report goes on to state the purpose of the Disability Compensation Program as well:

The basic purpose of the disability compensation program is to provide a measure of relief from the impaired earning capacity of veterans disabled as the result of their military service. The amount of compensation payable varies according to the degree of disability. This amount in turn is required by law to represent, to the extent practicable, the average impairment in earning capacity in civilian occupations resulting from such disability or

combination of disabilities (U.S. House of Representatives, May 19, 2003, H.R.108-108).

Veterans' Benefit Act of 2003 (Public Law No. 108-183)

This law (Pub. L. No. 108-183, 104, 201, 117 Stat. 2651) expanded rights to compensation under the Disability Compensation Program, expanded presumptions, and additionally increased compensation benefits in specific area. Among other provisions, this law:

- ▶ Provides that the remarriage of a surviving spouse of a veteran after age 57 shall not bar the furnishing of dependency and indemnity compensation (DIC), home loan, and educational benefits eligibility. Requires spouses who remarried after age 57 but prior to the enactment of this Act to apply for such eligibility within one year.
- ▶ Revises Federal provisions relating to the presumption of service-connection for certain diseases manifest in former prisoners of war to deem the following diseases to have been incurred in or aggravated by military service without any minimum period of internment (currently, internment of at least 30 days is required): psychosis; any of the anxiety states; dysthymic disorder; organic residuals of frostbite when consistent with prisoner conditions; and post-traumatic osteoarthritis. Adds cirrhosis of the liver to the list of diseases which will be considered as having been incurred in or aggravated by such service if (1) the veteran was interned for at least 30 days and (2) the disease becomes manifest to a degree of 10% or more after active military service.

In speaking about this provision, Rep. Tom Udall of New Mexico expressed the intentions of Congress:

The section of the bill relating to benefits for former Prisoners of War contains a provision that will add cirrhosis of the liver to the list of presumed service-connected disabilities for former POWs. It also eliminates the unfair requirement that a POW must be held for at least 30 days to qualify for presumption of service-connection for certain disabilities, such as psychoses and states of anxiety. We owe it to our former POWs to repay them for what they have been through as much as we possibly can, and this provision is a step in that direction (Congressional Record, November 20, 2003, p. E2432).

The law also:

- ▶ Authorizes the Secretary to provide adapted housing assistance to certain categories of disabled military personnel serving on active duty if the disability is the result of an injury or disease contracted or aggravated during such duty.
- ▶ Directs the Secretary, through NAS or another appropriate scientific organization, to study and report to the Secretary and Congress on the appropriate disposition of the Air Force Health Study, an epidemiological study of Air Force personnel

responsible for conducting aerial herbicides spray missions during the Vietnam era.

- ▶ Directs the Secretaries of Veterans Affairs and Defense to provide funding for fiscal years 2004 through 2013 for the Medical Follow-Up Agency of the Institute of Medicine of the Academy for purposes of epidemiological research on military personnel and veterans.
- ▶ Authorizes the Secretary, through 2009, to provide for the conduct of examinations with respect to the medical disabilities of benefit applicants by non-Department personnel. Requires a report from the Secretary to Congress on the utilization of such authority.
- ▶ Extends through fiscal year 2013 the requirement that yearly cost-of-living adjustments to rates of veterans' disability compensation and DIC be rounded down to the nearest whole dollar.

In passing this bill, however, some members of Congress expressed the view that it did not go far enough. For example, on October 15, 2003, in casting an affirmative vote, Rep. Max Sandlin said:

Mr. Speaker, I rise in support of H.R.2297, the Veterans Benefits Act of 2003; however, I cannot in good conscience cast my vote for this measure without expressing my serious disappointment in the leadership of this House and its continuing refusal to fulfill the promises this Nation has made to its bravest and most loyal citizens--our veterans. As a result of the War on Terror, we have troops deployed at points all over the world. In the name of freedom and liberty, we are in the process of creating more veterans, yet we cannot do justice by our Nation's current veterans.

I refuse to remain silent while Congress puts forth a bill that does not go nearly far enough to help the men and women who risked life and limb at our government's request. H.R.2297 does not fulfill the promises that our Nation made to provide for health care, education, housing and burial rights for the brave soldiers who fought our battles... leadership refuses to live up to its obligations, including the elimination of the profoundly unfair disabled veterans' tax, also known as Concurrent Receipt.

The Disabled Veterans Tax is shorthand for a practice whereby the retirement pay earned by veterans with service-connected disabilities is reduced dollar for dollar by the amount those veterans receive in disability payments. To put it more bluntly, our Nation's veterans--the men and women who fought to preserve the freedoms we all enjoy--are forced to pay their own disability compensation. Veterans with service-connected disabilities are the only Federal employees subject to this offset and are essentially given no additional pay for their sacrifice (Congressional Record, October 8, 2003, p. E2039).

National Defense Authorization Act for Fiscal Year 2004 (Public Law No. 108-136)

Concurrent receipt of disability compensation and military retirement pay, without full offset, finally became law in 2003, to be phased-in over the following ten years, for some veterans. The law, Public Law No. 108-136, was signed into law on November 24, 2003, and went into effect January 1, 2004. Among other important provisions, Section 641 of this law:

- ▶ Authorizes the concurrent payment, phased-in over a ten-year period from 2004 through 2013, of military retirement pay and veterans' disability compensation for military retirees with service-connected disabilities rated at 50% or more.
- ▶ Prohibits concurrent compensation for disabled retirees with less than 20 years of retirement-creditable service.
- ▶ Requires a person also eligible for combat-related special compensation under the next section to choose compensation from that program or from the concurrent compensation program but not from both.

While Congressional intent might have been questionable in the past, with the passage of this law, it became explicit. Rep. Corrine Brown, of Florida, in addressing the House on October 2, 2003 said:

Congress should fully fund concurrent receipt this session. It is the right thing to do. We owe it to the soldiers, airmen, sailors and marines, who have served as a source of great pride in our Nation, to fully fund the retirement that they have earned without penalizing them because they are also disabled. For every dollar given in disability pay, a dollar is taken out of retirement pay. That is wrong.

Right now, there are 140,000 Americans serving in Operation Iraqi Freedom. Now, more than ever, Congress needs to take action and fully fund concurrent receipt. We must promise this generation of servicemembers that they will be entitled to a full retirement for a career spent in the military. Today's soldier is tomorrow's veteran. We must show today's soldier that we will take care of him tomorrow (Congressional Record, October 2, 2003, p. E1955).

This was echoed by Senator Orin Hatch in Senate Conference Report, S.14484, who acknowledged that the law was a compromise between Congress' obligation to veterans and cost:

Keeping our word to our Nation's veterans is vital to maintaining the honor of our country. No other issue is as important to our veterans as that of concurrent receipt, that is, simultaneously paying veterans a military pension and providing them with disability benefits. Under the current law, many veterans' retirement pay is reduced or offset dollar-for-dollar for any disability benefit they receive. Unfortunately, proposals to remedy this situation remain controversial due to cost. Therefore, I must commend and

congratulate Chairman Warner once again for devising a compromise plan that boldly expands upon his previous efforts by providing full concurrent receipt for those veterans suffering disabilities from combat or combat-related operations and by phasing in this benefit, over a 10-year period for those retirees whose disability is rated at 50 percent or greater (Senate Conference Report, November 12, 2003, S14494).

For some in Congress, this new law did not go far enough. On November 7, 2003, in an extension of remarks to the House conference report on H.R. 1588 just three weeks before the law was signed, Rep. Ron Paul of Texas argued:

Mr. Speaker, while I am pleased to see that this conference report has addressed the issue of concurrent receipt, I note with dismay that the provision as included in the report is inadequate. It will leave hundreds of thousands of veterans out in the cold, many of whom will likely not live long enough to benefit from this unacceptable pseudo-solution.

This provision will allow only those 20-year retiree combat-disabled veterans to receive concurrent receipt, which completely ignores that many if not most soldiers who are combat-disabled do not remain in the military for 20 years. Upon becoming disabled they are discharged from the military. This means that, according to some estimates, two-thirds of disabled veterans will be left behind by this provision. In this, the provision is a slap in the face of our veterans.

Additionally, the 10 year phase-in of concurrent receipt for the remaining who are at least 50 percent disabled effectively means that thousands of our veterans--particularly those of the World War II and Korea generations--will not live to receive this earned and deserved benefit.

Mr. Speaker, we need to make our veterans and our soldiers our top priority. We have entered into a contract with each of them. They have done their part and are doing their part every day--in conflicts across the globe including the increasingly deadly Iraq occupation. We must keep our end of the contract. I am sad to note that provisions like this watered-down concurrent receipt are not in keeping with our end of the contract (Congressional Record, November 12, 2003, p. E2291).

Pending Legislation

In arguing for ending the ban on concurrent receipts, many in Congress have over the years referred to each statute that affirmed the ban as "Disabled Veterans Tax Acts." During the 108th (current) Congress alone, more than 40 pieces of legislation have contained amendments to "eliminate the disabled veterans tax." Such amendments virtually always fail. In other instances, in an attempt to focus directly only on that issue, single-purpose bills have been put forth.

Immediate and Full Repeal of the Disabled Veterans Tax Act of 2004 (H.R.3730 and H.R.3738)

Two pending pieces of legislation, H.R.3730 and H.R.3738, introduced in January 2004, represent some Congressional sentiment that the 2003 law did not go far enough. Both of these bills, which were referred to the Subcommittee on Benefits in April 2004, would repeal three limitations:

- ▶ The 10-year phase-in would be eliminated in favor of immediate concurrent receipt.
- ▶ The 50% disability rating requirement would be eliminated, so that all veterans who receive disability compensation would be eligible.
- ▶ The 20 years of service requirement would be eliminated, so that all veterans would be eligible, regardless of length of service.

In introducing H.R.3730 in January 2004, Rep. Bob Filner of California said:

H.R.3730 is called the Immediate and Full Repeal of the Disabled Veterans Tax Act of 2004 and does exactly what the title says. It eliminates the years of waiting before all disabled military retirees receive all the retired pay and compensation they have earned and deserve.

Last year, our Nation's veterans waged a long and determined campaign to eliminate this Disabled Veterans Tax. As my colleagues know, we did take a step that some say was a legitimate compromise but I call an insult to our veterans. That law makes veterans with a disability rating of 50 percent or more wait 10 years before their tax is completely eliminated. A great number of those veterans are elderly and unfortunately may not live to see the day that they get their full compensation.

Even worse, fully two thirds of America's disabled veterans have been left behind and will continue to be taxed as before, nearly 400,000 of our veterans. Despite the actions of Congress, the Disabled Veterans Tax is alive and well.

Some of the veterans left behind include a veteran of the Kuwait theatre who had below-the-knee amputation after being hit by a drunk driver while jogging near the Pentagon to maintain physical fitness. He does not qualify under the Act we passed. Neither does a retiree who cannot work on a family farm because of pain, numbness, and osteoarthritis of both feet due to exposure of cold during noncombatant military service; a veteran who lost an eye when an air hose accidentally detached from an airplane being worked on and who cannot work as an airline pilot. He still pays the tax; as does a female retiree who has weekly panic attacks and chronic sleep disturbances as the result of a sexual assault which occurred while on active duty.

Mr. Speaker, we took the first step towards eliminating the Disabled Veterans Tax, but I would give us a grade of incomplete. We did not do the "A" work that our veterans deserve. During the time I have been in Congress, I cannot recall more than one or two other issues where I have received so many letters, e-mails, and phone calls. Our veterans have been telling us that this is an important issue to them. They deserve that we complete our work and do it at an "A" level.

I understand there are costs to concurrent receipt, but I also understand that the now disabled veterans did not hesitate when they were called to duty. They have returned home with disabilities they have had to live with ever since. How can we doubt the imperative that we keep our promise and give them what they deserve? They earned their military retired pay. They deserve their VA disability compensation. We should not make them wait any longer for justice to prevail (Congressional Record, February 26, 2004, p. H672).

Because of the enormous cost associated with this proposal in light of increasing budget deficits, passage of this bill does not appear likely.

Prisoner of War Benefits Act of 2003 H.R.348

This pending bill, H.R.348, was introduced on January 27, 2003, and would extend a number of presumptions of service-connection for specific medical conditions:

- ▶ Amends Federal veterans' benefits provisions with respect to former prisoners of war to repeal the currently required:
 - 30-day minimum period of internment prior to the presumption of service-connection for certain listed diseases, for purposes of the payment of veterans' disability compensation
- ▶ Adds the following to the listed diseases: heart disease, stroke, liver disease, diabetes (type 2), and osteoporosis. The law would also require (1) such presumption also with respect to any disease that the Secretary of Veterans Affairs determines warrants such presumption by reason of having a positive association with the experience of being a prisoner of war and (2) the Secretary to make such a determination within 60 days after a recommendation from the Advisory Committee on Former Prisoners of War that such presumption be established for a non-listed disease.

This bill was referred to the subcommittee on benefits on February 20, 2003. Passage does not look likely before the end of the 108th Congress. A parallel Senate bill, S.517, was offered in the Senate. Action is still pending. On July 20, 2004, H.R.348 was incorporated into H.R.4175, upon which action is still pending, giving this provision two opportunities for passage. Rep. Christopher Smith, of New Jersey, announced the addition and the rationale for the provision:

The bill would also expand the list of diseases presumed to be related to a former prisoner of war for which benefits may be paid by adding osteoporosis, an often crippling bone condition. Former prisoners of war are eligible for disability compensation if they are disabled from one of the 16 conditions presumed to be the result of their POW experience.

I want to thank the gentleman from Florida (Mr. Bilirakis), the committee's vice chairman, for working with us to include this portion of his bill, which was H.R.348 (Congressional Record, July 20, 2004, p. H6079).

Presumption of Service-Connection for Certain Veterans with Hepatitis C (H.R.3455 and S.1846)

Two bills, H.R.3455 and S.1846, were introduced in 2003 that would extend the presumption of service-connection for veterans with hepatitis C for those who were potentially exposed to contaminated blood products prior to December 31, 1992. Screening procedures introduced after that time are thought to have eliminated the risk of such contamination.

Senator Olympia Snowe of Maine explains her support and reasons for this legislation:

I have reviewed medical research that suggests many veterans were exposed to Hepatitis C in service, and are now suffering from liver disease and other diseases caused by exposure to this virus. I am troubled that many Hepatitis C veterans' are not being treated by the VA because they can't prove the virus was service-connected, despite the fact that Hepatitis was not isolated until 1989 and could not be tested for until 1990.

Hepatitis C is a hidden infection with few symptoms. However, most of those infected with the virus will develop serious liver disease 10 to 30 years after contracting the virus. For many of those infected, Hepatitis C can lead to liver failure, transplants, liver cancer and death.

And yet, most people who have Hepatitis C don't even know it--and so they don't get treatment until it is too late. It has been estimated that up to 70 percent of the approximately four million Americans with Hepatitis C are unaware that they carry the virus. For those who know they're infected, the prognosis is promising--some estimates indicate that 50 percent may have the virus eradicated.

Vietnam veterans in particular are just now starting to learn that they have liver disease likely caused by Hepatitis C. Early detection and treatment may help head off serious liver disease for many of them. However, many veterans with Hepatitis C will not be treated by the VA because they must first establish a service-connection for their condition--a standard that is virtually impossible to meet (Congressional Record, November 11, 2004, pp. S14453-4).

In November 2003, both bills were referred to subcommittees, and further action is pending.

Veterans Cold Weather Injury Compensation Act (H.R.631)

Introduced in February 2003 as H.R.631, this amendment to 38 U.S.C. would provide a presumption of service-connection for injuries classified as cold weather injuries that occur in veterans who while engaged in military operations had sustained exposure to cold weather. As yet, there is no parallel bill in the Senate. This bill was referred to the Subcommittee on Benefits, and is pending.

Presumption of Service-Connection When Occurring in Veterans Exposed to Ionizing Radiation (H.R.4172)

Introduced in 2004 (Congressional Record, April 20, 2004, p. H2198), H.R.4172 would amend 38 U.S.C. to add certain additional diseases as establishing a presumption of service-connection when occurring in veterans exposed to ionizing radiation during active military, naval, or air service. To the existing list of conditions enumerated in 38 U.S.C. 1112, this amendment would add:

- ▶ Cancer of the bone
- ▶ Cancer of the brain
- ▶ Cancer of the colon
- ▶ Cancer of the lung
- ▶ Cancer of the ovary

This bill was referred to the Subcommittee on Benefits eight days later, and further action is pending.

Veterans Carbon Tetrachloride Benefits Act (H.R.4179)

This bill, H.R.4179, would add veterans exposed to carbon tetrachloride to the list of presumptions of service-connection. The bill provides that certain diseases or disabilities that develop in veterans who served 90 days or more of active military duty during which such veteran was exposed to carbon tetrachloride shall be considered to be service-connected, and therefore compensable through veterans' disability compensation, notwithstanding that there is no record of evidence of such disease during such service. Included diseases and disabilities are:

- ▶ Depleted vision or floater cataracts.
- ▶ Hearing impairments such as high-pitch ringing, sensitivity to loud noises, and loss of hearing.
- ▶ Memory losses such as lapses of recall, dates, numbers, and inverting numbers and letters.

- ▶ Growths.
- ▶ Swelling of hands or feet.
- ▶ Aching bones or joints throughout the body (not associated with arthritis).
- ▶ Loss of hair.
- ▶ Deterioration of nervous system.
- ▶ Pulmonary edema.
- ▶ Hemorrhagic congestion.

There is no parallel bill in the Senate. This bill was introduced on April 20, 2004, by Rep. Peterson of Minnesota:

A bill to amend Title 38, United States Code, to provide a presumption of service-connection for certain specified diseases and disabilities in the case of veterans who were exposed during military service to carbon tetrachloride; to the Committee on Veterans' Affairs (Congressional Record, April 20, 2004, p. H2199).

This bill was referred to the Subcommittee on Benefits eight days later. Further action is pending.

Veterans' Compensation Cost-of-Living Adjustment Act of 2004 (H.R.4175 and S.2483)

This law, H.R.4175 and S.2483, was sent by the House to the Senate on September 7, 2004. It was reported out of committee in the Senate on September 20, 2004, and is awaiting floor action. Passage is anticipated in the near future. This law would increase veterans' disability compensation using the same adjustment percentage used by the Social Security Administration for OASDI adjustment. The Congressional Budget Office (CBO) has estimated the adjustment will be 1.5 percent. Senator Arlen Specter described the bill on June 1, 2004:

I have sought recognition to comment on legislation I am introducing today to provide a cost-of-living, COLA, adjustment for certain veterans' benefits programs. This COLA adjustment would affect payments made to nearly 3 million Department of Veterans Affairs, VA, beneficiaries, and would be reflected in beneficiary checks that are received in January 2005, and thereafter.

An annual cost-of-living adjustment in veterans benefits is an important tool which protects veterans' cash-transfer benefits against the corrosive effects of inflation. The principal programs affected by the adjustment would be compensation paid to disabled veterans, and dependency and indemnity compensation, DIC, payments made to the surviving spouses,

minor children and other dependants of persons who died in service, or who died after service as a result of service-connected injuries or diseases (Congressional Record, June 1, 2004, p. S6279).

End Note

This completes the review of the legislative history of the VA Disability Compensation Program. We also refer the reader to our companion report, Literature Review, where research recommendations are made to support substantial research and data needs.