

**DOES A TOTAL DISABILITY RATING BASED
ON INDIVIDUAL UNEMPLOYABILITY (TDIU)
PROPERLY COMPENSATE TODAY'S
VETERANS?**

HEARING

BEFORE THE

**SUBCOMMITTEE ON DISABILITY
ASSISTANCE AND MEMORIAL AFFAIRS**

OF THE

COMMITTEE ON VETERANS' AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

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C O N T E N T S

WEDNESDAY, JUNE 12, 2024

	Page
OPENING STATEMENTS	
The Honorable Morgan Luttrell, Chairman	1
The Honorable Chris Pappas, Ranking Member	2
WITNESSES	
PANEL I	
Mr. Ronald S. Burke Jr., Deputy Under Secretary, Office of Policy & Oversight, Veterans Benefits Administration, U.S. Department of Veterans Affairs	3
Accompanied by:	
Mr. Nick Pamperin, Executive Director, Veterans Readiness and Employment Service, U.S. Department of Veterans Affairs	
Mr. David J. Barrans, Chief Counsel, Benefits Law Group, Office of General Counsel, U.S. Department of Veterans Affairs	
PANEL II	
Mr. Marquis Barefield, Assistant National Legislative Director, Disabled American Veterans (DAV)	9
Mr. Michael S. Figlioli, Director, National Veterans Service, Veterans of Foreign Wars of the United States (VFW)	10
Mr. Mike Stoddard, National Service Director, Benefits Service, Wounded Warrior Project (WWP)	12
APPENDIX	
PREPARED STATEMENTS OF WITNESSES	
Mr. Ronald S. Burke Jr. Prepared Statement	21
Mr. Marquis Barefield Prepared Statement	26
Mr. Michael S. Figlioli Prepared Statement	31
Mr. Mike Stoddard Prepared Statement	33
STATEMENTS FOR THE RECORD	
National Organization of Veterans' Advocates, Inc. Prepared Statement	39
Paralyzed Veterans of America Prepared Statement	45
James Vollman Prepared Statement	50
Georgetown University Center on Education and the Workforce Prepared Statement	54

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SUBCOMMITTEE ON DISABILITY ASSISTANCE &
MEMORIAL AFFAIRS,
COMMITTEE ON VETERANS' AFFAIRS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 360, Cannon House Office Building, Hon. Morgan Luttrell (chairman of the subcommittee) presiding.

Present: Representatives Luttrell, Self, Pappas, and McGarvey.

OPENING STATEMENT OF MORGAN LUTTRELL, CHAIRMAN

Mr. LUTTRELL. Subcommittee will come to order. Thank you for the witnesses for being here with us today. We are going to take a close look at the Veterans Disability Benefit program, known as a Total Disability rating based on Individual Unemployment, or TDIU. We will examine whether the disability benefit properly compensates our veterans today. TDIU is a tax-free monthly benefit that U.S. Department of Veterans Affairs (VA) awards to veterans who are unable to work due to their service connected disabilities. Eligible veterans can potentially receive both TDIU and VA occupational rehabilitation benefits.

TDIU is established in the 1930's, and the requirements to be eligible for TDIU essentially have not changed since 1940's, so that is over 80 years. TDIU is meant to make veterans whole for their total loss of income resulting from their service-related disabilities. We must ensure that TDIU is properly and adequately supporting the men and women who have earned it and their families.

Under current law, VA takes into account a veteran's education and work history to decide whether a veteran is eligible for TDIU, but the benefit itself is flat rate of roughly \$3,800, regardless of a veteran's education, or work history, and/or career growth potential.

Further, a veteran may be eligible for TDIU if they are only able to maintain marginal employment. VA states that marginal employment is employment that pays below the poverty, according to the us census, which is roughly \$15,000. Even when a veterans income is higher than the poverty level, VA will still consider their job marginal employment if it is employment in a protected envi-

ronment, which can include a family business and or sheltered workshop.

For decades, VA has refused to define exactly what employment in a protected environment means. Recently, the U.S. Court of Appeals for Veterans Claims attempted to define it as a lower income position that is shielded in some respect from competition in the employment market. We know it is still unclear to the veterans about what counts as employment in a protected environment.

We also heard from civilian workforce experts that the current flat rate of TDIU is outdated. However, these occupational experts emphasize that VA must conduct further studies and obtain data to ensure that Congress is fully informed if we are to change the TDIU eligibility criteria and rates to properly make veterans whole. Similarly, the Federal Advisory Committee on Disability Compensation (ACDC) recommended that VA study the use of aids to determine vocational assessments in TDIU.

VA conducted the study, but the VA has not shared the study results with Congress, despite our frequent asks from the committee staff. In 2023, nearly 300,000 veterans receiving TDIU. We must ensure that TDIU benefits works for today's veterans and their families. That includes ensuring that we have all the data and information we need to determine whether TDIU eligibility criteria and benefits amount should be modernized.

With that, I yield to the ranking member.

OPENING STATEMENT OF CHRIS PAPPAS, RANKING MEMBER

Mr. PAPPAS. Thank you, Mr. Chairman. As we examine the TDIU program today, I think it is important to remember that behind all the numbers we will hear discussed today are real life people, veterans who have served and sacrificed and have been markedly changed as a result of that service, both physically and mentally. Those veterans deserve not only our gratitude, but our attention and respect. Those veterans also deserve our understanding, our understanding that they are indeed individuals, and that their abilities and disabilities are unique to them in many ways.

While it is known that VA disability rating schedule is rather rigid, the VA math used to combine multiple disability ratings is not straightforward arithmetic. The total disability based on Individual Unemployability benefit is an attempt to inject some nuance and understanding into the system.

Two veterans may experience the same disability differently, or a unique combination of disabilities may render one veteran unable to work, while others may still be able to find gainful employment. Therefore, TDIU exists to accommodate the unique circumstances of an individual veteran when their disability or combination of disabilities may not add up to 100 percent, and yet they are unable to find sustainably gainful employment. It is a benefit that must remain available both for current and future veterans. No program is without room for improvement. TDIU is no exception to that.

However, we must tread carefully in discussing any changes to this program. Certainly, we should create pathways to work for veterans, TDIU or not, who may want to enter the workforce. However, we must not make receipt of one benefit contingent upon use

of another, and we must recognize that cessation of a benefit could represent a significant financial hardship to a veteran.

Mr. Chairman, thank you for holding this hearing. I look forward to the testimony of our witnesses and discussing ways we can improve benefits for our veterans. I yield back.

Mr. LUTTRELL. Thank you, Mr. Pappas. Our lead witness from VA is Mr. Ron Burke. Good to see you again, sir. Deputy Under Secretary of the Office of Policy and Oversight in the Veterans Benefit Administration. Mr. Burke is joined by Mr. Nick Pamperin, Executive Director of the Veteran Readiness and Employment (VR&E) Service, and Mr. David Barnes, Barrans, excuse me, Chief Counsel of the Benefits Law Group, Office of General Counsel.

Thank you. Let the record reflect that the witnesses have answered in the affirmative. Thank you all for being here today.

[Witness sworn.]

Mr. LUTTRELL. Mr. Burke, you are now recognized for 5 minutes, sir, to deliver your opening statement.

STATEMENT OF RONALD BURKE

Mr. BURKE. Thank you. Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, thank you for inviting us here today to discuss the Department of Veterans Affairs Individual Unemployability benefit. With me today are Nick Pamperin, the Executive Director of Veteran Readiness and Employment Service in the Veterans Benefits Administration, and Dave Barrans, Chief Counsel, VA Office of General Counsel. The Individual Unemployability (IU) benefit fills a critical gap when the VA schedule for rating disabilities does not fully address the impact of service-connected disability in a veteran's circumstances. The intent of the Veterans Affairs Schedule for Rating Disabilities (VASRD) is to fairly compensate veterans for their disabilities according to the average impairment to their earning capacity. However, the VASRD cannot always adequately compensate an individual veteran in their specific circumstance.

IU is, therefore, an important benefit that enables VA to address these situations. For example, in cases where there is sufficient evidence that a veteran is unable to obtain or maintain gainful employment, but their specific impairment does not meet the disability rating criteria for a scheduled 100 percent evaluation, VA may be able to bridge the gap by utilizing the IU benefit to compensate the veteran at the 100 percent evaluation rate.

In Fiscal Year 2023, VA provided IU benefits to over 377,000 beneficiaries and saw an increase of such benefits of 21.7 percent over the past 10 years. The IU benefit has a long history and regulation. In 1925, the VASRD provided the first definition of total disability. In the following decades, the regulation regarding IU have been updated numerous times to clarify eligibility requirements.

Over the last several years, VA has taken steps to review and scrutinize the IU program through various studies, court decisions, and reports. Recent court decisions have identified that VA's regulatory definitions of marginal employment and protected environment lack specificity.

However, in January 2024, the Court of Appeals for Veterans Claims issued a decision which concluded that VA's definition of

employment in a protected environment means a lower-income position that, due to the veteran, service-connected disability or disabilities, is shielded in some respect from competition in the employment market. As a result of this decision, VA is currently drafting guidance for claims processors and is also considering whether regulatory updates may be needed.

Aside from our response to court decisions, VA is also taking action to make sure that veterans are probably properly compensated for their disabilities by examining and revamping the VASRD. On February 12, or February 15, rather, 2022, VA published a proposed rule in the Federal Register to amend the portion of the VASRD for evaluation of mental disorders. If finalized, the proposed change would help alleviate current disparities with the evaluation of mental disabilities so that veterans with such challenges may receive adequate compensation using VASRD criteria rather than receiving Individual Unemployability.

While IU is a great benefit aimed at compensating those who cannot maintain gainful employment, it is important to note that VA is also committed to other routes for veterans to find gainful employment. One of these routes is VA's Veteran Readiness and Employment program. The mission of the VR&E program is to assist qualified service members and veterans with service-connected disabilities prepare for, obtain, and maintain suitable employment, or maintain a life of independence.

One of VR&E Service's is the Chapter 31 program, and during the past 5 years, VA received nearly 3,000 applications for VR&E benefits for veterans in receipt of IU, of which 98 percent were found entitled to Chapter 31 benefits. VR&E service has seen an average of 549 IU applicants per year for Chapter 31 benefits.

Since 2020, VA has witnessed the successful rehabilitation of 70 veterans in receipt of IU. Although the VR&E program has been successful in preparing many veterans for suitable employment, VA acknowledges that there may be, inevitably, some veterans who are unable to obtain or maintain gainful employment or whose specific impairment does not meet the disability rating criteria for a scheduler 100 percent evaluation. As such, VA remains committed to providing the IU benefit to fill that critical gap.

Mr. Chairman, this concludes my statement. My colleagues and I are prepared to respond to any questions you or other members of the committee may have.

[THE PREPARED STATEMENT OF RONALD BURKE APPEARS IN THE APPENDIX]

Mr. LUTTRELL. The record statement of Mr. Burke will be entered into the hearing record. We will now move to questioning. I recognize myself for 5 minutes. Give me just a second. I am going to go ahead and engage with that one question while it is fresh. In 2024, in January 2024, you said the board came out with a finding on what the pay gap requirements, I believe, is how we said.

Can you elaborate on that for me? It seems like the catch point for TDIU or IU is that the poverty line is set in a certain spot. If we are looking at this nationally, we fall in different areas of the country. It is going to be different for different people. What was the—can you get into the granular level and the 5 minutes that I

have of the findings of that court, of that find, the details? Excuse me.

Mr. BURKE. Yes, sir. I think the court finding that I referenced really talked about protected environments, and that really helped to call out, not necessarily the question that you are referring to. I think there are multiple layers of what we are trying to address in the IU space. The largest is the VASRD changes that would actually more adequately compensate folks with mental disorders compared to the current rating schedule. In doing so, that may alleviate the need for Individual Unemployability. As we feel there are gaps in the way the VASRD is written today.

Mr. LUTTRELL. The protected environment, is there a—can you explain the range for me?

Mr. BURKE. Yes. The protected environment, actually, this was a court case in 2024 where the court held that employment in a protected environment is unambiguous and means that a lower-income position that, due to the veteran service-connected disability or disabilities, is shielded in some respect from competition in the employment market. What we see with those, largely, are those, I think that, you know, the sheltered programs, the court case did not have anything to do, necessarily, with the levels of compensation. It really honed in on the definition of protected environment, so I am not sure—

Mr. LUTTRELL. I think clarity is kind of the problem that the veterans are running into, exactly what protected environment looks like.

Mr. BURKE. Yes, I think with respect to the protected environment, there were a few things that came from the court case. Determining employment in a protected environment is fact specific. The court listed as common characteristics of protected environment that employment sheltered from the open labor market.

Mr. LUTTRELL. Is the term protected environment? It does not seem like it gets into details of what exactly a protected environment is. I think that the veterans are kind of navigating themselves in and around it, and some have kind of got it on the chin and then some have not.

Mr. BURKE. Well, and, sir, to your point, I think not just veterans, but even our claims processors, which is why we are in the process of developing guidance for our claims processors, providing those tighter definitions. And—

Mr. LUTTRELL. Okay, so great point, sir, because we have been, from what I understand, we have been trying to get that clarified for the—since 2016, correct?

Mr. BURKE. Well, we are actually taking the results of the court case from 2024, which actually gave a little bit of room for us to navigate within. We are actually using that recent court finding to draw down and be more specific with the guidance and the clarification. Again, not just for claims processors, but to communicate that through our stakeholders, our Veterans Service Organizations (VSO), our veteran communities, there will be—

Mr. LUTTRELL. Do we have a—

Mr. BURKE [continuing]. better understanding.

Mr. LUTTRELL [continuing]. projected window of when all of those individuals will be in their comfort zone?

Mr. BURKE. I do not. I am certainly happy to report that back to this committee as soon as we have a timeline. We are working on that now. In part of that, it is not just the guidance and clarification to employees. It is also assessing whether or not we need to change any regulations as part of that. That assessment is ongoing right now.

Mr. LUTTRELL. Okay. I am familiar with multiple studies that we have—that Congress has requested, and from what I understand, the VA has them internal, and we are still waiting on the results to be presented to us. If the court findings are something that we can build the foundation off of, I would hate to kick that proverbial can down the road if we can prep everybody accordingly and then move forward and get this problem set out of our way. Thank you for that, sir.

I yield to the ranking member.

Mr. PAPPAS. Thank you, Mr. Chairman. Mr. Burke, Congressional Budget Office (CBO) has proposed tying TDIU eligibility to age. Is that something that VA would support?

Mr. BURKE. That is not. No, sir. We do not tie age to any other factor within our disability compensation program, and certainly do not believe it to be prudent with Individual Unemployability either.

Mr. PAPPAS. Well, thanks very much. I share your concerns there, and I hope that proposal will not ever see the light of day. You did talk about, I was going to ask about the VASRD issue, and you mentioned that it is in the process of being changed and finalized. When would we expect to see that move forward?

Mr. BURKE. Well, we are in the process right now, sir, of incorporating more than 800 comments.

Mr. PAPPAS. Uh-huh.

Mr. BURKE. It takes a little bit. We do believe that in Fiscal Year 2025, probably early mid-2025, that that will be finalized.

Mr. PAPPAS. Okay. Thank you. The Advisory Committee on Disability Compensation asked VA to share with it information from a study that was completed in 2017 related to compensation levels. VA has so far refused to share that material, stating that it is dated and moot. Setting aside that fact, I am not sure VA should be editorializing what information is relevant to the advisory committee. I am wondering what harm VA sees in sharing that information, and if you will commit to providing this information to the advisory, advisory committee along with results of your economic loss study?

Mr. BURKE. Yes, sir. I will tell you, with respect to the ACDC portion, there are really two factors. Number one, that the premise of our internal review was based on the request to assess and consider age as a factor, which, of course, we do not support. That premise that predicated the internal study to begin with. Second of all, the findings, the data, all of that that went along with that internal review is significantly outdated.

With that, we continue to take the position that is an internal deliberative document, and that our way to approach, kind of, the updating of the IU benefit is really through the VASRD changes that I articulated earlier, and that is an ongoing process that we just spoke about.

Mr. PAPPAS. Is there current data that could be married with this data that you say is outdated and provided to the committee?

Mr. BURKE. Yes. I am not sure that current data would support the ACDC only because, again, it was predicated on a—

Mr. PAPPAS. Uh-huh.

Mr. BURKE [continuing]. the premise was to review age as a factor, which, again, is not something that we support.

Mr. PAPPAS. Okay. In terms of VR&E, you discussed a little bit about some of the issues surrounding that. There is a statutory limitation. I am just wondering if you can respond if there is a statutory limitation or any other limitation that prevents a veteran with entitlement to TDIU from applying, and if found entitled, participating in services from VR&E.

Mr. BURKE. There are no limitations. There are no limitations to any veteran receiving Unemployability and then again, trying to pursue the benefits associated with those that, of VR&E. It is not just VR&E. I would add that we have programs from our transition space, personal career planning space. In our transition phrase, we have education benefits and the like. To answer your question, there is no limitation, sir.

Mr. PAPPAS. What kind of outreach does comp service and VR&E do to let them know about opportunities?

Mr. BURKE. We do outreach by means of, you know, our regular notification letters. When somebody is granted in their rating decision notice, they will get a letter that lets them know other benefits that they are entitled to. There are other various mailings and outreach strategies and campaigns. Of course, our regional offices, when they are doing their local outreach activities, they are also communicating to veterans all of the portfolio of benefits that they are entitled to.

Mr. PAPPAS. Okay, Mr. Burke, I do not know if Mr. Pamperin wants to take this one, but how many participants currently in VR&E also have entitlement to TDIU? How many participants that have entitlement to TDIU have successfully completed the VR&E program and obtained and maintained suitable employment in the last 5 years?

Mr. PAMPERIN. I appreciate the question, sir. Within the last 5 years, there have been just a little under 3,000 veterans that are in receipt of TDIU that have applied and gone through our program. Currently, within the last 5 years, almost 70, the number 68 folks, have successfully completed the program through a positive outcome. Right now, we have actually 577 currently in a plan of service. The average time that somebody is in the VR&E program is around 4 years. As they continue to go through the program, that number will grow.

Mr. PAPPAS. Okay, my time is up, but those numbers feel incredibly low, and maybe we can talk a little bit offline about why that is the case. We appreciate your thoughts here today.

I yield back.

Mr. LUTTRELL. Mr. McGarvey, you are recognized. 5 minutes, sir.

Mr. MCGARVEY. Thank you, Mr. Chairman. I will be brief as possible, given that votes have been called. Mr. Burke related to some of the things that Mr. Pappas was asking about. In particular, he was asking about the age, which I appreciate. I want to know how

the VA views the eligibility threshold and should what is considered to be marginal employment be a higher dollar amount?

Mr. BURKE. Yes, sir. Thank you. As you are aware, VA does not set that threshold. That actually is not established by VA. We are simply using the poverty level established by the Census Bureau, and those are the numbers that we utilize. Again, I think with respect to the IU benefit itself, the thing that I really want to portray is that the importance behind the changes to the VASRD are really going to help better compensate those specifically with mental disorders compared to what the current does now. It will alleviate some of the need to utilize Individual Unemployability because the evaluations assigned using the potential new VASRD criteria will reflect, will reflect such.

Mr. MCGARVEY. I think when we are looking at these veterans who, again, who have been injured, who have some type of disability, have something going on, if the idea behind TDIU is to compensate a veteran for future lost earnings, how much should the veteran's military occupation or post service occupation factor into the compensation level, if at all?

Mr. BURKE. Well, I think that we have a lot of factors that we have to consider with respect to granting Unemployability. It is the individual's current work history, it is their prior work history. We do a 5-year lookback. We look to see, even in our exams, if we require an examination, we are asking the examiners to indicate what level of impairment of their earning capacity is because of their service-connected disabilities. We are looking at a lot of factors, not just the disability evaluation, but those specific contentions and disabilities, and their respective impact on earning capacity.

Mr. MCGARVEY. Thank you. I say many times in this committee and in the larger committee, we talk about veterans benefits. They are not a gift. These benefits have been earned by our servicemen and women. I just want to know how much. How are we helping those who may be making a little too much to qualify for TDIU, but less than they need to make ends meet?

Mr. BURKE. Well, we do have provisions within our process that allow for still the award of Unemployability, even if they are making a little above the marginal threshold, the poverty level. We do have things like extra scheduler consideration. There are review processes. My point is, if they are a dollar over the threshold level, that is not a bar to them receiving the benefit.

Mr. MCGARVEY. Thank you very much. Yield back.

Mr. LUTTRELL. Thank you, sir. Votes have been called, Mr. Burke, we only have one round of questioning for you and Mr. Pamperin and Mr. Barrans. Thank you for joining us today. I expect to reconvene 10 minutes after the last vote back here in this. Gentlemen, thank you very much.

[Recess.]

Mr. SELF. [Presiding.] Thank you for coming today. Our second panel of witnesses will include Mr. Marquis Barefield of Disabled American Veterans (DAV), Mr. Figlioli of Veterans of Foreign Wars of United States (VFW), and Mr. Mike Stoddard of the Wounded Warrior Project, who is a constituent of mine. Welcome. I think we are waiting on one other panel member.

Mr. STODDARD. Yes, sir.

Mr. SELF. Let the record reflect that witnesses have answered in the affirmative. Thank you again for being here.

[Witness sworn.]

Mr. SELF. Mr. Barefield, you are now recognized for 5 minutes to deliver your opening statement.

STATEMENT OF MARQUIS BAREFIELD

Mr. BAREFIELD. Thank you. Acting Chairman Self, Ranking Member Pappas, and members of the subcommittee, thank you for inviting DAV to testify about our insights, concerns, and recommendations related to Total Disability based on Individual Unemployability or TDIU. Veterans who are unable to work due to service-connected disabilities, but whose disabilities do not meet the requirements for a complete and total disability rating under VA's regular rating schedule criteria may be eligible to receive total compensation through TDIU. To qualify, a veteran must have either a single service-connected disability rated at 60 percent or have a combined disability rating of 70 percent with at least one disability rated 40 percent or higher.

As of September 2023, about 6.8 percent of the approximately 5 million veterans receiving disability compensation do so as a result of TDIU, which is down from 7.8 percent 6 years earlier. Despite the downward trend, proposals to limit TDIU, particularly based on a veteran's age, have persisted. For example, VA's Fiscal Year 2018 budget submission included a proposal to terminate TDIU ratings for veterans at the age of 62 and cutoff TDIU benefits for any veteran already in receipt of Social Security benefits.

More recently, the December 2022 CBO report, Options for Reducing the Deficit, included a proposal to terminate TDIU ratings for veterans at age 67 and cutoff TDIU benefits for any veterans already in receipt of Social Security support. Another option in the CBO report would require that once a veteran meets their full Social Security retirement age, all disability benefits would be reduced by 30 percent.

Mr. Chairman, today, many people work well beyond what was once considered normal retirement age. To award TDIU to a veteran at age 64 but deny it to a veteran at age 67 would be unfair discrimination, desperate treatment, and wholly unjustified from an equitable standpoint.

In fact, under current Federal regulations, age may not be considered a factor in evaluating service-connected disabilities or in determining entitlement to TDIU. Although TDIU is based on the effect of disability on the individual, it does not and should not discriminate on the basis of age. That is why DAV strongly supports H.R. 6362, the Protecting Benefits for Disabled Veterans Act, which would codify entitlement to TDIU, including the prohibition against considering age as a factor in determining eligibility.

It is also important to understand that TDIU is not a retirement benefit, and it should not be considered as comparable to either Social Security retirement or disability insurance. Many veterans in receipt of TDIU who are unable to work due to their disabilities may not have earned enough credits to even qualify for Social Security retirement or might receive very low benefits.

As such, proposals to reduce or cutoff TDIU when a veteran becomes eligible for Social Security benefits could be devastating for some veterans.

Another proposal that has been floated would link the award of TDIU to a completion of a vocational assessment likely done by the Veteran Readiness and Employment program, or VR&E. While DAV is a steadfast supporter of VR&E, in fact, our national service officers and I was one of them, complete a VR&E vocational rehabilitation program during our training.

Mr. Chairman, most veterans, including those who have serious injuries, illnesses, and disabilities from their service, want to work. We do not support making a vocational assessment a requirement for TDIU eligibility. We are concerned that it could create an additional burden on veterans, as well as a strain on VR&E's ability to fulfill its responsibility to those veterans who need their services.

Finally, Mr. Chairman, we believe it is time to increase the rates for disability compensation for all veterans, particularly for veterans rated at 100 percent, including those under TDIU. According to the Bureau of Labor and Statistics, the national average salary is approximately \$59,000. The rate for veterans rated 100 percent disabled is approximately \$45,000, almost 25 percent less. It is time to change that.

Mr. Chairman, that concludes my statement, and I would be happy to answer any questions you or members of the committee have.

[THE PREPARED STATEMENT OF MARQUIS BAREFIELD APPEARS IN THE APPENDIX]

Mr. SELF. Thank you very much. The written statement of Mr. Barefield will be entered into the hearing record. Mr. Figlioli, you are now recognized for 5 minutes to deliver your opening statement.

STATEMENT OF MICHAEL FIGLIOLI

Mr. FIGLIOLI. Acting Chairman Self, Ranking Member Pappas, members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States and its auxiliary, thank you for the opportunity to provide our remarks on this important issue. The TDIU program is essential for veterans who can no longer maintain gainful employment due to service-related injuries. It offers vital support not only to veterans but also to their families, acknowledging the sacrifices made and the lifelong impacts of their service.

Discussions around TDIU often focus on financial aspects, but at its core, it is about supporting people whose lives have been irrevocably changed. For countless decades, veterans have returned home with life altering injuries from toxic exposures, Improvised Explosive Device (IED) blasts, or contact with harmful substances like radiation and dioxins. These injuries, both visible and invisible, can prevent veterans from securing employment.

For those who do not meet the schedule requirements for a 100 percent disability rating, the VA offers TDIU to ensure they receive the support they need. Every system has room for improvement, including the TDIU program. The VFW supports enhancements to

sustain or improve benefits for veterans, but we must be cautious of unintended consequences for those who rely on this benefit, especially the most vulnerable will depend on this payment for their very survival.

TDIU has been a contentious topic in VA benefits discussions, partly because it challenges conventional norms by not considering age and eligibility decisions.

This exclusion of age often leads to debates about its parity with civilian sector benefits. While some veterans disabilities worsen with age, VFW believes most veterans would prefer to work if they were able to do so. Critics often focus on the financial cost of TDIU, especially when media attention on war expenses fades.

However, cutting veterans benefits is historically unjust and remains so. Benefits earned through service are never a waste of money. Recent legislative changes like the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics (PACT) Act and the expansion of Blue Water Navy benefits have increased the number of veterans eligible for TDIU, many of whom are older and have been silently suffering due to bureaucratic red tape.

Comparing TDIU to Social Security is misleading. TDIU beneficiaries have service-connected disabilities, preventing them from contributing to Social Security like their civilian counterparts. Age is not a factor in TDIU eligibility, and VFW supports this policy. The median age of the House of Representatives is nearly 60 and the Senate is 65. It is off-putting that members of these bodies, which suggest other Americans, should not be considered part of the workforce simply due to age. Elder workers are entitled to their earned wages and associated benefits.

Veterans receiving TDIU did not have that capability and should not be penalized due to their documented inability to work based on their service-connected disabilities. Advanced healthcare has increased life expectancy and work for potential veterans. A proposal to cut TDIU at retirement age equated unfairly with Social Security, ignoring the unique nature of service-related disabilities.

The VR&E program offers veterans training for new career fields, and those on TDIU can potentially benefit from it. However, consistent and effective implementation of VR&E is lacking. VFW advocates for better identification and support for eligible veterans, including automatic invitations to apply for VR&E in decision letters allowing veterans to make informed choices about their participation. As the world and technology has evolved over the past several decades, the needs of our veterans have as well.

Service members are trained in the art of warfare, whereas veterans need to be trained in civilian fields, many of which, such as coding, aeronautics, robotics, and others, did not even exist a generation ago. The economic opportunity for better earnings potential is vastly greater for veterans who receive this essential training from VR&E. For 125 years, the VFW has championed the needs of veterans and their families. While some view TDIU as costly, it represents the true cost of war.

Veterans sent to dangerous places return changed, and it is our duty to ensure they have the resources to survive and thrive despite their service-connected disabilities. The collective debt to

these veterans is unrepayable, but ensuring their survival is the least we can do.

Mr. Chairman, this concludes my testimony, and I am happy to answer questions you may have.

[THE PREPARED STATEMENT OF MICHAEL FIGLIOLI APPEARS IN THE APPENDIX]

Mr. SELF. Thank you. The written statement of Mr. Figlioli will be entered into the hearing record. Now, I recognize Mr. Stoddard for your opening statement for 5 minutes.

STATEMENT OF MIKE STODDARD

Mr. STODDARD. Acting Chairman Self, Ranking Member Pappas, and distinguished subcommittee members, on behalf of Wounded Warrior Project, I want to thank you for this opportunity to speak about TDIU. We share your commitment to ensuring VA continues to support our veterans who have earned this benefit through their service and their sacrifice. Wounded Warrior Project has been working with post-9–11 generation for 20 years, and our goal is to ensure every veteran receives the benefits they have earned in a manner that honors their service.

Across more than a dozen programs and services that we provide at no cost to the veteran, one of the first and most impactful interactions many of our warriors have with our organization is with our benefit services team. Helping warriors with their VA claim is just one element of our holistic approach to helping warriors on their path to mental, physical, and financial wellness, but our research tells us that this is a critical part.

Our Annual Warrior Survey reveals that service-connected injuries and complex health problems play a major role in sustaining gainful employment. When looking at disability ratings alongside employment status, approximately half of our responding warriors who were unemployed and looking for work had a 100 percent disability rating. Among responding warriors who were not looking for work, about 7 in 10 had a 100 percent disability rating.

Why are these numbers important? A 100 percent rating is often associated with unemployment and does not adequately insulate a warrior from feeling financial strain. Almost two-thirds of our warriors who reported 100 percent disability rating also reported they did not have enough money to make ends meet last year. To be clear, some veterans have conditions where work is not going to be possible now or in the future. For others, TDIU is a part of the larger picture that includes getting back to work eventually.

Wounded Warrior Project is committed to helping disabled veterans seamlessly transition into the civilian workforce.

In many instances, we inform warriors about the opportunities provided by VR&E before pursuing a TDIU rating. Here is an example of how we help. Despite a decorated career, an Army sergeant had a service-related injuries that left him eligible for TDIU. While this financial security was a relief, the Army sergeant yearned to continue contributing. He reached out to both VR&E and Wounded Warrior Project for support on his employment endeavors.

VR&E counselors with expertise in veteran disabilities began crafting an employment plan that leveraged the sergeant's trans-

ferable skills and accommodated his limitations. Meanwhile, we offered support through benefit services, alumni, our Warriors to Work programs, connecting the sergeant with a network of veterans who understood his unique challenges and could offer guidance on navigating a civilian career path.

This combined arms approach with VR&E's practical tools and Wounded Warrior Projects camaraderie positioned the sergeant for successful transition back into gainful employment. For reasons like this, we support the VR&E program as a pathway to long-term employment of disabled warriors. We do have some suggestions for how these systems can work better together.

First, we strongly support the removal of the VR&E delimiting date. Under current regulations, a veteran is only eligible for VR&E for 12 years from the date of discharge or their first disability rating.

If disabilities worsen or new disabilities arise, some veterans may find the VR&E option is no longer there and TDIU becomes one of the only reasonable options left. Removing the delimiting date would fix this.

Second, we support making VR&E easier to access for veterans who have established TDIU. Although pursuing VR&E should never be a prerequisite to receive TDIU, it can be a launch pad to return to work when a veteran is ready. Since the evidence needed to receive TDIU generally exceeds what is needed to enter VR&E, we would support a more integrated onramp for a program that can prepare warriors to reenter the workforce.

Third, we recommend that the VA do a review of the overall effectiveness of reducing a veteran on TDIU to their overall original disability rating after securing gainful employment for a period of 12 months. By looking into this issue, we can ensure the appropriate steps to ensure veterans with a TDIU rating have the support they need to be gainfully employed by removing financial barriers that may inhibit them from the earliest steps back into the workforce.

Finally, we recommend exploring the development and implementation of a VR&E resource hub. Current VR&E staffing and resources are not consistent across the country, so the same opportunities are not available to all veterans seeking VR&E support. We recommend creating solutions to help all veterans, regardless of where they live and access service to have equal opportunity to leverage VR&E resources in their pursuit of gainful employment.

Thank you for the opportunity to testify and look forward to your questions.

[THE PREPARED STATEMENT OF MIKE STODDARD APPEARS IN THE APPENDIX]

Mr. SELF. Thank you to each of you for being here and for what you do for our veterans. I appreciate your testimonies. I now recognize myself for 5 minutes and your written statement, Mr. Stoddard will be entered in the hearing record. I now recognize myself for 5 minutes.

I want to go back to Mr. Barefield about increasing any mandatory spending amounts. There is one offset that is used by this committee, by this Congress for mandatory veterans programs that we add to the offset. You all, all represent major VSOs. This ques-

tion is to you, the only offset, and I say it is not an offset, is that we add to veterans housing loan fee in the out years. I need the American people—and I have raised this with the major VSOs before. We pay for new mandatory spending in any veteran program, any new veteran program on the backs of veterans alone in the future. It is not an offset. It is an addition to the budget.

With that said, I will move to my first question, and it is for Mr. Stoddard. The PACT Act, I have talked to young veterans who have met the presumptive criteria for the PACT Act, but who have no symptoms and they have not filed for the PACT Act because they do not have any symptoms. They could 15 years from now. How does that impact that VR&E date that you mentioned?

Mr. STODDARD. I appreciate the question Mr. Self. I think when we talk about, we want to draw service connection is required to get into the VR&E program.

Mr. SELF. Right.

Mr. STODDARD. Important that if it is not PACT Act related—

Mr. SELF. Right.

Mr. STODDARD [continuing]. and they have that, the most important thing I would recommend to anybody that is going to pay attention to this is they just need to get in and get filed for a claim so we can get their disability. The most important thing is I do not want them to overthink it. I want them to come see us. Let us advocate for them and find a way to get them connected to those resources that they so richly deserve.

Mr. SELF. I agree with your suggestion. Mr. Figlioli, how can veterans be better educated about the VA vocational rehabilitation services available to them? What do we need to do?

Mr. FIGLIOLI. Yes.

Mr. SELF. We hear a lot in this committee about our veterans simply do not know what is available to them.

Mr. FIGLIOLI. Thank you, Mr. Acting Chairman. Really, you know, a good, strong, robust marketing campaign very similar to the PACT Act. PACT Act was one of the biggest things that is been advertised from VA in a very long time.

Mr. SELF. Right.

Mr. FIGLIOLI. You know, we have got social media platforms left and right. We have them everywhere. VA definitely uses them. You also have the opportunity to partner with VSOs, whether it is the major VSOs, minor VSOs. Use those social media platforms as well to advertise the availability of VR&E. Reach as many veterans as you can. A lot of times it is somebody that is on the program, they understand what the benefit is, and you really have to rely on word of mouth. We are doing mass mailings. Lots of letters go up from VA. We have had hearings on letters. My inbox is inundated every day with electronic messaging from the Comms Department from VA. I think if we all work together and probably leverage social media quite a bit, we could reach more veterans as well.

Mr. SELF. Mr. Barefield, would you like to take a whack at that one?

Mr. BAREFIELD. Yes. VA has already started doing campaigning where they talk about healthcare. They could also do that same campaigning talking about other services that are available to veterans. On my commute in and out of DC, I listen to WTOP radio

station, and they have in constant rotation commercials that talk about VA healthcare; coming back to VA to get your healthcare. They could use those same media campaigns to talk about other benefits and services that are available to them through VA.

Mr. SELF. How about our rural veterans? We have got many veterans that live in rural areas, my district included.

Mr. BAREFIELD. In cases of veterans that are in rural areas, then along with the social media campaigns that were mentioned, then that is when you could use mass mailings to veterans in the rural areas to reach out to them to make sure that they get the same message that veterans that live in metropolitan areas receive.

Mr. SELF. Thank you. Mr. Stoddard, back to your proposal for a steady glide path off of TDIU once gainful employment is had. Would you elaborate on that?

Mr. STODDARD. Yes, sir, and I appreciate that question. What we are finding is during this off ramp, in the 12-month window for VR&E, we have veterans. It goes back to your education and informing what veterans know. For a year they have been gaining the full rate of the TDIU and they have been getting the gainful employment which they have been getting.

They have become accustomed to this. When the VR&E becomes at that 12-month mark and the VA decides to take them back to their original disability rating, and I use the example of 100 percent to 90 percent is \$1,000 less in a pocket of a veteran. As much as we want to prepare them for that off ramping and saying, hey, this is going to happen, we know that the real landscape for veterans are they are going to pay and get accustomed to that money in their pocket.

Our thought is we start to off ramp and think about how we educate them early on into the process and then make sure their employment matches whatever that off ramp is going to be.

Mr. SELF. Thank you very much. Now, I recognize the ranking member for 5 minutes of questions.

Mr. PAPPAS. Oh, thank you very much, Mr. Chairman. As I asked VA earlier, I wanted to ask all of you this, if your organizations or you personally support tying TDIU to age, as CBO has suggested?

Mr. FIGLIOLI. Mr. Ranking Member, no, we do not. The law of the land is that age is not tied to a benefit, nor should it be, and we will not support that concept.

Mr. PAPPAS. Thank you. Mr. Barefield.

Mr. BAREFIELD. No, we do not support having age tied to this current TDIU benefit.

Mr. PAPPAS. Okay. Mr. Stoddard.

Mr. STODDARD. Wounded Warrior Project does not support—

Mr. PAPPAS. Okay.

Mr. STODDARD [continuing]. tying age to TDIU.

Mr. PAPPAS. Well, thank you. I think that is why this proposal should be a non-starter. Mr. Stoddard, you were talking about streamlining eligibility for TDIU recipients into VR&E. Given that there is significant overlap in eligibility, this kind of categorical eligibility for TDIU recipients makes sense. Creating a fast lane into VR&E could have some concerning implications, you know, for vet-

erans could crowd out other veterans from the program or further overburden an already overworked VR&E workforce.

I am wondering if Wounded Warriors Project has considered what it would mean for current enrollees in VR&E and their level of service if we see an influx of thousands of new veterans that were added to the roles on an annual basis?

Mr. STODDARD. Ranking Member Pappas, I appreciate that question. I think what our message here is very clear is that the workload, actually, we think, would be, because they have already met the requirements of VR&E—

Mr. PAPPAS. Uh-huh.

Mr. STODDARD [continuing]. so, the process of having to counsel and do those things really takes that workload off of those counselors that could focus on counselors doing that because they have already met the requirements of VR&E. They do not have to go through the process of trying to figure out do they belong there. We think that will help. Obviously, there is a concern. We want to make sure that the workload and the amount of people taking care of our veterans is represented appropriately, but we think that this would be a helpful process in getting our folks taken care of.

Mr. PAPPAS. Okay. Wondering if others on the panel want to reflect on whether veterans on TDIU should be, whether it should be tied to VR&E as a condition of eligibility?

Mr. FIGLIOLI. No. No, Mr. Ranking Member. It is important to get people onto VR&E. Let us get them retrained into new careers. If they need to get off the rolls, if they want to get off the rolls, let us give them that opportunity.

Mr. PAPPAS. Uh-huh.

Mr. FIGLIOLI. Yes, both programs need to exist, need to coexist. I think VFW's concern is that VA has eliminated some Full-Time Equivalent (FTE) in the VR&E program and now we are looking to add more people to it. You know, if we found funding and a lot of staff to add for PACT Act processing and claims processing should have had the downstream thought about the ancillary benefits of a claim; and, they should have had some foresight to say, well, people are going to want to maybe get on to VR&E and retrain for a career. Let us see if we cannot fill those gaps with these staffing levels.

Mr. PAPPAS. Thank you. Mr. Barefield.

Mr. BAREFIELD. Yes. DAV does not support making a vocational assessment a requirement for TDIU. As mentioned in my oral remarks, when you are talking about putting additional claims into the VR&E system, you are going to put a strain on the current workload that those counselors have. As it was just mentioned, in the upcoming budget, they want to reduce VR&E staff by 60 people.

You are talking about an influx of claims and a reduction of people. That is naturally going to lead to a backlog, and that is going to be creating a bigger problem. That is not a successful plan.

Mr. PAPPAS. Okay, thank you for that. Mr. Figlioli, maybe I could turn to you for this one. If you would agree that veterans often work in fields that are not directly or only tangentially related to the work that they are doing in the military. Similarly, veterans,

like civilians, often change careers several times in their adult life. Correct?

Mr. FIGLIOLI. Yes, sir. You know, the workforce from post-World War II, Korea, and Vietnam is different than what it is today. Today it is far more technically based. More people are apt to have some kind of a tech interest. Coding, web design. Technology is involved in everything that we do, whether we are broadcasting this hearing or preparing for the hearing. You know, we rely on data, research.

Everything is tech-linked. I do not think that the average veteran today is more or less likely to, you know, pick a blue-collar job. We also need to be prepared to support them as well and be prepared for the change. If, again, if people look for a new career, the benefits available to them, and they can get into a career field that does not exacerbate their disabilities, but they have options. Do they want to have a blue-collar job? Do they want to have a white-collar job? Still receive that benefit.

Mr. PAPPAS. Yes, it seems like it would be difficult to predict someone's future earnings potential based just on their Military Occupational Specialty (MOS), even if it directly translates into a civilian profession. It seems like that is what you are saying, correct?

Mr. FIGLIOLI. Yes, sir. You know, the earnings potential today is far greater than it was at any other time. You know, let them earn what they can, as much as they can. Let us find them a job that they can have that maximum earnings potential but sustain the benefit.

Mr. PAPPAS. Given that, does anyone think that VA compensation, TDIU or otherwise, should be based on MOS or civilian occupation? Mr. Stoddard.

Mr. STODDARD. Ranking Member Pappas, absolutely not. I think the example I would use is if you took that where I got out of the Army 10 years ago, my earning potential and where I am at now may be drastically different. Wounded Warrior Project would not be in support of that.

Mr. FIGLIOLI. VFW would agree with Mr. Stoddard. I think that is where we stand.

Mr. PAPPAS. Thank you. Mr. Barefield.

Mr. BAREFIELD. We do not agree with that.

Mr. PAPPAS. Okay. Well, thanks for your responses. Sorry, Mr. Chair, for going over, but I yield back.

Mr. SELF. I want to thank all of our witnesses for testifying before us today on this important issue of ensuring that TDIU benefit works for today's veterans who sacrifice for our Nation and are unable to work as a result. With that, I recognize Mr. Pappas for any closing remarks.

Mr. PAPPAS. Thank you, Mr. Chairman. To answer the question posed at the top of the this hearing, does a Total Disability Rating based on Individual Unemployability properly compensate today's veterans? The answer is unequivocally no. How could it possibly? How could a monetary benefit, no matter the scale, adequately compensate someone whose life has been altered so significantly by their service to this country that they have been rendered unable to work? We simply cannot.

The best we can do is to try to get as close as we can, and the TDIU program at VA helps in that effort by individualizing what can be an often rigid system. I appreciate the subcommittee having this hearing to help highlight a sometimes obscure program and to shed some light on ways that VA may help veterans who are unable to work or are willing to re-enter the workforce but need some assistance in doing so. Lost in this conversation, though, is whether or not the compensation rates for 100 percent service connected veterans, scheduler or TDIU, are themselves high enough. I would argue that they are not, and this Congress should look at raising them beyond the annual cola, but that is a discussion for another time.

With that, Mr. Chairman, I join you in thanking all of the witnesses before the panel today, and I yield back.

Mr. SELF. Thank you, Ranking Member Pappas, and thank you all again for your participation in today's hearing. I ask unanimous consent that all members have 5 legislative days to revise and extend their remarks and include extraneous material. I plan to put for the record a question to you officially. Without objection. So, ordered. This hearing is adjourned. Thank you.

[Whereupon, at 12:00 p.m., the subcommittee was adjourned.]

A P P E N D I X

PREPARED STATEMENTS OF WITNESSES

Prepared Statement of Ronald Burke

Good morning, Chairman Luttrell, Ranking Member Pappas, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the Department of Veterans Affairs' (VA) individual unemployability (IU) benefit. With me today are Nick Pamperin, Executive Director, Veteran Readiness & Employment (VR&E) Service, Veterans Benefits Administration (VBA), and David Barrans, Chief Counsel, Office of General Counsel.

Overview

The IU benefit fills a critical gap when the VA Schedule for Rating Disabilities (VASRD) does not fully address the impact of service-connected disability in a Veteran's circumstances. The intent of the VASRD is to fairly compensate Veterans for injuries incurred or as the result of their military service. To the extent those disabilities impair earning capacity of the average Veteran, the VASRD nonetheless cannot always adequately compensate an individual Veteran in their specific circumstances. IU is an important provision that enables VA to address this, such as when a Veteran's specific impairment does not meet the disability rating criteria for a schedular 100 percent evaluation, yet there is sufficient evidence of the Veteran's inability to obtain or maintain gainful employment. A qualified Veteran would be compensated at the 100 percent evaluation rate utilizing VA's IU authority. In Fiscal Year (FY) 2023, VA provided over \$7 billion in IU benefits to 377,108 beneficiaries and saw a 21.7 percent increase in IU beneficiaries over the past 10 years (2013–2023).

A Rating Veterans Service Representative (RVSR) assigns IU ratings when the evidence of record shows a Veteran has a minimum combined evaluation criteria of a single service-connected disability rated at 60 percent disabling or more, or has 2 or more disabilities at a combined evaluation of 70 percent or more with at least 1 service-connected condition rated at 40 percent or more, and, in the judgment of the decision-maker based on the evidence of record, is not able to obtain or maintain substantially gainful employment due solely to service-connected disability(ies). In exceptional circumstances, claims processors may refer cases that fail to meet the minimum combined evaluation criteria to the Executive Director of Compensation Service for consideration of an IU rating on an extra-schedular basis.

Authority and Historical Background

Section 1155 of title 38, United States Code, charges the Secretary with responsibility for developing and applying a disability rating schedule, known as the VASRD, that is based, "as far as practicable," upon the average impairments of earning capacity resulting from service-connected disabilities. The IU benefit has a long history in regulation. In 1925, the VASRD provided the first definition of total disability. Total disability was defined as an impairment of mind or body that is sufficient to render it impossible for the average person to follow a substantially gainful occupation. In the following decades, the regulations regarding IU have been updated numerous times to clarify eligibility requirements. Per current 38 C.F.R. § 4.16, total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

Eligibility Criteria

Under current regulations, Veterans who are unable to secure or follow a substantially gainful occupation due to their service-connected disabilities may be eligible for IU. Generally, IU eligibility is established if a Veteran has either 1 service-connected disability rated at 60 percent or more, or a single service-connected disability rated at 40 percent or more with other service-connected disabilities that combine to equal or exceed 70 percent. The single 60 percent or 40 percent disability may

be established based upon disabilities of 1 or both upper or lower extremities, disabilities resulting from common etiology or a single accident, disabilities affecting a single body system, multiple injuries incurred in action, or multiple disabilities incurred as a prisoner of war.

When deciding if a Veteran is entitled to IU, VA reviews all available evidence and considers the current severity of the service-connected disability(ies) that prevent substantially gainful employment; the impact of the service-connected disability(ies) upon employability; and employment status. Claims processors consider economic and non-economic factors impacting employability, including but not limited to evidence concerning the Veteran's current employment status, past employment history, educational/training history, and functional impairment arising from service-connected disabilities.

A request for a total disability evaluation based on IU, whether expressly raised by the Veteran or reasonably raised by the record, is not a separate claim for benefits. Rather, the IU claim involves an attempt to obtain an appropriate rating for a disability or disabilities, either as part of the initial adjudication of a claim or as part of a claim for increased compensation if the disability upon which IU is based has already been found to be service connected.

While a substantially complete VA Form 21-8940, Veteran's Application for Increased Compensation based on Unemployability, is necessary to provide VA with information needed to substantiate entitlement to IU, it is not necessary to raise the issue of IU. This form is required to establish entitlement to IU because it gathers relevant and necessary information regarding a claimant's disabilities and employment and educational histories. This form requires the Veteran to furnish an employment history for the 5-year period preceding the date on which the Veteran last worked. The form concludes with a series of sworn certification statements, and in endorsing it, a Veteran thereby attests to their employment status and signals understanding of the IU benefit's incompatibility with substantially gainful work. As part of the development of claims involving IU, VA contacts the Veteran's noted employers and asks them to provide information concerning the Veteran's employment history, including the dates of employment, the type of work performed, and the reasons for termination of employment if the Veteran is not currently working.

If VA decides a medical examination is necessary to determine whether a Veteran is entitled to IU, an appropriate examination or opinion request is submitted to a Veterans Health Administration medical facility or a VBA contract examination provider. Medical examiners follow the appropriate Disability Benefits Questionnaires to perform a complete and adequate examination for rating purposes, answering all questions, and providing opinions as requested. The medical examiner is requested to comment on the Veteran's ability to function in an occupational environment and describe functional impairment caused solely by the service-connected disabilities.

In some cases, a Veteran's service-connected disability(ies) may improve, but this does not necessarily result in the reduction of the total disability rating based on IU. In such cases, VA regulation 38 C.F.R. § 3.343(a) and (c) require that IU ratings will not be reduced, in the absence of clear error, without medical evidence showing material improvement in physical or mental impairment. In all rating reduction cases, a reduction in the evaluation may only be effectuated if the improvement is shown by a thorough examination and evidence of an improvement in the Veteran's ability to function under the ordinary conditions of life, including employment.

Training

To ensure consistent and quality findings of IU, VBA requires completion of standardized training on the subject. VBA requires all Veteran Service Representatives (VSR) and Rating Veteran Service Representatives (RVSR) to complete training on IU claims processing during Virtual and In-Person Progression (VIP) Training. VSRs complete approximately 2 days of IU course work, activities, and simulated cases to include a learning assessment. VIP provides employees with hands-on training, including simulated and live case work training with computer applications, policies, and laws. The training enables VSR employees to define IU and determine eligibility requirements, determine evidence, including medical evidence, required to process claims involving IU, and identify resources available to obtain additional evidence. The training also allows VSRs to list the steps for processing a claim involving IU, identify any ancillary benefits available to the Veteran's dependents, and understand the employment and income verification requirements for Veterans in receipt of IU benefits. Similarly, the VIP training program enables RVSR employees to define IU, define eligibility requirements, determine evidence requirements, determine effective dates, and rate and process IU claims.

Additionally, claim processors are assessed annually through the Competency Based Training System (CBTS). CBTS is designed to identify potential knowledge

and skill gaps at the individual level and assign remediation to address the potential gap. Additional national-level curriculum can be delivered at the station level based on individual error trends.

Marginal Employment and Protected Environment

Over the last several years, VA has examined, through various court decisions, studies, and reports completed by stakeholders, if the current IU benefit properly compensates Veterans who are unable to secure and maintain substantially gainful employment because of their service-connected disability(ies). If a Veteran has a service-connected disability(ies) that meets the eligibility criteria and earned income does not exceed the amount established by the U.S. Census Bureau (Department of Commerce) as the poverty threshold for one person, the Veteran is considered only marginally employed and may be entitled to IU. Veterans may also be found to be marginally employed when their income exceeds the poverty threshold if their employment is in a protected environment such as a family business or sheltered workshop. In determining entitlement to IU, marginal employment does not qualify as substantially gainful employment.

Over the last several years, a number of court decisions¹ have found that VA's regulatory definitions of "marginal employment" and "protected environment" lack specificity, and have encouraged VA to engage in rulemaking to better define these terms. In January 2024, the Court of Appeals for Veterans Claims issued a decision in *LaBruzza v. McDonough* (2024 WL 259882) regarding what constitutes a protected environment for purposes of determining entitlement to IU. In that decision, the court concluded that "employment in a protected environment," as used in VA regulations, is unambiguous and means "a lower-income position that, due to the veteran's service-connected disability or disabilities, is shielded in some respect from competition in the employment market."

The court elaborated that common characteristics of employment in a "protected environment" include employment sheltered from the open labor market and employment based on something other than the strict qualifications of the employee. According to the court, protected environments include working situations "shielded, covered, or guarded from an outside source of harm," with the harm being a Veteran's inability to secure or follow a substantially gainful occupation in the open labor market because of service-connected disabilities.

The court cautioned that the "protected environment" exception that allows a finding of entitlement to total disability based on IU when a qualifying Veteran has income exceeding the poverty level must be narrowly read lest it supplant the general rule that annual income, limited by the poverty threshold, is a key criterion for determining IU eligibility. The court recognized that determining whether employment is in a protected environment is highly fact specific and hinges on context. The court also noted that an employee's receipt of reasonable accommodations beyond those legally required by the Americans with Disabilities Act may be indicative of employment in a protected environment. VA currently is drafting guidance for claims processors regarding how to apply this decision and considering whether regulatory updates may be needed considering that decision and others.

IU Benefit and Mental Disabilities

On February 15, 2022, VA published a proposed rule in the Federal Register to amend the portion of the VASRD for evaluation of the impact of mental disorders. The proposed evaluation criteria measures a Veteran's essential ability to participate in a work environment and the impact of the mental disorder on earning capacity via a comprehensive assessment of occupational and social functioning. The proposed new evaluation criteria would more accurately capture the occupational impairment caused by mental disabilities and provide more adequate compensation for the earnings losses experienced by Veterans with service-connected mental disorders. If finalized, the proposed change would help alleviate current disparities with evaluations of mental disability(ies), so that Veterans with such challenges may receive adequate compensation using VASRD criteria, rather than receiving IU.

Verifying Earnings and Employment for Continued IU Eligibility

VA monitors changes in the employability of Veterans receiving IU benefits through a yearly Social Security Administration (SSA) wage data match. If a Veteran is receiving IU and is identified as having verified earned income over the poverty line, VA sends the Veteran a VA Form 21-4140, Employment Questionnaire, with an accompanying VA Form 21-4138, Statement in Support of Claim. The Vet-

¹ *Ortiz-Valles v. McDonald*, 28 Vet.App. 65 (2016); *Cantrell v. Shulkin*, 28 Vet.App. 382 (2017); *Arline v. McDonough*, 34 Vet. App. 238, 242 (2021)

eran will be required to identify and explain any earned income on the VA Form 21-4140. In addition to these forms, VA also sends the Veteran a due process notice of proposed adverse action that is sufficient for discontinuation of IU due to any of the following: failure to complete and return the VA Form 21-4140; an insufficient response on the VA Form 21-4140; or a return to gainful employment.

If a Veteran in receipt of IU has been employed for 1 year or more, VA will consider whether the employment is sustained, gainful employment, or marginal employment, separately from whether the Veteran's condition has improved or not. VA will also determine if an examination is necessary to evaluate employment status or employability. If VA determines gainful employment has been sustained for 1 year or more, VA will discontinue entitlement to IU the last day of the month 60 days after due process notice was provided.

Monitoring changes in employability is not required when the Veteran has not been identified in the SSA data match as having verified earned income above the poverty line; has an IU rating that has been in effect for 20 or more continuous years; or has had an IU rating replaced with a 100 percent schedular evaluation.

Comparison of Social Security and IU Benefits

An important distinction between the SSA benefit and the VA IU benefit is that SSA disability is based upon the totality of an individual's disabling conditions. In contrast, IU considers only service-connected disabilities. Hence, Veterans who receive SSA disability benefits may not be entitled to IU if their SSA disability determination was based upon any disabling conditions that are not related to the individual's military service. Conversely, Veterans receiving SSA benefits, including SSA retirement benefits earned through payroll contributions, can still be entitled to IU if they also meet VA's eligibility requirements.

VA does not preclude IU eligibility based upon the age of an eligible Veteran or the fact that they may have retired and/or elected to receive SSA retirement benefits upon reaching their SSA retirement age. Under VA regulations, age cannot be considered as a factor in service-connected claims. Veterans who are 62 or older may therefore be eligible to receive retirement benefits from SSA and VA IU benefits.

VA does not penalize Veterans who are eligible to receive IU compensation based upon their election to receive the SSA retirement benefits they have earned. VA recognizes that some Veterans may prefer to engage in substantially gainful employment beyond an age where they are entitled to draw the SSA retirement benefits they earned but may be unable to do so because of their service-connected disabilities. VA also recognizes that a Veteran's decision to discontinue work and draw SSA retirement benefits they earned may be influenced by the impediments service-connected disabilities impose on their continued ability to perform in their occupations.

The issues of Veterans receiving both IU and SSA benefits and of age as a factor in IU decisions have been raised by various parties over the years. A 2015 report from the U.S. Government Accountability Office (GAO)² on IU included a recommendation that VA study whether age should be considered when deciding if Veterans are unemployable. In October 2017, in response to that recommendation, VA completed such study, which first compared two potential age-specific IU eligibility policies: (1) placing a cap on the age at which Veterans can begin receiving benefits; and (2) placing restrictions on the age for both initial claimants and existing beneficiaries. VA concluded that both alternative eligibility policies would reduce the number of Veterans receiving IU benefits. Upon reviewing the results of the study, VA decided not to make policy changes regarding the IU benefit.

In 2014, the Congressional Budget Office (CBO) proposed several options to reform the disability compensation program,³ including discontinuing IU benefits when the Veteran reaches SSA's full retirement age. The rationale provided was that most Veterans who are older than SSA's full retirement age would not be in the labor force because of their age and that a lack of earnings among them would probably not be attributable to service-connected disabilities. CBO also noted that Veterans over SSA's retirement age who currently receive IU benefits would likely have income from other sources, including the regular schedular VA disability compensation benefit in addition to SSA retirement benefits. Recently, CBO addressed ending IU payments to disabled Veterans at the full retirement age for Social Security in its options for reducing the deficit, published in December 2022.⁴

² <https://www.gao.gov/products/gao-15-464>

³ https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/45615-VADisability_OneCol_2.pdf

⁴ https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/45615-VADisability_OneCol_2.pdf

VA currently has no plans to limit IU based on age or concurrent receipt of SSA retirement or disability benefits, recognizing that the IU benefit fills a critical gap when the VASRD fails to fully address the impact of disability in a specific Veteran's circumstances.

VA Occupational Training and Counseling

The mission of VA's VR&E program is to assist qualified Service members and Veterans with service-connected disability(ies) prepare for, obtain, and maintain suitable employment or maintain a life of independence. VR&E achieves this mission by providing comprehensive vocational counseling services to transitioning Service members and Veterans to ensure goals are suitable and attained.

Eligibility for VR&E benefits is determined for Veterans who received an honorable or other than dishonorable discharge, have a VA service-connected disability rating of at least 10 percent, and apply for services. Following eligibility, entitlement must be determined and is based on the establishment of a barrier to employment resulting from a service-connected disability(ies). A significant barrier must be established for Veterans rated 10 percent.

Per 38 U.S.C. § 1163, each time a Veteran is granted payment at the total disability rate based on IU during the period beginning after January 31, 1985, VR&E Service will be notified to provide counseling. This includes information about the VR&E program such as how to apply, eligibility, and services available. When a Veteran in receipt of IU applies to the VR&E program, a feasibility assessment must be completed to determine appropriate services.

In some instances, a Veteran's functional limitations due to disability(ies) impact their ability to participate in a rehabilitation program on a full-time basis. In these circumstances, VR&E offers Reduced Work Tolerance services that are approved when the Veteran's disability conditions prevent the pursuit of full-time training, based on recommendations from a medical provider. The Veteran can then be assisted with obtaining less than full-time employment.

During Fiscal Year 2023, VA provided VR&E services to 131,179 Veterans and Service members, and 17,135 Veterans have successfully completed their VR&E program. During Fiscal Year 2023, VBA paid over \$1.6 billion in VR&E benefits. As of May 1, 2024, VR&E has 151,769 Veteran participants with 90,380 enrolled in Long-Term Services, which helps program participants obtain education and training needed to find work in a different field that better suits current abilities and interests of participants.

VR&E Longitudinal Study

The VR&E Longitudinal Study, required by 38 U.S.C. § 3122, follows 3 cohorts of former participants over a 20-year period and details the of self-reported outcomes of those completing the program. The Longitudinal Study provides insight into four major areas: employment, income, home ownership, and use of supplemental programs for VR&E enrolled Veterans. The study finds that the median annual household income of Veterans who successfully complete the program is \$95,000, which is 65 percent higher than Veterans who did not complete the VR&E program. Additionally, these Veterans have homeownership rates of 76 percent, which is 15 percentage points higher than Veterans who do not complete the VR&E program. The employment rate for rehabilitated Veterans steadily increased from 45 percent in Fiscal Year 2012 (the first year of survey data collection) to 72 percent 5 years later in Fiscal Year 2017, and to 75 percent in Fiscal Year 2022.

Additional Data

The VA chapter 31 benefit assists Veterans with service-connected disabilities prepare for, find, and keep suitable employment. During the past 5 years, VA received nearly 3,000 applications for VR&E benefits for Veterans in receipt of IU, of which 98 percent were found entitled to chapter 31 benefits. VR&E Service has seen an average of 549 IU applicants per year for chapter 31 benefits. Since 2020, VA has witnessed the successful rehabilitation of 70 Veterans in receipt of IU cases. It is noteworthy that there has not been a significant disparity in the discontinuance rates between IU cases and the entire VR&E population. Specifically, 1,994 Veterans in receipt of IU cases were discontinued, comprising 66.8 percent of total cases, a figure quite like the discontinuance rate of the entire chapter 31 Veteran population, which stands at 65.4 percent. Of these discontinued cases, 92.5 percent were due to the Veteran choosing not to continue in the program. As of May 13, 2024, VA has 345 VR&E participants with pending IU applications, with 292 in the evaluation and planning status, and 285 actively participating in a rehabilitation plan.

Closing

VA appreciates Congress' continued support in finding ways to improve the services and benefits available to transitioning Service members and Veterans who have challenges preparing for, obtaining, and maintaining gainful employment. VA remains committed to continuing collaboration with you and its stakeholders. Mr. Chairman, this concludes my statement. My colleagues and I would be happy to answer any questions you or other members of the Subcommittee may have.

Prepared Statement of Marquis Barefield

Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee:

Thank you for inviting DAV (Disabled American Veterans) to be a witness at your hearing titled, "Does a Total Disability Rating Based on Individual Unemployability (TDIU) Properly Compensate Today's Veterans?"

DAV is a congressionally chartered and Department of Veterans Affairs (VA) accredited veterans service organization. We provide meaningful claims support free of charge to more than 1 million veterans, family members, caregivers and survivors. To fulfill our service mission, DAV directly employs a corps of benefits advisors, national service officers (NSOs), all of whom are themselves wartime service-connected disabled veterans, at every VA regional office (VARO) as well as other VA facilities throughout the Nation, including the Board of Veterans' Appeals (Board). During 2023, DAV national and transition service officers interviewed over 300,000 veterans and their families, and filed more than 200,000 new claims for over 600,000 specific injuries and/or illnesses. Thanks to the great work of our service officers, those represented by DAV obtained more than \$28 billion in earned benefits in 2023.

We are pleased to provide our insight, concerns, and recommendations as we explore the requirements of TDIU, discuss the veteran's age and TDIU, compare it the Social Security Administration's (SSA) Social Security Disability Insurance (SSDI) program and discuss levels of compensation for TDIU.

Total Disability Rating Based on Individual Unemployability

As we discuss and debate TDIU, how it is defined and applied, we must remember whom this impacts; service-connected disabled veterans suffering from mental health disorders such as post traumatic stress disorder (PTSD) from combat or military sexual trauma, cognitive disabilities such as traumatic brain injuries (TBI), amputations and other orthopedic conditions limiting mobility, diseases impacting the ability to breathe, digest, hear, see, as well as the effects of cancers, not to mention the overwhelming disruption of life caused by chronic pain.

For those veterans who are unable to work due to service-connected disabilities but whose disabilities do not meet the requirements for a total rating under VA's regular rating schedule criteria, VA has special provisions for awarding total disability ratings. A total disability rating for compensation based on TDIU may be assigned where the schedular rating is less than total, when it is found that the disabled person is unable to secure or follow a substantially gainful occupation as a result of a single service-connected disability ratable at 60 percent or more, or as a result of two or more disabilities, provided at least one disability is ratable at 40 percent or more, and there is sufficient additional service-connected disability to bring the combined rating to 70 percent or more.

Total disability will be considered to exist when there is present any impairment of mind or body sufficient to render it impossible for the average person to follow a substantially gainful occupation. Therefore, total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the veteran is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

The distinction between total disability on a schedular basis and TDIU is that total disability on a schedular basis is founded on an "average person" standard, as are all regular schedular ratings, while unemployability ratings are based on the impact of the disability in the veteran's own circumstances.

Average earning capacity, or average person, is a standard or a single value used to represent a broad universe of persons. Like an average, it is approximately the middle position in a data set or intermediate between the two ends or extremes on a scale. Consequently, while the concept of average impairment in earning capacity is the basis underlying the various percentage evaluations provided for given levels

of disability in the rating schedule, unemployability determinations are not based on average impairment and must consider the disability as it affects the individual's ability to follow a substantially gainful occupation in light of his or her attained work skills and educational background.

Substantially Gainful Occupation

Substantially gainful occupation, found in 38 C.F.R. § 4.16, has been clarified by the United States Court of Appeals for Veterans Claims (Court) decision, *Ray v. Wilkie*, 31 Vet. App. 58 (2019). First, there is an economic component, which essentially contemplates an occupation earning more than marginal income (outside of a protected environment) as determined by the U.S. Department of Commerce as the poverty threshold for one person. Second, there is a non-economic component dealing with the individual veteran's ability to follow and secure employment.

For the second component, attention must be given to: (a) the veteran's history, education, skill and training, (b) the veteran's physical ability (both exertional and non-exertional) to perform the type of activities (e.g., sedentary, light, medium, heavy or very heavy) required by the occupation at issue, with relevant factors such as lifting, bending, sitting, standing, walking, climbing, grasping, typing, reaching, auditory and visual, and (c) whether the veteran has the mental ability to perform the type of activities required by the occupation at issue, with relevant factors such as memory, concentration, and ability to adapt to change, handle work place stress, get along with coworkers and demonstrate reliability and productivity.

Marginal Employment

Substantially gainful employment is defined as work that is more than marginal, and that permits the individual to earn a living wage. *Moore v. Derwinski*, 1 Vet. App. 356, 358–59 (1991). The ability to work only a few hours a day or only sporadically does not qualify as an ability to engage in substantially gainful employment. See *id.* Marginal employment shall generally be deemed to exist when a veteran's earned income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person.

VA's Federal Advisory Committee on Disability Compensation was tasked in the January 6, 2014, VA Response to the Committee's 2012 Biennial Report to conduct a study of the issue of Individual Unemployability (IU) and make recommendations based on the earnings and losses study. The Committee expressed concern in the 2016 Biennial Report that there was no plan developed to study economic loss data. VA initiated a limited study in 2017 which identified weaknesses with respect to sample size. VA has engaged contractors for a more robust study which has not been completed. Analysis is still pending access to data bases from other Federal agencies. The Committee remains concerned about the approach being taken.

As an exception to poverty threshold-based marginal employment, which in turn is an exception to the norm of TDIU usually being awarded to veterans who are unemployed, facts found marginal employment, including employment in a protected environment, must be read narrowly so that it does not utterly supplant the general rule that annual income, limited by the poverty threshold, is a key criterion for determining TDIU eligibility. See *Rossey v. Shulkin*, 29 Vet.App. 142, 144–45 (2017).

In the recent decision of *LaBruzza v. McDonough* (2024), the Court held, "for the purposes of ascertaining the meaning of employment in a protected environment, the Court concludes that the phrase limits such employment to lower-income positions that produce earned annual income that exceeds the poverty threshold. And while the fact-specific nature of the protected-environment inquiry, as well as institutional limitations, prevents the Court from setting a bright-line standard for what constitutes a lower-income position, the extent to which a veteran's earned annual income exceeds the poverty threshold is clearly a key regulatory consideration."

As can be gleaned by the above descriptions and explanations about substantial gainful employment and marginal employment, the Court has weighed in often on these requirements of TDIU. However, one area we have yet to address is the veteran's age, which cannot be considered in any determination of entitlement to TDIU.

Veteran's Age and TDIU

Although TDIU is based on the effect of disability on the individual, it does not discriminate on the basis of age. If the total rating is based on TDIU, it must be determined that the service-connected disabilities are sufficient to produce unemployability without regard to advancing age. VA is required to determine, without regard to age, whether it is the service-connected disability that renders the veteran unemployable.

Per VA's Fiscal Year 2025 annual budget submission, in September 2023, 377,108 veterans received TDIU, an increase of 933 cases over September 2022. While TDIU caseload continues to increase at a gradual rate, the percentage of veterans on the compensation rolls receiving TDIU compared to total veteran caseload has been decreasing slightly, from 7.8 percent in September 2017 to 6.8 percent in September 2023.

Although the percentage of veterans receiving TDIU has slightly decreased and VA regulations preclude considering the veteran's age, attempts to limit TDIU based on the veteran's age have persisted. For example, the June 2015 Government Accountability Office (GAO) report, "Veterans' Disability Benefits: VA Can Better Ensure Unemployability Decisions Are Well Supported," they recommended to develop a plan to study whether age should be considered when deciding if veterans are unemployable.

Reports from the Congressional Budget Office (CBO) in November 2013, August 2014 and December 2016, provided options to limit TDIU based on age and entitlement to additional earned benefits. In the former administration's 2018 budget, VA proposed to terminate TDIU ratings for veterans at the age of 62 and cutoff TDIU benefits for any veteran already in receipt of Social Security benefits.

In the December 2022 CBO report, "Options for Reducing the Deficit, 2023 to 2032," an option was presented to terminate TDIU ratings for veterans at age 67 or older, and cutoff TDIU benefits for any veterans already in receipt of TDIU. This is predicated on the veteran being in receipt of SSA based on retirement age. Another option in the report would require that once a veteran meets the SSA retirement age, all disability benefits would be reduced by 30 percent.

To be clear, total compensation for TDIU is not a retirement benefit. Many veterans in receipt of TDIU may have not have earned enough work credits to receive SSA retirement. Therefore, cutting off benefits due to obtaining the retirement age or age 67, would take TDIU benefits from veterans with no SSA entitlement or actual retirement benefits.

Today, many people work well beyond what was once considered normal retirement age. Typically, VA awards the benefit when disability forces the veteran to terminate employment. To award TDIU to a veteran age 64 and deny it to a veteran aged 67, for example, would be unfair discrimination, disparate treatment of veterans similarly situated, and wholly unjustified from an equitable standpoint.

Age may not be considered a factor in evaluating service-connected disabilities or in determining entitlement to TDIU as stated in 38 C.F.R. § 4.19. That is why DAV strongly supports H.R. 6362, the Protecting Benefits for Disabled Veterans Act. This legislation would codify entitlement to TDIU and include the provisions of 38 C.F.R. § 4.19, to protect TDIU for all veterans regardless of age. Through our grassroots efforts, DAV members and supporters sent nearly 11,500 emails to the House of Representatives in support of the Protecting Benefits for Disabled Veterans Act.

Although VA cannot consider age regarding TDIU, other programs consider age, such as VA's nonservice-connected pension program and SSA's SSDI program.

Social Security Disability Insurance and Total Disability Based on Individual Unemployability

SSDI was established in 1956 as a component of the Old Age, Survivors and Disability Insurance (OASDI) program. Its primary purpose is to replace a portion of an insured worker's earnings, should a medically determinable illness or injury impede his or her ability to work. For SSDI benefits, an individual must have a sufficient work history and must be unable to engage in any employment that brings income in excess of the substantial gainful activity (SGA) threshold, as a result of one or more medical conditions that is expected to last 12 months or longer, or result in death.

SSDI is an insurance program that replaces a portion of earnings for an eligible worker whose illness or injury, while not necessarily caused by a work-related incident, results in an inability to work. SSDI is one of several Federal programs funded through the Federal Insurance Contributions Act (FICA) payroll tax and the Self Employment Contributions Act (SECA) tax to which all workers and employers in covered occupations (including military personnel) and self-employed individuals make contributions.

Insurance against disability from any cause is to be distinguished from compensation for disability from military service. VA compensation is not an insurance program; it is based on wounds, injuries and illnesses that are related to active military service.

Age is a factor in determining entitlement to SSDI on the principle that, where a person is unable to perform his or her customary work, the effects of advancing

age reduces a person's ability to adjust to other work for which the person has the necessary skills, education, and physical or mental abilities. The June 2015 GAO report, "Veterans' Disability Benefits: VA Can Better Ensure Unemployability Decisions Are Well Supported," proposed SSDI's age restriction. It noted the potential strengths:

- Could better target the intended population—older veterans might not be likely to work past retirement age.
- Benefit costs might be reduced due to the reduction in payments to older veterans.

The report noted the following challenges:

- Some veterans might not have income replacement available—especially those who had been on TDIU in advance of reaching retirement age.
- Could be unfair to veterans—older individuals might have the option of working past the retirement age, but older veterans whose service-connected disabilities stop them from working cannot.

Regulatory provisions preclude VA from considering age. Thus, contrasting SSDI with TDIU, considering age restrictions, is clearly not an apples to apples comparison. DAV is firm in our conviction that age restrictions will negatively impact veterans. We remind Congress that age must be ignored because compensation is paid for the effects of service-connected disabilities, not the effects of age.

Disability determinations for SSDI benefits entail a five-step process. First, an applicant files for benefits with the SSA at the agency's website, a field office, or through a toll-free phone line. The responsibility for adjudicating the application then shifts to medical and vocational experts at state-level Disability Determination Services (DDS) agencies.

In the previously noted 2015 GAO report, it considered the results of a mandatory vocational assessment before granting TDIU benefits. It was noted that not all veterans who claim TDIU do not receive a vocational assessment. The vocational assessment would address whether the veteran could be rehabilitated in order to maintain employment. In addition, rating specialists working on TDIU claims would receive training in how to interpret the findings from the vocational assessment. Rating specialists would then be able to use this assessment, along with the results of medical reports and other information, to help determine the veteran's ability to engage in work activities. The report noted only potential strength of such a requirement:

- Could help provide a more complete appraisal of the veteran's ability to work.

VA has vocational specialists with the Veteran Readiness & Employment (VR&E) program, so if a vocational component was required, it would more than likely fall to VR&E. The report also identified potential challenges as:

- Could require VA to expand its vocational rehabilitation program to address the increase in required assessments.
- Could cause delays in benefit decisions.
- Rating specialists and vocational rehabilitation counselors might need to receive additional training on how to assess the vocational rehabilitation findings.
- Could increase the burden on veterans as they would likely need to submit to an additional assessment.
- By adding a new factor to consider, could possibly increase the subjectivity of claim decision-making, thereby possibly creating more variation in decisions.

Our experience has showed that when a veteran is denied entry into a VR&E plan for employment due to their service-connected disabilities, it has an impact for the veteran to be awarded TDIU. However, we have concerns over making that a requirement, as this could create an additional burden on the veteran to obtain a vocational opinion on their own, which many may not have the means to obtain.

VA's 2025 budget submission indicated that they would be losing approximately 60 FTE. We believe adding a vocational component would lengthen the processing time and place an additional burden on VR&E counselors, even though many have admitted they are currently overwhelmed.

If the requirements of a vocational expert become mandatory, we have concerns as the Court does not find that vocational opinions are equivalent to medical opinions (finding that vocational expertise is not the same as medical expertise). See *Arline v. McDonough* 34 Vet. App. 238 (2021). To take this even farther, the Federal Circuit Court of Appeals has held that the ultimate determination of whether a vet-

eran is capable of substantial gainful employment rests with the VA adjudicator, not a medical examiner. *Geib v. Shinseki*, 733 F.3d 1350, 1354 (Fed. Cir. 2013). This means that VA can discount any vocational or medical opinion that could be potentially beneficial for a veteran seeking TDIU.

Though they are imperfect and have been criticized by the Court and GAO, we believe the current rules, for the most part, prescribe consideration of the appropriate factors. These decisions do require careful examination of the facts and the exercise of well-informed and well-reasoned judgments. Most veterans prefer to work if they are able and we believe they should be afforded those opportunities and not be solely reliant on VA compensation rates.

TDIU Compensation

Currently VA has stated that approximately 5 million veterans are in receipt of VA compensation and as we noted above, roughly 400,000 veterans are receiving TDIU compensation, which is the same compensation rate as 100 percent disabled. This means approximately 8 percent are receiving TDIU compensation, which for a single veteran is \$3737.85 a month equaling \$44,854.20 a year.

In the fourth quarter of 2023, the U.S. Bureau of Labor Statistics reported that the national average salary was \$59,384.00. The Forbes Advisor reported that the average annual salary in the United States in 2024 is \$59,428.00 with an average hourly rate of \$28.34. Based on these numbers and the 100 percent disability compensation rates for a single veteran, which is an approximate difference of \$15,000 less than the national average annual salary.

For those veterans that are unable to work due solely to their service-connected disabilities, they receive compensation that is demonstrably lower than the national average. TDIU compensation is not some lottery windfall amount, it is below average and veterans are required to use this amount for themselves and their families.

We recommend an increase not only in the 100 percent disability compensation rates, but an adjustment of all rates based on any potential increased rate for 100 percent. Further, we recommend that more opportunities for education, vocational training and job placement be made available for all veterans and specifically those in receipt of TDIU.

Many veterans have difficulties with the loss of independence and being forced to deal with the aspects of diseases, wounds and injuries, medical appointments, treatments, prosthetics and medications. VA is required to notify a veteran awarded TDIU of the availability of vocational rehabilitation and offer the veteran counseling services and the opportunity for evaluation as to whether the achievement of a vocational goal is feasible.

Although a veteran might have the potential to perform substantially gainful employment in the future upon successful completion of vocational rehabilitation training, entry into a program of vocational rehabilitation, by itself, does not cause a termination of TDIU benefits. A veteran who undertakes a program of vocational rehabilitation is not considered “rehabilitated to the point of employability” unless he or she has been “rendered employable in an occupation for which a vocational rehabilitation program has been provided, as noted in 38 C.F.R. § 21.72. Additionally, participation in an education program does not mean that a veteran is employable and TDIU cannot be discontinued for that reason.

However, there are provisions that essentially allow for a period of trial work, in which a TDIU rating cannot be reduced where a veteran secures and follows a substantially gainful occupation unless the veteran maintains such an occupation for a period of 12 consecutive months. See 38 C.F.R. § 3.343(c)(2). We agree that it is desirable to provide every reasonable opportunity and encouragement for disabled veterans, including those with very serious handicaps and those found to be unemployable, to have the ability to return to work.

Mr. Chairman, in closing, we must remember that TDIU impacts those service-connected disabled veterans suffering from mental health disorders such as PTSD from combat or military sexual trauma, cognitive disabilities such as TBIs, amputations and other orthopedic conditions limiting mobility, diseases impacting the ability to breathe, digest, hear, see, as well as the effects of cancers, not to mention the overwhelming disruption of life caused by chronic pain.

DAV believes that improvement can be made to the TDIU process; however, our conviction remains with the following:

- Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation.

- Unemployability ratings are based on the impact of the disability in the veteran's own circumstances in light of his or her attained work skills and educational background.
- Total disability compensation for TDIU is not a retirement benefit.
- Age should not be considered a factor in evaluating service-connected disabilities or in determining entitlement to TDIU.
- VA compensation is not an insurance program; It is based on wounds, injuries and illnesses that are related to active military service.
- Veterans in receipt of total disability compensation receive substantially less than the national average salary.
- Mandatory vocational assessments would create a burden on the VR&E program and create delays in claims and appeals.
- Disabled veterans, including those with very serious handicaps and those found to be unemployable, deserve to have a mechanism to return to work.

While we agree that there need to be better paths to employment, education and training, we must be vigilant in protecting those that receive a total disability based on individual unemployability due to the severity of their service-connected disabilities. This concludes my testimony.

Prepared Statement of Michael Figlioli

Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to provide our remarks on this important issue.

Total Disability based on Individual Unemployability (TDIU) has long been a delicate subject of debate. For many, the benefits provided by the program have been life changing, not only for veterans but for their family members as well. While some may be quick to focus on costs and numbers, the underlying core of the discussion is about people. These are individuals who put themselves in harm's way and were injured. Some of the wounds are visible and some are not, but because of their service they are unable to achieve gainful employment.

As we have witnessed for more than 20 years, one of the tragic consequences of men and women risking their lives is that they do not always return in the same condition as when they left. Many have had their lives changed in an instant whether it was due to an improvised explosive device blast, or toxic exposure to radiation, dioxins, or herbicides. For those who selflessly served this country but do not meet the schedular requirements for a 100 percent disability rating and are left with the insidious effects of war that preclude them from gainful employment, the Department of Veterans Affairs (VA) can provide a TDIU rating.

Every process, program, and system has the capacity for improvement in some form or another. The VFW supports process improvement that sustains or enhances benefits for those who served their country. We must be cautious of unintended consequences for those who rely on this benefit, especially the most vulnerable who depend on this payment for their very survival.

TDIU Compensation

Of all the discussions over the years about VA benefits, countless hearings, statistical analyses, Congressional Budget Office recommendations, and opinions based on fact or perception, TDIU has been one of the most contentious issues. It has been a difficult benefit to discuss, likely because this law pushes the boundaries of statistical and accepted norms. As stated, age is not to be taken into account when making a decision. Yet, it is always the "elephant in the room" when there are discussions about its parity with the civilian sector. There is no standard expectation when it comes to the effects of illness or injury and the impact on a veteran. Some veterans will become unemployable as their disabilities worsen with age. The VFW believes that most veterans would prefer to work if capable of doing so.

The VFW is aware of the cost of this benefit in terms of dollars and cents. Looking back, we have seen veterans' programs cut when the financial cost of war disappears from the media's focus. Taking benefits from veterans was wrong then and it is still wrong today. Any benefit to which a veteran is entitled by their service to our Nation is never a waste of money.

Many veterans have recently become beneficiaries of VA disability compensation due to changes in the law. This has become more apparent with the passage of the PACT Act. Prior to that there was the expansion of Blue Water Navy benefits. These veterans who suffered silently due to the bureaucratic process continued to get older and their disabilities worsened. They are now unable to work and are entitled to TDIU as a result. Many are past retirement age and may not have had the opportunity to pay into the system. Like every other eligible veteran who may be younger, these older veterans should not have the benefit taken away.

TDIU / Social Security

Veterans in the TDIU program have service-connected disabilities. These disabilities prevent them from working or contributing to the Social Security trust funds like their civilian counterparts in the workforce. TDIU beneficiaries would be at a significant disadvantage in compensation provided by Social Security.

The law prohibits VA from taking age into consideration in a claim for disability benefits. By this statute alone, age is also not a contributing factor in determining TDIU eligibility, and the VFW supports this criterion. Health care has advanced significantly, whether provided by VA or the civilian sector. Americans in general are living and working longer.

In each new Congress there are proposals submitted by the Congressional Budget Office to stop TDIU at the age of retirement because those veterans are no longer employable, which relates to the age of eligibility for Social Security. It is off-putting that Congress would suggest that Americans should not be considered part of the workforce simply due to age. Elder workers are entitled to their earned wages and associated benefits. Veterans receiving TDIU have documented service-connected disabilities and should not be penalized for their inability to work.

The comparison of TDIU to Social Security is the proverbial “apples and oranges.” The Social Security safety net is intended to supplement lost income customarily due to retirement from the workforce after earning enough work credit at an age determined by that agency. Many individuals have the opportunity to contribute to a qualifying retirement plan such as a 401(k) to ensure their financial security in retirement. TDIU is compensation due to injuries or illness incurred in service to one’s nation. There is no formula or predetermined age to calculate when a veteran who has the desire to continue working is unable to do so.

TDIU / VR&E / Earnings Capacity

Everyone’s service was different whether it was by occupational specialty, theater, or period of time. Post-service entitlements are also different for every eligible claimant. As the world and technology have evolved over the past several decades, so have the needs of our force. Older veterans were likely trained in the art of warfare—artilleryman, infantryman, tanker, engineer. These were the needs in a post-World War II military, but they were labor-intensive career fields and employment opportunities may have been limited in our post-war world.

The modern military has transitioned to a more technically diverse force. Recruits are now able to receive training in robotics, coding, aeronautics, and other career fields that did not exist only a generation ago. Separating or retiring service members are likely to find similar employment in the civilian sector. The economic opportunity for better earnings is vastly greater than it was for most of their predecessors or for individual service members in less technical or more focused career fields.

A single veteran entitled to TDIU is already at a financial disadvantage in comparison to the national average salary. Other indirect compensation such as VA health care and the non-taxable status of VA compensation contributes to the amount received being comparable to the national average salary.

VA has offered training in new career fields for those eligible due to their service-connected disabilities. Since 1985, veterans who receive TDIU have been eligible for the Veteran Readiness and Employment (VR&E) program. The Veterans Benefits Administration is tasked with notifying the administrators of this program about individuals who may be eligible to participate. VR&E is supposed to provide a comprehensive evaluation for each veteran in receipt of TDIU benefits to determine if a new vocation is possible.

While the VFW has consistently supported the policy for vocational rehabilitation, we have no credible data to indicate that this occurs consistently and faithfully. We believe it could be greatly beneficial to incorporate more components of the VR&E program into the TDIU program, but not without major improvements and added resources. We have concerns that VR&E may be inadequately staffed or if it even has the capability to fulfill this goal. As a member of the Independent Budget Vet-

erans Service Organizations, the VFW has testified for years about the need for program improvement at VR&E.

The VFW suggests that VA work with stakeholders to better identify eligible veterans for this critical program. We agree that we must better collaborate on marketing these benefits for individuals who receive TDIU and want to continue to work, but might not know how to navigate the system. This would create more opportunities for veterans to rehabilitate themselves and eventually not have to rely on TDIU.

There has been great discussion in previous hearings about VA standard forms. Are they necessary or are they not? Yet, there is no mention of VR&E benefits in rating decision notices to claimants. This benefit should be included automatically if a veteran meets the criteria, the same as when a claimable issue is identified during a compensation and pension examination but was not included in the submission. This could be accomplished by simply adding language to the disability notification letter that states, "You may be entitled to additional benefits. If you would like to apply for Veteran Readiness and Employment benefits, please complete and submit VA 28-1900" and include the form.

This approach would allow the veteran to decide on participation in the program. Some individuals may simply be unable to work. Some may need to work. The VFW has heard from many veterans who desire to continue to be a contributing member of the workforce. Many have told us that it has kept them alive, and if they had been just sitting at home collecting VA disability compensation they may not have lasted long. We welcome the opportunity to work with your staffers and our partners to help veterans who have employment challenges use the benefits they have earned and remain gainfully employed whenever and wherever possible.

Conclusion

For the past 125 years, the VFW has been a visible and vocal advocate for veterans, their family members, and survivors. While TDIU may be seen by some as too costly, we remind them that this is the true cost of war. Young men and women are sent to faraway places without complaint because it is their duty. When they come home, they are changed. Many have seen things that others would say are best forgotten. When they are unable to, when they are no longer whole and too broken to support themselves or their families, it is part of the collective "unrepayable" debt to make sure they have the resources needed to survive.

This concludes my testimony. I am happy to answer any questions you may have.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, the VFW has not received any Federal grants in Fiscal Year 2024, nor has it received any Federal grants in the two previous Fiscal Years.

The VFW has not received payments or contracts from any foreign governments in the current year or preceding two calendar years.

Prepared Statement of Michael Stoddard

Chairman Luttrell, Ranking Member Pappas, and distinguished members of the Subcommittee for Disability Assistance and Memorial Affairs – thank you for inviting Wounded Warrior Project (WWP) to submit this written statement for the record of today's hearing on total disability rating based on individual unemployability (TDIU). We share your commitment to ensuring that Department of Veterans Affairs (VA) benefits continue to support the veterans who earned them through their service and sacrifice.

For 20 years WWP has been dedicated to our mission to honor and empower wounded warriors. In addition to our advocacy before Congress, we offer more than a dozen direct service programs focused on connection, independence, and wellness in every spectrum of a warrior's life. These programs span mental, physical, and financial domains to create a 360-degree model of care and support. This holistic approach empowers warriors to create a life worth living and helps them build resil-

ience, coping skills, and peer connection. Our reach extends to more than 200,000 veterans who are being served in various ways across the United States.

One of the first and most impactful interactions many warriors will have with WWP is through our Benefits Services program. Our Benefits Services program assists injured veterans, Service members, and their families navigate the often-complex process of filing claims for VA benefits. For some of these warriors and their families, establishing service connection for service-related injuries and illnesses is a key step in establishing financial security and connection to VA health care after leaving the military. For WWP, ensuring they receive the benefits they have earned in a manner that honors their service is fundamental to our mission. Based on thousands of programming engagements with warriors, our ongoing partnerships with other non-profit organizations, and data from the largest and most statistically relevant survey of post-9/11 veterans in the country, WWP is uniquely equipped and informed to advocate for the needs of the community we serve.¹

Understanding TDIU Ratings

Department of Veterans Affairs regulations define the criteria for entitlement for individual unemployability (IU) as a VA disability benefit that allows veterans to be compensated at the 100 percent disability rate even if their service-connected disabilities do not combine to a total rating of 100 percent. The associated criteria for establishing IU require that a veteran be found unable to secure and follow substantially gainful employment due to their service-connected disabilities. The case may be referred to the Executive Director for Disability Compensation for consideration.

Judicial decisions have also shaped the laws that govern TDIU. *Ray v. Wilkie*, 31 Vet. App. 58 (2019), provides guidance on the necessary components to establish the inability to secure or follow a substantially gainful occupation, which is a determining factor in establishing entitlement to TDIU. *LaBruzza v. McDonough* (No. 21-4467 (Vet. App. 2024) clarified that marginal employment can still be recognized even if a veteran's income exceeds the poverty threshold, particularly if the employment is in a protected environment, such as a family business or sheltered workshop. These rulings by the Court of Appeals for Veterans Claims underscore the nuanced nature of determining eligibility for TDIU. Providing clear guidance on what constitutes the inability to secure substantially gainful employment and recognizing the complexities of marginal employment helps ensure that veterans receive fair consideration for their unique circumstances.

As helpful context, TDIU ratings are a meaningful but slowly declining part of the overall VA disability compensation landscape. VA's Fiscal Year 2025 Budget Submission reported a gradual increase of veterans in receipt of TDIU from approximately 350,000 in 2017 to 377,108 veterans in September 2023. But while IU case-load has increased, it is now only 6.8 percent of the total veteran case load, which is a decrease from 7.8 percent reported in 2017². Furthermore, data shows that TDIU is a multigenerational issue. In September 2017, CBO estimated that of the roughly 380,000 veterans who were in receipt of TDIU, less than half (180,000) were over the age of 67³. As such, WWP has a vested interest in helping ensure that the TDIU benefit can assist the post-9/11 generation we serve.

TDIU Ratings in 2024

Whether the current TDIU benefit is an accurate representation of the average totally impaired veteran's earning capacity in today's civil occupational environment is a question as diverse as the veteran community itself. WWP's Annual Warrior Survey provides data to help understand the different but related issue of whether a TDIU rating can provide adequate financial support to a totally impaired veteran. Across several data points, the survey reveals that service-connected injuries and health problems play a major role in employment among WWP warriors. Perhaps more significant is what the data shows about the relationship between financial security and quality of life.

When looking at disability ratings alongside employment status, more than half (53.7 percent) of those who are unemployed and looking for work have disability ratings of 100 percent. Among WWP warriors who are not currently looking for work,

¹ WWP's 2022 Annual Warrior Survey can be viewed at <https://www.woundedwarriorproject.org/mission/annual-warrior-survey>.

² U.S. DEPT OF VET. AFFAIRS, FISCAL YEAR 2025 BUDGET SUBMISSION, Burial and Benefit Programs and Department Administration at VBA-144, <https://www.va.gov/opa/docs/remediation-required/fy2025-va-budget-volume-iii.pdf> (last visited June 7, 2024).

³ CONG. BUDG. OFF., END VA'S INDIVIDUAL UNEMPLOYABILITY PAYMENTS TO DISABLED VETERANS AT THE FULL RETIREMENT AGE FOR SOCIAL SECURITY, available at www.cbo.gov/budget-options/54749 (2024).

70.3 percent have a disability rating of 100 percent. Disability rating was also shown to have an impact on how much financial strain a warrior felt in the last 12 months. Almost two-thirds (64.0 percent) of warriors who reported a 100 percent disability rating also reported that they did not have enough money to make ends meet in the past year. Warriors who reported full-time employment were still likely to report that they did not have enough money to make ends meet in past 12 months (58.1 percent), but unemployed warriors were generally feeling more financial strain (80.3 percent).

These insights were evaluated further to better understand impact on a warrior's quality of life. After controlling for demographic factors, WWP warriors who are employed were found more likely to have physical or mental health quality of life scores above the median of the general U.S. population. Similarly, warriors who report financial strain (as determined by not having enough money to make ends meet) were found less likely to have physical or mental health quality of life scores above the median of the general U.S. population. Unsurprisingly, these results collectively show that that financial strain negatively impacts warriors' quality of life, employment positively impacts warriors' quality of life, and a 100 percent disability rating is most often associated with unemployment and does not adequately insulate a veteran from feeling financial strain.

As the reasons for financial strain and unemployability are not easily controlled at the individual level, there are compelling reasons to invest in supportive services that can address the unique needs of each veteran. Long-term, multilevel interventions (individual-, system-, and community-level) are the solution. Certain insights may be helpful in this context:

Returning to work: WWP has worked with warriors suffering from significant disabilities and receiving TDIU. The financial relief that TDIU can provide helps warriors focus on taking care of their treatment needs. For others, TDIU presents questions about how to manage their future. WWP works with warriors who seek counsel about how to pursue work (both full time and part time) in consideration of TDIU. One more common example is a warrior with mental health challenges who seeks gainful employment to help with feelings of isolation and being an unproductive member of their community. The warrior here becomes concerned about the support in place to help them reintegrate into employment and the financial impact it will have on meeting financial obligations. Our experience has taught us that veterans would benefit from clearer communication about what returning to work – even in a limited capacity – means for the TDIU benefit, and what services are available to help manage that transition.

Modernizing schedular disability ratings: TDIU helps veterans reach a 100 percent rating when they would otherwise face unemployability with a rating of less than 100 percent. Making the case for a TDIU can be challenging however, and as noted above, some veterans who have successfully advocated for a TDIU will later find the ability and desire to return to work after growing accustomed to the financial cushion that TDIU provides. One path to providing better outcomes for many will be to continue efforts to modernize VA's Schedule for Rating Disabilities (VASRD) to ensure that assigned schedular ratings are closely reflective of the true impact of service-connected conditions on a veterans' ability to earn a living.

The last comprehensive update of the VASRD was completed in 1945. Though numerous amendments have been added since that time, a formal Program Management Plan to completely revise and update the VASRD under 14 body systems was implemented by VA in October 2009. To ensure the VASRD remained current, a provision was made to begin an ongoing review and update of the PMP beginning in March 2017. Since 2017, VA has been focused on the ongoing effort in research and rulemaking to update the VASRD to ensure the provisions accurately reflect the average impairment in earning capacities resulting from disease or injuries related to military service. To be clear, this is distinct from congressionally backed efforts to adjust disability compensation to reflect increased costs of living. WWP encourages further effort in this pursuit with an eye toward bringing veterans closer to 100 percent as warranted so that the gap between schedular disability ratings and TDIU becomes narrower.

VA's TDIU modernization efforts: In 2014, the Secretary of Veterans Affairs tasked the Advisory Committee on Disability Compensation (ACDC) to conduct a study of the issue of TDIU and make recommendations based on earnings-and-loss studies. In its most recent 2022 Biennial Report, the ACDC indicated that VA completed research in 2017 that would help its analysis. The ACDC further indicated that "it is unable to provide the Secretary with appropriate recommendations to modernize the TDIU program if the [2017 research] acquired by VA is not shared

with the [ACDC], nor the public.” In its response to the ACDC’s request for the 2017 research, VA stated “internal information on TDIU stemming from the [ACDC]’s 2014 recommendation is now dated. As noted in the response to Recommendation 2.1, VA is not currently engaged in TDIU modernization efforts. As such, the content of this dated report is moot.” WWP encourages more work to be done between all stakeholders to make informed decisions about how TDIU may be modified to better meet veterans’ needs.

TDIU & Relationship with Social Security

Since VA does not consider a veteran’s age when making TDIU eligibility determinations, veterans may be granted or continue to receive TDIU benefits after they have reached the Social Security full retirement age, which is currently 67 years old. As a result, veterans may receive both TDIU and Social Security retirement benefits concurrently. Of note, TDIU provides additional disability compensation for veterans who cannot maintain substantially gainful employment due to a service-connected condition, while Social Security benefits provide income for Americans who have reached retirement age, the amount of which is based on the taxable income they earned during their working careers. Clearly, these are two different programs, with different eligibility criteria, established for different reasons.

In the past, proposals have been made to end TDIU payments to veterans who have reached Social Security retirement age in an effort to bring down Federal spending. In its 2022 publication, *Options for Reducing the Deficit, 2023 to 2032*, the Congressional Budget Office (CBO) asserted that the Federal Government could save \$47.1 billion from 2023 to 2032 by ending TDIU payments to all veteran recipients over the age of 67, while \$9.2 billion could be saved over the same time period by grandfathering current TDIU recipients and ending TDIU payments to all future veteran recipients at age 67.⁴

Although no explanation for these proposals is given, one may infer an assumption by CBO that all veterans will begin collecting Social Security benefits at age 67, making TDIU payments unnecessary. WWP believes that this assumption fails to consider certain important factors. To begin, veterans who suffer disabling injuries that prevent them from working at a young age may rely on TDIU as their primary income for almost their entire adult lives. Since VA disability compensation, including TDIU, is not taxable, they may not qualify for Social Security retirement payments at age 67, or the payment they do qualify for would only be a small fraction of what an individual working through retirement would otherwise receive. In both instances, this would create a significant income gap for these veterans in their advancing age, seriously threatening their financial wellness. For this reason, WWP strongly opposes proposals to end or reduce TDIU payments for veterans once they reach Social Security retirement age.

TDIU & Veteran Readiness and Employment

In addition to our work assisting veterans with disability compensation advocacy, WWP is committed to helping veterans seamlessly transition back into the civilian workforce. In the context of TDIU, WWP helps educate veterans about VA services counsel about how employment can impact other VA care and benefits. VA programs provide personalized career counseling, vocational training, and job placement assistance tailored to each veteran’s individual needs. Addressing skill gaps and offering support services, such as resume writing, interview preparation, and technical training that enhance a veteran’s employability and facilitates securing a job that provides more than marginal income.

Among VA’s most notable occupational training programs is Veteran Readiness and Employment (VR&E). This program provides job training, employment, resume development, and job-seeking skills coaching for veterans whose service-connected disabilities make it hard to prepare for, obtain, or maintain employment. A meaningful number of WWP warriors – one in five (20.7 percent) – have used, or are using, the VR&E program.

In many instances, WWP will inform warriors about the opportunities provided by VR&E before pursuing a TDIU rating. For those who successfully pursue a VR&E opportunity, the program can provide tremendous returns through five distinct support-and-service tracks designed to evaluate and improve a veteran’s ability to achieve his or her vocational goal; provide services to qualify for suitable employment; enable a veteran to achieve maximum independence in daily living, and enable a veteran to become employed in a suitable occupation and to maintain suitable

⁴ CONG. BUDG. OFF., END VA’S INDIVIDUAL UNEMPLOYABILITY PAYMENTS TO DISABLED VETERANS AT THE FULL RETIREMENT AGE FOR SOCIAL SECURITY, available at www.cbo.gov/budget-options/54749 (2024)

employment. WWP supports using the VR&E program as a pathway to long-term employment for disabled veterans. However, in situations where a warrior is unfortunately denied VR&E services, a comprehensive VR&E evaluation can still serve a crucial purpose. By thoroughly documenting the veteran's limitations and employability challenges, a strong foundation is laid for establishing entitlement to TDIU benefits.

Remove VR&E Delimiting Date

There are opportunities to drive more positive outcomes for VR&E. First, the program can be made available to all deserving veterans. Under current regulations, a veteran is only eligible for VR&E for 12 years from the date of their military discharge or the date they received a compensable disability evaluation.⁵ The regulations do not consider whether a veteran's condition deteriorates after the initial rating or whether additional service-connected conditions have been recognized.

This issue was partially addressed by the enactment of the *Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020* (P.L. 116–315 § 1025), which removed this delimiting date for all veterans who were discharged after January 1, 2013. To bring parity across all generations of service, WWP asks that the 12-year delimiting date be removed for all veterans. VA already has the authority to waive the 12-year rule on a case-by-case basis if the veteran is determined to have a “serious employment handicap.”⁶ However, the standards used to make that determination are not clear and, without specific guidance to follow, a Vocational Rehabilitation Counselor (VRC) is ultimately left to make a subjective decision whether to grant the veteran eligibility to the program. Wider and more predictable participation should be the goal. Congress can help by removing the delimiting date for VR&E eligibility for all veterans, regardless of discharge date, to ensure maximum utilization of this important employment program.

Ease Eligibility for VR&E for Veterans with TDIU

Another avenue to improving VR&E is to ease access for veterans who have been found unable to secure and follow substantially gainful employment due to their service-connected disabilities – those veterans with TDIU ratings. As the findings needed to establish TDIU generally exceed the eligibility criteria for VR&E, our focus shifts to the benefit of making services easier to find and use. By creating a smoother system of referral and eligibility for VR&E for veterans with TDIU ratings, these individuals can receive the comprehensive support they need to transition into the workforce, even if their initial evaluation deems them ineligible due to the severity of their disabilities.

Create a Step-Down from TDIU

Wounded Warrior Project recognizes and understands the importance of reintegrating veterans on TDIU into the workforce and helping them achieve substantial gainful employment and financial independence. As previously discussed, Veterans often approach WWP with a desire to return to work and concerns about how related decisions can impact their service-connected disability ratings, including TDIU. Questions about what will happen if work proves to be too difficult to maintain or the fallout from struggling to find a steady employer are all valid concerns, especially when considering the financial backstop that TDIU has provided for these veterans as they recover from significant injuries and illnesses.

One method to ease concerns can be creating a steady glidepath off TDIU when substantially gainful employment is assumed. A starting point could be to review the overall effectiveness of reducing a veteran's overall combined evaluation from TDIU (100 percent) to their original overall combined evaluation after securing substantially gainful employment for a period of 12 consecutive months. By studying this issue closely, we can determine the most appropriate steps to ensure veterans on TDIU have the support they need to successfully obtain and maintain gainful employment by removing financial barriers that may inhibit them from taking the earliest steps back into the workforce.

VR&E Support Track for Federal Employment

Veterans with a service-connected disability have shown a desire to continue their service to their community by seeking to work in the public sector. In 2023, 31.4 percent of employed veterans who had a service-connected disability worked in Federal, State, or local government compared to 20 percent of veterans with no disability and 12.5 percent of nonveterans. Nineteen percent of employed, service-con-

⁵ 38 CFR § 21.41.

⁶ 38 U.S.C. § 3103(c).

nected veterans worked for the Federal Government compared to only 7.9 percent of veterans with no disability and 2.2 percent of nonveterans.⁷ Despite this, many more veterans who seek Federal employment are stifled by an overly cumbersome application process. Even while utilizing the 5- & 10-point veteran preference and use of the Schedule A Hiring Authority, many are denied jobs before they are afforded the opportunity to have an in-person interview. VR&E should consider creating a new track that assists unemployed and underemployed veterans with the resources and direction they need to be placed in Federal employment.

VR&E Resource Hubs

Current VR&E staffing initiatives are crucial in supporting veterans' needs. Staff training and resources are not uniform around the country and as a result, the same opportunities are not available to all veterans seeking VR&E support. WWP recommends exploring solutions to help ensure that all veterans, regardless of where they live and access services, have equal opportunity to leverage VR&E resources in their pursuit of long-term employment. The Veterans Health Administration (VHA) has found success utilizing Clinical Resource Hubs (CRH) to reduce gaps in services. These are Veteran Integrated Service Network (VISN)-owned and—governed programs that provide support to increase access to VHA clinical services for veterans when local facilities have gaps in care or service capabilities. Leveraging the power of telehealth, CRHs provide care to Veterans at their local VA health care facilities through telehealth technology or in-person visits. When paired with telehealth technology CRHs allow Veterans to connect with distant primary care, mental health, and specialty care teams to improve access to health care. If the CRH model can be adapted to VR&E, veterans stand to benefit from increased access to service and potentially lower wait times for services that are in demand by not uniformly available across the country.

CONCLUSION

Wounded Warrior Project thanks the House Committees on Veterans' Affairs Subcommittee on Disability Assistance and Memorial Affairs, its distinguished members, and all who have contributed to a robust discussion of TDIU. WWP stands by as your partner in meeting the needs of all who served – and all who support them. We are thankful for the invitation to submit this statement for record and stand ready to assist when needed on these issues and any others that may arise.

⁷News Release, U.S. Bureau of Labor Stat., Employment Situation of Veterans Summary (Mar. 2024), *available at* <https://www.bls.gov/news.release/pdf/vet.pdf>.

STATEMENTS FOR THE RECORD

Prepared Statement of National Organization of Veterans' Advocates, Inc.

NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC.



Statement for the Record

Before the

**House Committee on Veterans' Affairs
Subcommittee on Disability Assistance and Memorial Affairs**

Oversight Hearing

**Does a Total Disability Rating Based on Individual Unemployability (TDIU)
Properly Compensate Today's Veterans?**

June 12, 2024

Chairman Luttrell, Ranking Member Pappas, and members of the Subcommittee, the National Organization of Veterans' Advocates (NOVA) thanks you for the opportunity to offer our views on the important benefit of total disability based on individual unemployability (TDIU).

NOVA is a not-for-profit 501(c)(6) educational membership organization incorporated in the District of Columbia in 1993. NOVA represents over 850 accredited attorneys, agents, and qualified members assisting tens of thousands of our nation's military veterans, families, survivors, and caregivers seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for persons seeking VA benefits.

NOVA members represent veterans before all levels of VA's disability claims process, and handle appeals before the U.S. Court of Appeals for Veterans Claims (CAVC), U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and the Supreme Court of the United States. Many landmark cases implicating TDIU benefits have been litigated by NOVA members.

As an organization, NOVA advances important cases and files amicus briefs in others. See, e.g., *Henderson v. Shinseki*, 562 U.S. 428 (2011) (amicus); *NOVA v. Secretary of Veterans Affairs*, 710 F.3d 1328 (Fed. Cir. 2013) (addressing VA's failure to honor its commitment to stop applying an invalid rule); *Procopio v. Wilkie*, 913 F.3d 1371 (Fed. Cir. 2019) (amicus); *NOVA v. Secretary of Veterans Affairs*, 981 F.3d 1360 (Fed. Cir. 2020) (M21-1 rule was interpretive rule of general applicability and agency action subject to judicial review); *Buffington v. McDonough*, No. 21-972 (February 7, 2022) (amicus in support of petition for writ of certiorari before U.S. Supreme Court); *Van Dermark v. McDonough*, No. 23-178 (September 25, 2023) (amicus in support of petition for writ of certiorari before U.S. Supreme Court). In 2000, the CAVC recognized NOVA's work on behalf of veterans with the Hart T. Mankin Distinguished Service Award. NOVA also advocates for laws to improve the VA disability claims and appeals process.

Does a Total Disability Rating Based on Individual Unemployability (TDIU) Properly Compensate Today's Veterans?

History of TDIU and Current Entitlement Criteria

Although there is no express statutory authority for TDIU, VA has long recognized the importance of this benefit for veterans who are unable to secure and maintain gainful employment due to service-connected disabilities. The first VA rating schedule published in 1925 set forth the purpose of disability ratings and planted the seed for the TDIU benefit:

The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations similar to the occupation of the injured man at the time of enlistment and not upon the impairment in earning capacity in each individual case, so that there shall be no reduction in the rate of compensation for individual success in overcoming the handicap of an injury. *The bureau in adopting the schedule of ratings of reduction in earning capacity shall consider the impairment in ability to secure employment, which results from such injury.*

The U.S. Veterans Bureau Schedule of Disability Ratings 9 (1925) (based upon The World War Veterans' Act, 1924, as amended) (emphasis added).

TDIU was formally added to the 1933 rating schedule and defined as follows: "Total disability shall exist when there is (or are) present any impairment(s) of mind or body which is (or are) sufficient to render it impossible for the average person to follow a substantially gainful occupation." Amendments were made in 1945 to establish that age may not be considered a factor in evaluating service-connected disability and TDIU could not be based on advancing age or additional, nonservice-connected disability.

In 1963, this guidance was codified at 38 C.F.R. § 4.16(a), with the concept of marginal employment added in 1990. In 1975, subsection (b) was added to allow for evaluation on an extraschedular basis.

Currently, section 4.16(a) states:

(a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: *Provided* That, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more,

and sufficient additional disability to bring the combined rating to 70 percent or more. For the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: (1) Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable, (2) disabilities resulting from common etiology or a single accident, (3) disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascular-renal, neuropsychiatric, (4) multiple injuries incurred in action, or (5) multiple disabilities incurred as a prisoner of war. It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable. Marginal employment shall not be considered substantially gainful employment. For purposes of this section, marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the U.S. Department of Commerce, Bureau of the Census, as the poverty threshold for one person. Marginal employment may also be held to exist, on a facts found basis (includes but is not limited to employment in a protected environment such as a family business or sheltered workshop), when earned annual income exceeds the poverty threshold. Consideration shall be given in all claims to the nature of the employment and the reason for termination.

Over the years, the CAVC and Federal Circuit have weighed in extensively on this benefit. Both courts have emphasized that TDIU is more tailored to an individual than a 100-percent schedular rating. *See, e.g., Smith v. Shinseki*, 647 F.3d 1380 (2011) (whether jobs exist in the economy for the veteran is not the standard; whether the veteran is capable of performing the “physical and mental acts requirement by employment” is the standard, citing *Van Hoose v. Brown*, 4 Vet.App. 361, 363 (1993)); *Parker v. Brown*, 7 Vet.App. 116, 118 (1994) (TDIU claim based on acknowledgment that, “even though a rating less than 100% under the rating schedule may be correct, objectively, there are subjective factors that may permit assigning a 100% rating to a particular veteran under particular facts, notwithstanding the putative correctness of the objective rating”).

Furthermore, the courts have discussed and clarified numerous concepts related to TDIU. *Faust v. West*, 13 Vet.App. 342 (2000) (substantially gainful occupation); *Ortiz-Valles v. McDonald*, 28 Vet.App. 65 (2016) (substantially gainful occupation and substantially gainful employment); *Ray v. Wilkie*, 31 Vet.App. 58 (2019) (addressing economic and noneconomic components of substantially gainful occupation); *LaBruzza v. McDonough*, 37 Vet.App. 111 (2024) (employment in a protected environment).

Finally, the courts have made clear that TDIU is not a separate claim for benefits, but arises whenever a veteran expressly or reasonably raises it, as part of an initial claim or a claim for an increased rating. *See, e.g., Rice v. Shinseki*, 22 Vet.App. 447 (2009); *Roberson v. Principi*, 251 F.3d 1378 (2001).

Comparison to Social Security Benefits

Aside from both agencies being tasked with operating a federal disability compensation program, VA and the Social Security Administration (SSA) operate under entirely different statutory schemes with entirely different purposes. As the Federal Circuit noted: “[T]he SSA scheme differs significantly from the VA’s approach.” *Smith v. Shinseki*, 647 F.3d 1380, 1385 (Fed. Cir. 2011).

The veterans’ benefits disability scheme was created to provide compensation to those who sacrificed in service to our country. “Congress has expressed special solicitude for the veterans’ cause. . . . A veteran, after all, has performed an especially important service for the Nation, often at the risk of his or her own life.” *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009). VA states the purpose of these benefits on its website:

VA disability compensation provides monthly benefits to Veterans in recognition of the effects of disabilities, diseases, or injuries incurred or aggravated during active military service. . . . A tax-free monetary benefit paid to Veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service.

<https://www.benefits.va.gov/COMPENSATION/types-compensation.asp#:~:text=VA%20disability%20compensation%20provides%20monthly,agggravated%20during%20active%20military%20service.>

By contrast, SSA oversees benefits for all Americans. Through Social Security Disability Insurance, SSA provides benefits for individuals to replace a portion of their salary when disability prevents them from working. The disability does not have to be incurred on the job. Employers and employees contribute to the fund for this benefit through payroll taxes. In addition, Social Security retirement benefits are available to those who have worked for a certain amount of time and contributed through payroll taxes. This benefit is tied to age and not disability.

Importance of TDIU Benefit

The long-standing TDIU benefit is of critical importance to veterans and their families because it allows for individual consideration of the veteran based on his or her unique disability picture and ability to work. In recent years, some entities have suggested

reductions to these benefits, primarily as a cost-savings measure. *See, e.g.,* Congressional Budget Office, *Options for Reducing the Deficit, 2023 to 2032—Volume II: Smaller Reductions* 20-21 (December 2022), <https://www.cbo.gov/system/files/2022-12/58163-budget-options-small-effects.pdf>; U.S. Government Accountability Office, *Veterans' Disability Benefits: VA Can Better Ensure Unemployability Decisions Are Well Supported*, GAO-15-464 (July 2, 2015), <https://www.gao.gov/assets/gao-15-464.pdf>.

NOVA does not support any efforts to reduce the TDIU benefit. Reducing the deficit should not be done on the backs of veterans, families, survivors, and caregivers. Implementing age restrictions or otherwise reducing benefits upon reaching retirement age as defined by SSA would dilute the earned benefits of veterans receiving TDIU. Furthermore, recommendations to reduce or cut TDIU are short sighted. VA compensation is not an insurance or retirement benefit. Many veterans who are in receipt of TDIU have spent long periods of time unemployed or underemployed due to their service-connected disabilities. Therefore, any SSA benefits they may be eligible for or receive are lower than those who have worked their entire adult lives. Likewise, having less time in the workforce means they are far less likely to have benefits enjoyed by other Americans, such as 401k plans. These adverse consequences to their earning potential and security directly result from injuries they incurred during their service to our country.

The TDIU Benefit Should Be Codified

To protect veterans and ensure these benefits are not reduced or eliminated by VA, Congress should codify 38 C.F.R. § 4.16. Any legislation should expressly require VA to consider entitlement to TDIU where the veteran meets the schedular criteria of § 4.16(a) and the record contains evidence of unemployability, per the decision in *Rice v. Shinseki*, 22 Vet.App. 447 (2009); *see also Phillips v. McDonough*, docket no. 22-2575 (oral argument held Jan. 10, 2024) (addressing applicability of *Rice* in the AMA system).

CONCLUSION

Thank you again for allowing us to present our views on this important topic. If you have questions or would like to request additional information, please feel free to contact:

Diane Boyd Rauber, Esq.
Executive Director
National Organization of Veterans' Advocates, Inc.
1775 Eye Street, NW
Suite 1150
Washington, DC 20006
(202) 587-5708
drauber@vetadvocates.org

Prepared Statement of Paralyzed Veterans of America

Chairman Luttrell, Ranking Member Pappas, and members of the subcommittee, Paralyzed Veterans of America (PVA), would like to thank you for the opportunity to submit our views today on Total Disability Ratings based on Individual Unemployability (TDIU). No group of veterans understands the full scope of benefits and care provided by the Department of Veterans Affairs (VA) better than PVA members—veterans who have incurred a spinal cord injury or disorder (SCI/D).

Disabled veterans bring important perspectives to the workplace. However, veterans' success often depends on whether they have access to proper employment services and supports, which are available both inside and outside of the VA. In order to understand the role of TDIU in supporting disabled veterans, the subcommittee must consider these services and supports and whether they are properly meeting veterans' needs.

A PVA National Service Officer (NSO) recently assisted a veteran in receiving TDIU. TDIU is a supplemental program for veterans with combined VA disability ratings that do not equal 100 percent but which impede their ability to maintain meaningful employment. To qualify for TDIU, a veteran must have one service-connected rating of 60 percent or higher or a combined rating of 70 percent with one condition rated at 40 percent or more.

The veteran had been a brick mason most of his adult life, but due to his service-connected disabilities, he was unable to continue performing manual labor. This veteran had applied for and been accepted into the Veteran Readiness and Employment (VR&E) program; however, his counselor determined that not only did his disabilities prevent him from manual labor, but he also was unable to sit for long periods of time.

Clearly, the veteran was eager to find alternative employment, as evidenced by his application for VR&E, but his service-connected disabilities were too significant to find employment that met his needs, and TDIU was his only option. Service-connected disabilities often worsen over time, not always with an increased rating decision. When veterans struggle to work due to their disabilities, they put themselves and others at risk due to their limitations. After confirmation from a medical professional, the veteran was awarded TDIU.

When discussing disabilities and how they impact a veteran's ability to gain employment, we must consider both visible and invisible disabilities. Treatment for conditions which may not physically manifest, such as mental health issues or some chronic illnesses, may require extended periods of stabilization or may be recurring, adding complications to a veteran's employment stability. Often, TDIU might be the most beneficial or even the only option for veterans struggling with periods of health-related hardship and it is critical in helping them remain independent and financially secure.

Employment Participation for Veterans with Disabilities

Some of the most frequently awarded service-connected disabilities, per the VA *Annual Benefits Report of 2023*, are ratings for issues in the knees, the back, or the arms. A smaller percentage of new claims are persistent migraines and post-traumatic stress disorder (PTSD).¹ Each of these prevalent disabilities could significantly impact a veteran's ability to execute the necessary functions of their job.

In data from 2023, published by the Department of Labor's Veterans' Employment and Training Service (DOL VETS), of an estimated 17.8 million veterans living in the U.S., about 8.6 million (48 percent) are in the labor force. Of that 8.6 million, approximately 2.6 million veterans have a service-connected disability rating. Of that 2.6 million, 991,000 identify as a person with a non-service-connected disability. An estimated 500,000 disabled veterans in the labor force report having a service-connected disability rating of 30–50 percent, and 1.3 million report a rating of 60 percent or greater.²

The current veteran unemployment rate is around 3.2 percent, a figure that has remained relatively constant this year. But looking at the unemployment rate for disabled veterans, that number jumps to 5.5 percent and is significantly higher for severely disabled veterans. Little data exists analyzing the unemployment rates of veterans with SCI/D; however, the National Spinal Cord Injury Statistical Center created a prospective longitudinal multicenter study on the demographics of people with SCI, and they estimated that in 2015, only 18 percent of people with an SCI were employed a year out from their injury. Over time, people with SCI tend to get

¹ Veterans Benefits Administration, Annual Benefits Report, Compensation, Fiscal Year 2023.

² Service-Connected Disabled Veterans and Veterans with a Disability in the Labor Force, 20023.

more comfortable with their injury, and they better understand what they are capable of, and at 30 years post-injury, upwards of 30 percent of them are employed.³

While unemployment has been a valuable tool in tracking the employment landscape for veterans it is important to consider that the data provided by the Bureau of Labor Statistics (BLS) is based off of a sample size of 10,000 people whom they follow for a year and an unknown portion of that group is identified as veterans or disabled veterans. Also, BLS uses several metrics to analyze the data they provide; but the people they track are actively engaged with the workforce. Because it ignores the number of veterans who are not engaged with the workforce, it results in a misrepresentation of the disabled veteran employment landscape. A more appropriate representation would be to examine workforce participation rates by demographics, such as disabled veteran status, to see how many disabled veterans are unemployed versus not engaged with the workforce system.

Increased Resources for Veteran Readiness & Employment (VR&E)

The VR&E Program within the VA plays a critical role in assisting disabled veterans in finding appropriate employment that will not exacerbate their service-connected disability. Unfortunately, a significant amount of misinformation exists around the program, and many veterans do not understand that a VR&E counselor, or VRC, is trained to find the most suitable job for veterans with disabilities.

Historically it has been proposed that VR&E might be in a position to help veterans applying for TDIU find appropriate employment that meets the needs of applicants; however, not everyone applying for TDIU will be able to maintain employment due to their disability. For veterans with significant employment barriers due to their service-connected disabilities, a VRC may not find suitable employment, and if a medical professional confirms a veteran's inability to work, TDIU should be awarded. VR&E applications have increased dramatically (40 percent) since the passage of the Honoring our PACT Act (P.L. 117-168) which fuels a need for more staff to properly manage these cases.

If VR&E played an increased role in the assessment of TDIU eligibility, it would require additional resources and staff. Also, Congress should prioritize the elimination of the delimiting date for the program. Currently, a VRC can use their professional expertise to assess if a veteran who is past the 12-year eligibility date should be accepted into the program. A greater number of veterans would be eligible for the program if the delimiting date were removed, which would likely result in more positive outcomes from an already successful program.

In the Independent Budget's (IB) recommendations for VA's budget for fiscal years 2025 and 2026, the IB veterans service organizations (VSO) recommended an increase of \$46 million to improve the performance of the VR&E program. Several recommendations were made that could help VR&E be better positioned to assist in the determination of TDIU eligibility. Current funding levels address the suggested staffing ratio of 1:125 (counselor to clients), but the IB VSOs suggest funding the program to a 1:120 ratio to increase timeliness and support for disabled veterans. The IB also suggested that VR&E hire an additional 300 full-time employees, which would increase counselor capacity and decrease the administrative burden they face.⁴ If TDIU consideration was added to the duties of a VRC, the recommended funding would likely need to be increased.

In some regional offices, staffing shortages have led to longer wait times for veterans. When counselors leave, the remaining staff are tasked to manage those cases. That makes it very difficult for a VRC to have a manageable bandwidth that allows them to make thoughtful decisions or plans for the veterans they serve. Increased funding and expansion of staffing for VR&E would allow for appropriate engagement for potential TDIU eligible veterans to find meaningful, and appropriate employment despite their service-connected disabilities.

Workplace Accommodations Improve Access to Employment Opportunities

For other employment supports and services, we cannot discount the need for increased awareness and understanding of appropriate workplace accommodations. Under the Americans with Disabilities Act (ADA), State and local government and private employers are required under Federal law to make reasonable accommodations for employees with disabilities. A reasonable accommodation is a change to the application or hiring process, to the job, or to the way the job is performed, or the environment, for a person with a disability.

³Traumatic Spinal Cord Injury Facts and Figures at a Glance, NSCISC, 2024.

⁴The Independent Budget, Fiscal Years 2025 & 2026 for the Department of Veterans Affairs, 2024.

Federal law requires that employers offer reasonable accommodations; however, more education is needed to guarantee employers understand what is expected of them regarding accommodations. Many employers believe that hiring a disabled veteran and making accommodations for them will be too costly, but data overwhelmingly shows that investing in people with disabilities, veteran or civilian, often pays big dividends to the company.

The Job Accommodation Network, an employment consultant site funded by the DOL, published data about the cost of workplace accommodations. Nearly half (49 percent) of employers who provided reasonable accommodations reported that it cost nothing to provide them, another 43 percent reported the average cost of accommodations was around \$300, and only 7 percent reported that accommodations provided incurred an ongoing annual cost.⁵ Other benefits seen by implementing workplace accommodations were increased worker productivity and retention, increased company morale, and decreased costs associated with training a new employee.

Understanding reasonable accommodations for veterans with disabilities and expecting these accommodations to be provided by employers across the country is another way to help people with disabilities find appropriate employment opportunities.

One of PVA's NSOs was on TDIU prior to his current employment. Mathew joined the military in 2010 at 29 years old. He had previously been a quality logistics manager for an oil production company but during the recession he was laid off from his position. Living in rural Oklahoma meant that employment opportunities that would sustain his family were difficult to find, so he joined the military.

After 5 years of service, Mathew experienced health concerns coupled with increased family responsibilities, and he was discharged in May 2015. Shortly after separation, in June 2016, Mathew was diagnosed with multiple sclerosis (MS). Several of the medical issues he experienced toward the end of his service were likely early symptoms of MS, and because he was diagnosed within the 7-year presumptive window, he was granted 30 percent for his MS. His health continued to decline, which led to secondary issues such as chronic migraines and vertigo, increasing his disability rating to 90 percent.

Mathew found work at a grocery store as an assistant manager which combined with his disability compensation allowed him to provide for his family. One day while taking the trash out he was hit with a strong case of vertigo and one of his coworkers found him lying on the ground next to the dumpster. His employer suggested Mathew take some time to get his health under control.

With worsening conditions, Mathew quickly realized finding suitable employment was going to be a struggle, and he was encouraged by his medical provider to apply for TDIU. The benefit was granted which allowed him to provide for his family, but he says that was the lowest point of his life. Mathew was uncomfortable receiving TDIU; he recalled praying for death, which he said would be better than sitting around and doing nothing.

Mathew's MS continued to progress, and eventually, he was diagnosed with drop foot, which increased his rating from 90 to 100 percent. Because of the increased rating, Mathew received a letter from the VA informing him that he was no longer eligible for TDIU but that he would receive the same amount of compensation. Like most veterans, Mathew had questions about this change, and he headed to his local VA office to get clarity.

Upon arrival at the VA, Mathew stopped at the local PVA office, where he already knew most of the staff. After addressing his questions, they informed him that PVA was hiring an NSO, and he was encouraged to apply. Mathew responded with shock, and he told the staff that they did not want to hire a guy like him. He was trying to get his MS under control and couldn't guarantee that he could work full-time in the office as needed. The PVA staff informed Mathew that they fully understood the complications of his MS and that they would still like him to apply. They also assured him that appropriate accommodations for his disabilities would be made and that they would assist with his success in the role.

Mathew was hired and has been working as a PVA NSO since then, and he has become an invaluable resource for veterans living with MS. Many veterans likely share a similar experience when it comes to the use of TDIU, and quickly learn that it can be the resource which allows a veteran to improve their health and well-being without fear of financial hardship, and once they are in a stable position they are better prepared and equipped to reenter the labor market.

Other Government Programs to Support Disabled Veteran Employment

⁵ Costs and Benefits of Accommodation, Low-Cost High Impact, Job Accommodation Network, April 2024.

Several Federal programs exist beyond the VA to help disabled veterans find meaningful employment. DOL VETS has been given the responsibility of helping veterans, service members, and military spouses to reach their full potential in the workplace. DOL oversees the Jobs for Veterans State Grants (JVSG) Program and programs such as Section 503 and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), which urge Federal contractors to recruit and hire veterans with disabilities. Another office within DOL that addresses employment challenges experienced by disabled veterans is the Office of Disability Employment Policy (ODEP), whose mission is to “develop and influence policies and practices that increase the number and quality of employment opportunities for people with disabilities.”⁶

When discussing DOL, it is critical to highlight the Workforce Innovation and Opportunity Act (WIOA), which was signed into law in 2014. WIOA was intended to “help people access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete.”⁷ Recently, the House passed H.R. 6655, the Stronger Workforce Innovation and Opportunity Act, which would reauthorize the funding through 2030 to help close the national skills gap and provide increased accountability in State workforce systems that help workers obtain gainful employment.

Across the country are American Job Centers (AJC) which are intended to provide a suite of assistance to job seekers such as training referrals, career counseling, and other employment-related supports. Two critical support roles within AJCs are Disabled Veteran’s Outreach Program (DVOP) Specialists and Local Veterans’ Employment Representatives (LVER). A DVOP provides individualized employment services and LVERs conduct outreach to local businesses and other employers to advocate for the hiring of veterans. LVERs are expected to educate employers on the practical implementation of appropriate workplace accommodations and to ensure the work environment they provide is suitable for a person with a disability. In 2002, the Jobs for Veterans Act required that priority of service be given to targeted veterans in workforce programs funded by DOL. Additionally, for employment within the Federal Government, veteran’s hiring preference is afforded to eligible veterans seeking Federal employment.

There is a robust network of services and support afforded to disabled veterans to help them find meaningful and lasting employment that allows them to live an independent life. There are federally funded programs, State funded programs, and other resources at the local level; however, despite all of these services, not all veterans will find suitable employment. At times, service-connected disabilities worsen and require a veteran to take time for themselves to focus on their health, which is why TDIU is such a vital program for our nations’ veterans.

Although AJCs have been tasked with the responsibility of assisting disabled veterans find suitable employment, fewer resources have been allocated for them to execute their mission. Since 2003, Federal dollars for AJCs has decreased 10 percent. If inflation were considered, it would be nearly 50 percent. Since 2003, there are 1,300 fewer job centers across the country, leaving 31 percent of the country, more than 25 million Americans, without those employment resources. It is also critical to stress that DOL’s data on participants earnings when they leave the AJC equates to no more than a fast-food worker. Despite the various programs and resources intended to support disabled veteran’s in finding employment, they are still struggling to find meaningful and financially secure employment.

Social Security Programming Offers an Example

The Social Security Administration (SSA) oversees the Federal benefits program for retirement benefits and disability income to qualified individuals and their dependents. The amount of the benefit is awarded based on your average indexed monthly earnings from your 35 highest-earnings employment years; therefore, it is different for every beneficiary. If someone is injured and unable to work, they might be eligible for Social Security Disability Insurance (SSDI).

It is critical to acknowledge that SSDI is an insurance program. Employees pay into Social Security through a U.S. Federal payroll tax known as the Federal Insurance Contributions Act (FICA). FICA helps fund Social Security and Medicare programs, together they provide benefits for retirees, people with disabilities, dependents, and survivors. SSDI is not an entitlement program. It is a payment based on an individual’s previous earning capacity and their contributions to Social Security. It is important to remember that this is a critical benefit for veterans with non-serv-

⁶ Office of Disability Employment Policy (ODEP), Department of Labor.

⁷ Workforce Innovation and Opportunity Act (WIOA), Department of Labor.

ice-connected disabilities, because it may be their only source of income they can rely on.

Another beneficial program offered to SSDI recipients is the Ticket to Work program, which allows beneficiaries to test their ability to work for at least 9 months. During this trial period, a beneficiary can continue to receive benefits regardless of their earnings, as long as they report the work activity and it meets the rules and standards set out by the SSA. Ticket to Work is a free and voluntary program that supports career development for SSDI recipients and assists them in moving toward financial independence while connecting them with services and supports needed to succeed in the workforce, free from the fears of economic hardship.

While TDIU recipients are able to engage in marginal employment, they are unable to earn more than the Federal poverty level. In 2024, the poverty level, set by the Department of Commerce, is around \$15,000 annually, or \$1,250 a month. Many veterans are unaware that they are able to attempt to reenter the workforce and fear the loss of their benefits. It is critical to remember that veterans receiving TDIU are struggling with their physical and/or mental health. The VA should improve outreach and awareness of the limits and allowances offered within the program.

The Ticket to Work program is not perfect, however if the VA were to offer something similar to this program to veterans attempting to reenter the labor market while ensuring their financial security, more veterans might be willing to engage with appropriate employment once they have improved their overall health and well-being. A program like this could offer an off ramp for veterans who think they are ready to return to work but have anxieties about their financial stability. This could be particularly impactful for veterans in rural areas hit hardest by inflation and rising costs.

Increased Oversight of Employment Support Programs

As previously mentioned, there are numerous federally funded programs that aim to get disabled veterans into appropriate employment. Congress needs to conduct efficient and targeted oversight to ensure that these programs are working to the benefit of the veterans they aim to serve. Improving communication and coordination would have a positive impact on all veterans looking for suitable employment. This is especially true for disabled veterans whose service-connected disabilities may prevent them from holding many jobs that would allow for financial security.

If all of the various employment support programs worked together to ensure that disabled veterans were able to find gainful and fulfilling employment, we would likely see decreased participation in the TDIU program. We urge Congress to focus on ensuring that disabled veterans have access to the benefits that they need while they focus on their health, and the opportunity to access robust services and supports to help them return to the workforce if their situation allows them to do so.

Thank you again for allowing PVA to offer its perspective on the TDIU program.

Information Required by Rule XI 2(g) of the House of Representatives

Pursuant to Rule XI 2(g) of the House of Representatives, the following information is provided regarding Federal grants and contracts.

Fiscal Year 2023

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events—Grant to support rehabilitation sports activities—\$479,000.

Fiscal Year 2022

Department of Veterans Affairs, Office of National Veterans Sports Programs & Special Events—Grant to support rehabilitation sports activities—\$ 437,745.

Disclosure of Foreign Payments

Paralyzed Veterans of America is largely supported by donations from the general public. However, in some very rare cases we receive direct donations from foreign nationals. In addition, we receive funding from corporations and foundations which in some cases are U.S. subsidiaries of non-U.S. companies.

Prepared Statement of James Vollman

**House Veterans Affairs Committee
Subcommittee on Disability Assistance and Memorial Affairs**

Hearing on the Total Disability based on Individual Unemployability (TDIU) Program

Better Information on Veteran Success in the Labor Market

**Written Testimony of
James Vollman
Former Associate Assistant Secretary of Labor**

Abstract

Research on veteran employment and earnings outcomes can inform legislative efforts to make adjustments to the TDIU program. Program specific research can also allow policy makers to understand who is served in terms of military MOS and other factors.

The databases and analysis needed to so TDIU specific research can also answer broader outcomes questions for veterans served by a number of programs within the Veterans Benefits Administration.

Problem Statement

Generally, VA tends not to track veterans for outcomes outside of the medical side (and on the medical side it just follows normal medical practice). VA knows little about the employment outcomes of most veterans other than the relatively small group that uses Vocational Rehabilitation services and even then it is only the immediate outcome. VA does not know why certain veterans succeed and others do not. VA could know much more about each veteran they touch.

Research Framework for Understanding Veteran Success in the Labor Market

The proposed research would utilize administrative data that VA already collects supplemented, if necessary, by additional data maintained by the Department of Defense on each individual service member. That data would be matched with the employment and earnings data maintained by the Census Bureau through their Longitudinal Employer-Household Dynamics (LEHD) program. (That program gathers earning data from state unemployment insurance wage records, Office of Personnel Management data on federal employees and IRS data on self-employment, as well as age data from Social Security.) The LEHD data is indexed by Social Security Number allowing the integration of multiple data sets. Information derived from research using the LEHD data can only be released in statistical form following the disclosure rules that meet the standards of US Code Title 13.

What Could or Should Be Included in the VA Data Set to Be Matched with LEHD

In doing the studies, VA would need to mine its own administrative data for information on each veteran's use of VA benefits services (GI Bill including the number of semesters completed, the program of study and whether a degree or certificate was earned). Also VA would need to include the veteran's disability ratings and whether if they achieved a 100% rating through the schedule or TDIU. VA would need to gather as much information as possible about the characteristics of the men and women as they exited the military from their own records or Department of Defense sources— their ranks, MOSs, length of service, tours of duty in war zones, branch of service, education level at exit, and their scores on the Armed Services Vocational Aptitude Battery (ASVAB). That final data point may prove critical for success analysis because all military personnel are subjected to substantial pre-service testing and the results of those tests often guide their military careers.

Organizing the Research Cohorts

Because LEHD contains earnings data back into the 1990's, it would be useful for VA to organize the data in will utilize for the research into four cohorts based on the year the service member exited the military. The cohorts would include those who exited 5 years ago, 10 years, 15 years ago, and 20 years ago. Data would then be delivered to one of the Census Research Center for matching to the LEHD data set.

Research Output

The output would include two large buckets: one grouping related to the veterans disability ratings and their qualification for compensation either through the schedule or through TDIU, the second grouping looking at general outcomes unrelated to disability ratings based on their exit characteristics when leaving the military and their utilization of VA services.

Disability and TDIU Related Output

- MOS characteristics of those qualifying for TDIU.
- Earnings and employment outcomes of those with combat MOSs without direct civilian analogs, in general and by disability ratings and TDIU participation
- Earnings and employment outcomes for those receiving 100% disability compensation via the schedule or through TDIU.
- Earnings and employment outcomes for veterans broken out by level of disability ratings (10%, 20%, etc.)
- Earnings and employment outcomes for each category of disability rating, in general and then by severity of the disability.
- Earnings and employment outcomes by level and disability rating and utilization of VA education and employment services

General Veteran Success Output for Use in Targeting VA Services and Allowing Veterans to Make Informed Choices

- Earnings and employment outcomes base on various entry characteristics of the veterans
- Earnings and employment outcomes for those utilizing VA education and employment services versus those who do not, cross tabbed using their service exit characteristics.
- Earnings and employment outcomes for those using the GI Bill based on program of study and number of semesters completed.
- Earnings and employment outcomes based on ASVAB scores.
- Earnings and employment outcomes for those using educational services where the ASVAB score would predict likely success in the program of study and those where it does not.
- Earnings and employment outcomes based on industries where the veteran is employed.
- Earnings and employment outcomes based on the locality of the veterans.

Potential Use of the Outputs

For Legislation or Policy Changes

Congress may wish to make adjustments to programs based on the data outputs. Specifically, understanding the impact of combat MOSs on employment outcomes and TDIU utilization may allow for program refinements.

Likewise, understanding the earnings outcomes of those with 100% ratings by schedule and those by TDIU might suggest compensation adjustments for TDIU based on earnings loss compared to other veterans.

VA could use the data to adjust the ratings schedule where certain types of disabilities are found to have an outsized impact on earnings and employment outcomes.

For VA Program Design

Understanding which groups of veterans is more likely to fall through the cracks (in terms of lower than average earnings and employment outcomes) might suggest program changes to target those veterans for additional services perhaps as early their pre-separation Transition Assistance Program.

Understanding which programs of study generally and when in there are in line with the veteran's ASVAB scores generate the best earnings and employment outcomes might allow VA to counsel veterans using the GI Bill or VR&E programs to more effectively utilize the benefits.

Understanding the mix of VA services that generates the best earnings and employment outcomes for each type of veteran might allow VA to customize their program offerings to optimize veteran success.

For Veterans

Some of the same information that could be used by VA to make program adjustments would also be useful to the veterans themselves to allow them to make more informed choices in selecting programs of study in education programs and knowing which industries and localities generate better earning and employment outcomes for veterans like themselves.

Testimony submitted by

James Vollman
Former Associate Assistant Secretary of Labor
President of Advanced Workforce Systems

**Prepared Statement of Georgetown University Center on Education and
the Workforce**

Summary

The Total Disability based on Individual Unemployability (TDIU) veteran compensation program provides a single flat payment to veterans experiencing total disability connected with their service. We suggest modifying this compensation by connecting the veteran's MOS to the civilian equivalent to better reflect what disabled veterans could have earned in the civilian labor force.

The attached earnings matrix details median civilian earnings (including the earnings of working veterans) by 3 levels of education (high school, middle skills, and a bachelor's degree or higher) within 22 major occupational groups. This approach documents that in 30 of 66 possible cases, the current TDIU payment is less than the lost potential earnings in the civilian occupation.

We further extend this analysis to account for career advancement. By splitting the workforce into age groups, we demonstrate that in 40 of the 66 cases, the median earnings of older workers (ages 45–54) exceed the current TDIU payment. This finding suggests that earnings growth should be considered when contemplating modified compensation. We propose a simple adjustment to account for earnings growth, which is to increase the TDIU payment annually by 1 percent above the COLA. This approach would raise the monthly payment from \$3,737 for a 25-year-old to \$4,840 for a 50-year-old.

Additional considerations

The approach of linking the MOS to the equivalent civilian occupation is limited by the degree to which each MOS can be linked. We believe that additional research is needed to determine whether a disproportionate share of disabilities occur among veterans whose MOS cannot be linked to a civilian occupation. We also suggest that civilian legal cases can provide guidance on disability compensation. Finally, we hold that the current payment should be treated as a floor for compensation. The current monthly base payment amount of \$3,737—equivalent to \$56,000 pretax annual earnings—may be reasonable for an individual, but may not be adequate to support a veteran's household.

Discussion

Approach: We suggest adjusting compensation to account for lost earnings using the following approach: we assume that the service person, if not disabled, would have entered the civilian labor force and worked full-time full-year (FTFY) in an occupation aligned to their military occupational specialty (MOS). Had the veteran not been disabled, they would have garnered similar earnings to those observed for all 25-to-64-year-old FTFY workers in that occupation in the civilian labor force.¹ We assume that the MOS is mappable to the civilian occupation via efforts such as COOL, which the DOD uses to assist reentering veterans.

To further explore this approach, we have created a matrix of monthly median earnings by 22 major occupations and by 3 education levels: high school diploma, middle skills (some college no degree, which implicitly includes certificates, and associate's degrees), and bachelor's degree or higher. This matrix (Table 1 of the attached) is populated by median earnings (66 medians); it is possible to be more granular, but we are not certain that more specificity will be informative as we believe that roughly 50 percent of the MOS categories will not meaningfully map to a civilian equivalent.

For the purposes of comparison, we adjust the current monthly TDIU payment of \$3,737 upwards to \$4,709 to reflect that it is tax exempt while the median monthly earnings for civilian occupations in the American Community Survey are subject to taxes. We assume an average tax rate of 26 percent to make this adjustment.² (We also suggest making further adjustments by local cost of living.)

We then compare the adjusted disability payment to the gross earnings in the matrix. This analysis demonstrates that prevailing earnings in 30 of the 66 education/occupation groups exceed the \$3,737 payment (adjusted to \$4,709) and could justify a higher compensation. These 30 education/occupation groups are distributed as follows: 5 groups at the high school level, 10 groups at the middle-skills level, and 15 groups at the bachelor's degree or higher level.

¹For veterans who claim TDIU benefits after working in the civilian labor force, their prior civilian occupation and earnings can be used directly (with an earnings growth adjustment based on their age) instead of mapping their MOS.

²We assume 15 percent Federal taxes and 11.2 percent State and local taxes.

Adjusting for earnings growth: As a second step in this analysis, we further adjust for lost potential earnings from expected earnings growth. In this part of our analysis, we estimate earnings growth by education and occupation for comparison with the flat TDIU payments. We calculate this estimate by comparing the earnings of workers ages 25–34 to those of workers ages 45–54 (Table 2 of the attached). This analysis demonstrates that while median earnings exceed \$4,709 for workers ages 25–34 in 15 education/occupation groups, that number rises to 40 education/occupation groups for working veterans ages 45–54.

The 40 (of 66) combinations for workers ages 45–54 in which earnings exceed \$4,709 include 9 (of 22) education/occupation groups at the high school level, 13 (of 22) education/occupation groups at the middle-skills level, and 18 (of 22) education/occupation groups at the bachelor's degree or higher level. The 25 education/occupation groups in which the monthly median earnings of workers ages 45–54 exceed \$4,709 and the median monthly earnings of workers ages 25–34 **do not** exceed \$4,709 include 7 education/occupation groups at the high school level, 11 education/occupation groups at the middle-skills level, and 7 education/occupation groups at the bachelor's degree or higher level.

This earnings growth analysis (Table 3 of the attached) suggests 1 percent growth in inflation-adjusted earnings per year for most of the education/occupation groups, which is based on observed annual growth. If we were to adjust the TDIU payment by 1 percent per year, by age 50, a veteran disabled at age 25 would see the \$3,737 payment grow to \$4,840.

Further considerations: We want to be clear that this analysis relies on a simple counterfactual based on prevailing wages in specific occupations and does not make any complex adjustments for loss of livelihood. We suggest that further research is needed to understand what precedent exists in civilian injury cases, which is the most relevant parallel we can think of to address the question of how to adjust for disability. This investigation will be particularly important given our expectation that a significant share of disabilities occur in non-mappable occupations.

Last, we want to express concern that this matrix could be used to reduce payments for workers in 36 education/occupation groups if the career median is used and in 26 groups if the growth adjustment is used. CEW takes the position that \$3,737 is an absolute minimum monthly payment for loss of economic potential and should, at the very least, be subject to COLA.

Table 1 (page 1 of 3): TDIU comparison to high school earnings in civilian occupations

Education level	Occupation	Monthly median (\$)	Difference from tax-adjusted TDIU (4709) (\$)	Do civilian earnings exceed tax-adjusted TDIU (1=yes)
High school diploma	Management	5,183	474	1
	Business and financial operations	4,834	125	1
	Computer and mathematical	5,943	1,234	1
	Architecture and engineering	5,503	794	1
	Life, physical, and social sciences	4,880	171	1
	Community and social service	3,619	(1,090)	0
	Legal	4,347	(362)	0
	Education, training, and library	2,712	(1,997)	0
	Arts, design, entertainment, sports, and media	4,428	(281)	0
	Healthcare practitioners and technical	3,686	(1,023)	0
	Healthcare support	2,849	(1,860)	0
	Protective service	4,351	(358)	0
	Food preparation and serving related	2,513	(2,196)	0
	Building and grounds cleaning and maintenance	2,849	(1,860)	0
	Personal care and service	2,747	(1,962)	0
	Sales and related	3,671	(1,038)	0
	Office and administrative support	3,487	(1,222)	0
	Farming, fisheries, and forestry	3,189	(1,520)	0
	Construction and extraction	4,467	(242)	0
	Installation, maintenance and repair	4,683	(26)	0
	Production	3,813	(896)	0
	Transportation and material moving	3,664	(1,045)	0

Table 1 (page 2 of 3): TDIU comparison to middle-skills earnings in civilian occupations

Education level	Occupation	Monthly median (\$)	Difference from tax-adjusted TDIU (4709) (\$)	Do civilian earnings exceed tax-adjusted TDIU (1=yes)
Middle skills	Management	5,862	1,153	1
	Business and financial operations	5,210	501	1
	Computer and mathematical	6,460	1,751	1
	Architecture and engineering	6,222	1,513	1
	Life, physical, and social sciences	5,216	507	1
	Community and social service	3,657	(1,052)	0
	Legal	4,574	(135)	0
	Education, training, and library	2,721	(1,988)	0
	Arts, design, entertainment, sports, and media	5,067	358	1
	Healthcare practitioners and technical	4,893	184	1
	Healthcare support	3,163	(1,546)	0
	Protective service	5,784	1,075	1
	Food preparation and serving related	2,869	(1,840)	0
	Building and grounds cleaning and maintenance	3,252	(1,457)	0
	Personal care and service	3,128	(1,581)	0
	Sales and related	4,494	(215)	0
	Office and administrative support	3,744	(965)	0
	Farming, fisheries, and forestry	3,595	(1,114)	0
	Construction and extraction	5,185	476	1
	Installation, maintenance and repair	5,330	621	1
	Production	4,393	(316)	0
	Transportation and material moving	4,019	(690)	0

Table 1 (page 3 of 3): TDIU comparison to BA+ earnings in civilian occupations

Education level	Occupation	Monthly median (\$)	Difference from tax-adjusted TDIU (4709) (\$)	Do civilian earnings exceed tax-adjusted TDIU (1=yes)
Bachelor's degree or higher	Management	9,033	4,324	1
	Business and financial operations	7,876	3,167	1
	Computer and mathematical	9,481	4,772	1
	Architecture and engineering	9,488	4,779	1
	Life, physical, and social sciences	7,550	2,841	1
	Community and social service	5,031	322	1
	Legal	10,461	5,752	1
	Education, training, and library	5,352	643	1
	Arts, design, entertainment, sports, and media	6,621	1,912	1
	Healthcare practitioners and technical	8,017	3,308	1
	Healthcare support	3,821	(888)	0
	Protective service	7,227	2,518	1
	Food preparation and serving related	3,280	(1,429)	0
	Building and grounds cleaning and maintenance	3,611	(1,098)	0
	Personal care and service	3,733	(976)	0
	Sales and related	7,663	2,954	1
	Office and administrative support	4,673	(36)	0
	Farming, fisheries, and forestry	4,223	(486)	0
	Construction and extraction	5,212	503	1
	Installation, maintenance and repair	5,550	841	1
	Production	5,064	355	1
	Transportation and material moving	4,600	(109)	0

Table 2 (page 1 of 3): TDIU comparison with earnings-growth-adjusted high school earnings

Education level	Occupation	Median earnings of workers ages 25–34 (\$)	Median earnings of workers ages 45–54 (\$)	Annual growth	Difference from \$4,709 for workers ages 25–34 (\$)	Difference from \$4,709 for workers ages 45–54 (\$)	Do median earnings exceed \$4,709 for workers ages 45–54? (1=yes)	Do median earnings exceed \$4,709 for workers ages 25–34? (1=yes)
High school diploma	Architecture and engineering	4,721	6,035	1%	12	1,326	1	1
	Arts, design, entertainment, sports, and media	3,603	4,784	1%	(1,106)	75	1	0
	Building and grounds cleaning and maintenance	2,702	2,994	0%	(2,007)	(1,715)	0	0
	Business and financial operations	4,060	5,382	1%	(649)	673	1	0
	Community and social service	3,349	3,777	0%	(1,360)	(932)	0	0
	Computer and mathematical	4,861	6,794	1%	152	2,085	1	1
	Construction and extraction	3,827	4,954	1%	(882)	245	1	0
	Education, training, and library	2,583	2,833	0%	(2,126)	(1,876)	0	0
	Farming, fisheries, and forestry	2,946	3,349	0%	(1,763)	(1,360)	0	0
	Food preparation and serving related	2,395	2,549	0%	(2,314)	(2,160)	0	0
	Healthcare practitioners and technical	3,333	3,892	1%	(1,376)	(817)	0	0
	Healthcare support	2,702	2,994	0%	(2,007)	(1,715)	0	0
	Installation, maintenance and repair	4,053	5,071	1%	(656)	362	1	0
	Legal	3,992	4,504	0%	(717)	(205)	0	0
	Life, physical, and social sciences	4,369	5,224	1%	(340)	515	1	0
	Management	4,092	5,988	1%	(617)	1,279	1	0
	Office and administrative support	2,994	3,848	1%	(1,715)	(861)	0	0
	Personal care and service	2,695	2,792	0%	(2,014)	(1,917)	0	0
	Production	3,493	4,072	1%	(1,216)	(637)	0	0
	Protective service	3,603	4,871	1%	(1,106)	162	1	0
	Sales and related	2,994	4,143	1%	(1,715)	(566)	0	0
	Transportation and material moving	3,144	4,092	1%	(1,565)	(617)	0	0

Table 2 (page 2 of 3): TDIU comparison with earnings-growth-adjusted middle-skills earnings

Education level	Occupation	Median earnings of workers ages 25–34 (\$)	Median earnings of workers ages 45–54 (\$)	Annual growth	Difference from \$4,709 for workers ages 25–34 (\$)	Difference from \$4,709 for workers ages 45–54 (\$)	Do median earnings exceed \$4,709 for workers ages 45–54? (1=yes)	Do median earnings exceed \$4,709 for workers ages 25–34? (1=yes)
Middle skills	Architecture and engineering	4,976	7,206	1%	267	2,497	1	1
	Arts, design, entertainment, sports, and media	3,992	5,845	1%	(717)	1,136	1	0
	Building and grounds cleaning and maintenance	2,973	3,410	0%	(1,736)	(1,299)	0	0
	Business and financial operations	4,306	5,988	1%	(403)	1,279	1	0
	Community and social service	3,383	3,882	1%	(1,376)	(827)	0	0
	Computer and mathematical	5,066	7,655	1%	357	2,946	1	1
	Construction and extraction	4,355	5,748	1%	(354)	1,039	1	0
	Education, training, and library	2,533	2,794	0%	(2,176)	(1,915)	0	0
	Farming, fisheries, and forestry	3,148	3,792	1%	(1,561)	(917)	0	0
	Food preparation and serving related	2,701	2,966	0%	(2,008)	(1,743)	0	0
	Healthcare practitioners and technical	4,092	5,489	1%	(617)	780	1	0
	Healthcare support	2,918	3,349	0%	(1,791)	(1,360)	0	0
	Installation, maintenance and repair	4,541	5,855	1%	(168)	1,146	1	0
	Legal	3,777	5,358	1%	(932)	649	1	0
	Life, physical, and social sciences	4,287	5,855	1%	(422)	1,146	1	0
	Management	4,504	6,988	1%	(205)	2,279	1	0
	Office and administrative support	3,261	4,155	1%	(1,448)	(554)	0	0
	Personal care and service	2,833	3,332	1%	(1,876)	(1,377)	0	0
	Production	3,827	4,790	1%	(882)	81	1	0
	Protective service	4,591	6,625	1%	(118)	1,916	1	0
	Sales and related	3,540	5,190	1%	(1,169)	481	1	0
	Transportation and material moving	3,349	4,497	1%	(1,360)	(212)	0	0

Table 2 (page 3 of 3): TDIU comparison of earnings-growth-adjusted BA+ earnings

Education level	Occupation	Median earnings of workers ages 25–34 (\$)	Median earnings of workers ages 45–54 (\$)	Annual growth	Difference from \$4,709 for workers ages 25–34 (\$)	Difference from \$4,709 for workers ages 45–54 (\$)	Do median earnings exceed \$4,709 for workers ages 45–54? (1=yes)	Do median earnings exceed \$4,709 for workers ages 25–34? (1=yes)
Bachelor's degree or higher	Architecture and engineering	7,554	10,812	1%	2,845	6,103	1	1
	Arts, design, entertainment, sports, and media	5,194	7,554	1%	485	2,845	1	1
	Building and grounds cleaning and maintenance	3,399	3,603	0%	(1,310)	(1,106)	0	0
	Business and financial operations	6,332	8,982	1%	1,623	4,273	1	1
	Community and social service	4,306	5,489	1%	(403)	780	1	0
	Computer and mathematical	7,984	10,670	1%	3,275	5,961	1	1
	Construction and extraction	4,491	5,666	1%	(218)	957	1	0
	Education, training, and library	4,384	6,138	1%	(325)	1,429	1	0
	Farming, fisheries, and forestry	3,410	4,871	1%	(1,299)	162	1	0
	Food preparation and serving related	2,994	3,293	0%	(1,715)	(1,416)	0	0
	Healthcare practitioners and technical	6,305	9,008	1%	1,596	4,299	1	1
	Healthcare support	3,493	3,897	0%	(1,216)	(812)	0	0
	Installation, maintenance and repair	4,721	6,305	1%	12	1,596	1	1
	Legal	7,554	13,220	2%	2,845	8,511	1	1
	Life, physical, and social sciences	5,405	9,255	2%	696	4,546	1	1
	Management	6,698	10,978	2%	1,989	6,269	1	1
	Office and administrative support	4,053	4,990	1%	(656)	281	1	0
	Personal care and service	3,258	3,963	1%	(1,451)	(746)	0	0
	Production	4,491	5,289	1%	(218)	580	1	0
	Protective service	5,456	8,612	2%	747	3,903	1	1
	Sales and related	5,741	9,008	2%	1,032	4,299	1	1
	Transportation and material moving	3,897	4,910	1%	(812)	201	1	0

Table 3: One percent per year growth adjustment to TDIU payment

Initial payment (\$)	Age	Years after completing service	1% annual growth (\$)
3,737	25	1	3,774
	26	2	3,812
	27	3	3,850
	28	4	3,889
	29	5	3,928
	30	6	3,967
	31	7	4,007
	32	8	4,047
	33	9	4,087
	34	10	4,128
	35	11	4,169
	36	12	4,211
	37	13	4,253
	38	14	4,296
	39	15	4,339
	40	16	4,382
	41	17	4,426
	42	18	4,470
	43	19	4,515
	44	20	4,560
	45	21	4,605
	46	22	4,652
	47	23	4,698
	48	24	4,745
	49	25	4,792
	50	26	4,840