



WOUNDED WARRIOR PROJECT

**Statement of
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National Service Director**

On

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

**SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
COMMITTEE ON VETERANS’ AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

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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 resilience, 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% disability rate even if their service-connected disabilities do not combine to a total rating of 100%. 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 FY 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 caseload 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 of 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.

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

² U.S. DEP'T 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/management/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).

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%) of those who are unemployed and looking for work have disability ratings of 100%. Among WWP warriors who are not currently looking for work, 70.3% have a disability rating of 100%. 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%) of warriors who reported a 100% 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%), but unemployed warriors were generally feeling more financial strain (80.3%).

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 impact's warriors' quality of life, employment positively impacts warriors' quality of life, and a 100% 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% rating when they would otherwise face unemployability with a rating of less than 100%. 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 towards bringing veterans closer to 100% 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%) – 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,

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)

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 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.

⁵ 38 CFR § 21.41.

⁶ 38 U.S.C. § 3103(c).

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%) 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% of employed veterans who had a service-connected disability worked in federal, state, or local government compared to 20% of veterans with no disability and 12.5% of nonveterans. Nineteen percent of employed, service-connected 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

⁷ News 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>.

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.