

ISSUE BRIEF: TOTAL DISABILITY BASED ON INDIVIDUAL UNEMPLOYABILITY

The Situation

- When a veteran's disability is rated less than a total 100% evaluation, but he or she is unable to obtain or maintain substantial gainful employment, Department of Veterans Affairs (VA) regulations allow the veteran to apply for Total Disability Based on Individual Unemployability (TDIU), commonly referred to as IU.
- The IU benefit is based on the severity of the individual veteran's unique disability picture and its impact on the veteran's ability to obtain and maintain substantial gainful employment. Generally, the veteran must have a single disability rated at 60% or a combined evaluation of 70% to be eligible for TDIU.
- TDIU was established via the Secretary's regulatory authority and is not codified by statute. Over four million U.S. veterans are currently receiving VA compensation benefits and of those, approximately 350,000 veterans are in receipt of TDIU with roughly 200,000 over the age of 65.
- Whether from the Administration or from other sources, there are continuing concerted efforts to limit TDIU benefits based on the veteran's age or their receipt of other earned government benefits, which are not considered a bar to this benefit by VA.

The Challenge

- Reports published by the Congressional Budget Office (CBO) in November 2013, August 2014, and December 2016, as well as the Government Accountability Office (GAO) report in June 2015, made recommendations to limit TDIU based on age and entitlement to additional earned federal benefits.
- The Administration's proposed 2018 budget contained a proposal for limiting TDIU. It proposed to terminate IU ratings for veterans at the age of 62 and cut off TDIU benefits for any veteran already in receipt of Social Security retirement benefits.
- A December 2018 CBO report also contained a proposal to terminate TDIU ratings for veterans at age 65 and cut off TDIU benefits for any veteran already in receipt of Social Security retirement benefits.

The Solution

- Congress must enact legislation to codify TDIU to include the provisions of 38 C.F.R. § 4.19, which states the VA is precluded from considering the veteran's age in its determination of a Total Disability Based on Individual Unemployability.
- Congress must ensure that TDIU remains available for all veterans regardless of age or receipt of any other earned federal benefits.