No. 21-432

In the Supreme Court of the United States

ADOLFO R. ARELLANO, PETITIONER

v.

DENIS R. MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

Congress has directed that, "[u]nless specifically provided otherwise" in the relevant chapter of the United States Code, the "effective date of an award" on a claim for veterans' benefits "shall not be earlier than the date of receipt of application therefor." 38 U.S.C. 5110(a)(1). One of the statutory exceptions to that directive provides that the "effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release." 38 U.S.C. 5110(b)(1). Petitioner was discharged from the military in 1981 and filed an application for disability compensation in 2011. He was awarded disability benefits effective as of June 3, 2011, the date the agency received his benefits application. The questions presented are as follows:

1. Whether the one-year grace period in 38 U.S.C. 5110(b)(1) is amenable to equitable tolling.

2. If the one-year grace period in Section 5110(b)(1) is amenable to equitable tolling, whether petitioner is entitled to such tolling.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 14a-97a) is reported at 1 F.4th 1059. The decision of the Court of Appeals for Veterans Claims (Pet. App. 2a-7a) is unreported but is available at 2019 WL 3294899. The order of the Board of Veterans' Appeals (Pet. App. 112a-118a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 17, 2021. The petition for a writ of certiorari was filed on September 17, 2021, and was granted on February 22, 2022. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant statutory and regulatory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-8a.

STATEMENT

In 2011, petitioner applied for service-connected disability compensation with the Department of Veterans Affairs (VA), which granted benefits with an effective date of June 3, 2011. The Board of Veterans' Appeals (Board) denied petitioner's claim for an earlier effective date. Pet. App. 112a-118a. The Court of Appeals for Veterans Claims (Veterans Court) affirmed. *Id.* at 2a-7a. The court of appeals affirmed. *Id.* at 14a-97a.

1. Petitioner served in the Navy from 1977 to 1981. See Pet. App. 23a, 112a. Following his discharge from active service, petitioner suffered from "psychosis, delusions, schizoaffective disorders, paranoia and anxiety (including [posttraumatic stress disorder])." *Id.* at 113a. Congress has directed that, with limitations not relevant here, "the United States will pay [compensation] to any veteran" who is "disabled" as a result of "personal injury suffered or disease contracted in line of duty," or "aggravation of a preexisting injury suffered or disease contracted in line of duty." 38 U.S.C. 1131; see 38 U.S.C. 1110 (same, for injuries suffered or aggravated during wartime service). Such disabilities entitling the veteran to benefits are called "service-connected" because they are "causally related to an injury sustained in the service." *Walters* v. *National Association of Radiation Survivors*, 473 U.S. 305, 307 (1985); see 38 U.S.C. 101(16).

In 2011, thirty years after his discharge, petitioner submitted an initial application for "service-connected

disability benefits for his psychiatric disorders." Pet. App. 23a. The VA granted disability benefits, finding as relevant here that petitioner suffered from service-connected "schizoaffective disorder bipolar type, with post traumatic stress disorder." *Id.* at 153a. The VA determined that the award of benefits would be "effective June 3, 2011," the date when the agency had received petitioner's benefits application. *Ibid.* Petitioner's monthly payments therefore began in July 2011. See 38 U.S.C. 5111(a)(1) (providing that as a general matter, "payment of monetary benefits based on an award or an increased award of compensation * * * may not be made to an individual for any period before the first day of the calendar month following the month in which the award or increased award became effective").

A statutory provision entitled "Effective dates of awards" states that, "[u]nless specifically provided otherwise in" the relevant chapter of the United States Code, "the effective date of an award based on an initial claim * * * of compensation * * * shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor." 38 U.S.C. 5110(a)(1). Section 5110 lists sixteen specific exceptions to that general rule, each of which allows for an effective date as much as one year earlier than the application-receipt date, depending on the circumstances. See 38 U.S.C. 5110(b)-(n). As relevant here, the exception set forth in Subsection (b)(1) provides that, in the case of "an award of disability compensation to a veteran," the "effective date * * * shall be the day following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release." 38 U.S.C. 5110(b)(1).

Longstanding VA regulations state that, with respect to an award of disability compensation with a direct service connection (like petitioner's), the effective date generally is the "[d]ay following separation from active service * * * if claim is received within 1 year after separation from service; otherwise, date of receipt of claim." 38 C.F.R. 3.400(b)(2)(i); see 26 Fed. Reg. 1561, 1593 (Feb. 24, 1961) (same).

The VA did not receive petitioner's initial application for disability compensation within one year of his discharge or separation from active service. See Pet. App. 23a. Accordingly, the agency concluded that the effective date of petitioner's award could be "no ear[li]er" than June 3, 2011, because that was "the date [the agency] received [petitioner's] original claim for service connection" to "support [the] claim for mental disorder." *Id.* at 156a.

2. On appeal to the Board, petitioner sought to "change the effective date of June 3, 2011 to January 1, 1982," which was "the date by which [petitioner's] psychiatrist and his family member established that [petitioner] was 100% disabled." Pet. App. 147a. Petitioner "in essence contend[ed] that the effective date * * * should be based on the date his psychiatric disability was incurred, in other words, immediately after his discharge from service, or, at the latest, as of January 1, 1982." *Id.* at 114a.

The Board rejected that contention, explaining that "the law governing effective dates is clear: the effective date is the date of claim." Pet. App. 114a (citing 38 C.F.R. 3.400(b)(2)). The Board acknowledged that "[t]he effective date * * * for claims received within one year after separation from service shall be the day following separation from service." *Id.* at 113a. It ob-

served, however, that "[petitioner's] original claim for benefits was received approximately 30 years after his discharge from service." *Id.* at 115a. The Board further observed that petitioner's brother and representative had "candidly acknowledged that it was not until after their father, who was [petitioner's] principal source of support, died in December 2010 that [petitioner], having no income, was able to be convinced by his brother and his psychiatrists to file the June 3, 2011 application." *Id.* at 114a. The Board thus concluded that, "under the law, there is no basis to assign an effective date * * * earlier than the date [petitioner's] original application was received." *Id.* at 115a.

3. The Veterans Court affirmed. Pet. App. 2a-7a. The court observed that petitioner "does not contest the Board's finding that he filed his claim for service connection for his mental disorder no earlier than June 3, 2011." *Id.* at 4a. Instead, the court observed, petitioner "claims that he is entitled to an earlier effective date because his mental disorder was so disabling from the moment he left service in 1981 that section 5110 should be tolled such that it would be possible for him to obtain an effective date as early as the date of his separation from service." *Ibid.*

The Veterans Court rejected that contention as "squarely foreclosed by binding precedent." Pet. App. 4a. The court explained that, in *Andrews* v. *Principi*, 351 F.3d 1134 (2003), the Federal Circuit had held that "[p]rinciples of equitable tolling are not applicable to the time period in § 5110(b)(1)." Pet. App. 5a (citation and ellipsis omitted). The *Andrews* court had acknowledged that "[e]quitable tolling may be applied to toll a statute of limitations" in certain circumstances, but had concluded that "§ 5110 does not contain a statute of lim-

itations, but merely indicates when benefits may begin and provides for an earlier date under certain limited circumstances." *Ibid.* (citation omitted).

4. The court of appeals, hearing the case initially en banc on its own accord, unanimously affirmed the Veterans Court's judgment but divided 6-6 on the rationale. Pet. App. 14a-97a.

a. The court of appeals issued a per curiam decision explaining that "a unanimous court holds that equitable tolling is not available to afford [petitioner] an effective date earlier than the date his application for benefits was received." Pet. App. 16a. The per curiam opinion further explained that the court was "equally divided as to the reasons for its decision," and that "[t]he effect of [its] decision is to leave in place [its] prior decision" in *Andrews*, *supra*, which the court described as having "held that principles of equitable tolling are not applicable to the time period in 38 U.S.C. § 5110(b)(1)." *Ibid.*

b. Judge Chen, joined by five other judges, concurred in the judgment. Pet. App. 17a-69a. In his view, *Andrews* was correctly decided and the one-year time period in Section 5110(b)(1) is not subject to equitable tolling. Judge Chen acknowledged (see *id.* at 18a-19a, 25a-26a) that in *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89 (1990), this Court had stated that "[t]ime requirements in lawsuits between private litigants are customarily subject to 'equitable tolling,'" and had held "that the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." *Id.* at 95-96 (citation omitted). Judge Chen further observed, however, that the *Irwin* Court had added "the caveat that 'Congress, of course, may provide otherwise if it wishes to do so.'" Pet. App. 26a

(quoting *Irwin*, 498 U.S. at 96). Judge Chen explained that *Irwin* requires courts (1) to "determine whether the rebuttable presumption of equitable tolling applies to the statutory provision at issue," and, if it does, (2) to "then determine whether that presumption has been rebutted—or in other words, whether there is 'good reason to believe that Congress did *not* want the equitable tolling doctrine to apply' to the statute." *Ibid.* (citation omitted).

Regarding the first step of that analytic framework, Judge Chen observed that this Court "has so far applied the presumption of equitable tolling *only* to statutory provisions that Congress clearly would have viewed as statutes of limitations," and "has declined to presume that equitable tolling applies where the time limit at issue functions '*unlike* a statute of limitations.'" Pet. App. 28a (brackets and citation omitted). Judge Chen explained that, for this purpose, "whether § 5110(b)(1) is a statute of limitations" depends on whether it "satisfies the 'functional characteristics' of such statutes." *Id.* at 30a (citation omitted).

For two principal reasons, Judge Chen concluded that the one-year time period in Section 5110(b)(1) "does not have the functional characteristics of a statute of limitations." Pet. App. 30a. First, he observed that Subsection (b)(1) "does not operate to bar a veteran's claim for benefits for a particular service-connected disability after one year has passed," but instead "determines one of many elements of a benefits claim that affects the amount of a veteran's award," without "eliminat[ing] a veteran's ability to collect benefits for that very disability." *Ibid.*; see *id.* at 32a-41a. Second, he observed that Subsection (b)(1) "lacks features standard" to statutes of limitations: "its one-year period is

not triggered by harm from the breach of a legal duty owed by the opposing party, and it does not start the clock on seeking a remedy for that breach from a separate remedial entity." *Id.* at 30a-31a; see *id.* at 41a-48a.

As to the second step, Judge Chen explained that, "even if *Irwin*'s presumption were to apply" to the one-year period specified in Subsection (b)(1), "equitable tolling would nonetheless be unavailable because it is 'inconsistent with the text of the relevant statute.'" Pet. App. 55a (citation omitted). He observed that Section 5110 "begins with the default rule" in Subsection (a)(1), under which the effective date of a disability-benefits award ordinarily is the date the VA received the veteran's application, and "then proceeds to list more than a dozen detailed exceptions to the default rule." *Id.* at 57a. Judge Chen viewed those exceptions as indicating "that Congress implicitly intended to preclude the general availability of equitable tolling by explicitly including a more limited, specific selection of equitable circumstances under which a veteran is entitled to an earlier effective date and specifying the temporal extent of the exceptions for those circumstances." *Id.* at 57a-58a.

c. Judge Dyk, joined by five other judges, concurred in the judgment. Pet. App. 70a-97a. In his view, *Andrews* was wrongly decided, the one-year time period in Subsection (b)(1) operates as a statute of limitations subject to *Irwin*'s presumption of equitable tolling, and the presumption has not been rebutted. *Id.* at 73a-91a. Judge Dyk would have held, however, that petitioner had not demonstrated an entitlement to equitable tolling in the circumstances of this case. *Id.* at 96a-97a. Judge Dyk observed that "[t]here is no allegation that [petitioner's brother]," who had been petitioner's caretaker since 1981 and had acted as his representative in

filing for veterans benefits in 2011, "was somehow prevented from filing, or faced obstacles in his attempt to file, [petitioner's] request for benefits sooner." *Id.* at 96a. Judge Dyk further explained that "there is no claim that [petitioner] was estranged from [his brother] or refused to interact with him." *Id.* at 96a-97a. Judge Dyk found "nothing in the record that justifies the inordinate thirty-year delay in filing the application at issue." *Id.* at 97a.

SUMMARY OF ARGUMENT

I. Equitable tolling does not apply to the one-year grace period in Section 5110(b)(1).

A. No presumption of equitable tolling applies here because the grace period is not a statute of limitations. This Court has held that certain statutory time limits are presumptively subject to tolling because Congress legislates against the background of common-law principles, one of which is that courts may equitably toll statutes of limitations. But that rationale, and the corresponding presumption, apply only to statutes of limitations, not to other types of time limits.

The one-year grace period in Section 5110(b)(1) is not a statute of limitations to which the presumption would apply. It performs none of the traditional functions of a limitations period, such as fixing the period of time within which a claimant must bring an action or embodying a policy of repose. Indeed, there is no statute of limitations for bringing a claim for service-connected disability compensation. Instead, the one-year grace period in Section 5110(b)(1) is one factor the VA considers in determining the *amount* of benefits the veteran may receive. Traditional statutes of limitations do not operate in that manner.

B. Even if the one-year grace period were viewed as a statute of limitations, the statutory text and context would rebut any presumption of equitable tolling.

1. The statute mandates application of the default effective-date rule "[u]nless specifically provided otherwise in this chapter." 38 U.S.C. 5110(a)(1). Because only Congress can enact provisions "in this chapter," that language indicates that Congress's authority to fashion exceptions to the default rule is exclusive. And the adverb "specifically" further indicates that those sixteen written exceptions, including the one in Subsection (b)(1), must be applied according to their specific terms. Those features are incompatible with equitable tolling.

Congress's intent that the sixteen exceptions will be exclusive also is readily inferable from the number and specificity of the exceptions themselves. And the emphatic and repeated insistence upon a one-year limit in each of those sixteen exceptions is inconsistent with the open-ended exceptions that equitable tolling would entail. Moreover, many of those sixteen exceptions are triggered by circumstances resembling those that might support equitable tolling in other contexts, demonstrating that Congress already has identified the "equitable" concerns that it believes warrant a deviation from the default effective-date rule. Particularly relevant is Subsection (b)(4), which addresses the precise circumstance that petitioner alleges applies to him: a permanent and total disability that prevented the earlier filing of an application. But there, Congress limited the grace period to one year and made the provision applicable only to a disability *pension*. Equitably tolling the one-year grace period in Subsection (b)(1) to pro-

vide additional protection against the same risk would subvert the balance struck by Congress.

2. Additional considerations reinforce the inference that Congress precluded equitable tolling of the one-year grace period in Section 5110(b)(1). Section 5113(b) authorizes the VA to make awards of educational benefits effective earlier than one year before the application-receipt date under certain circumstances, but Section 5110 contains no comparable language. And a 1949 statute authorized an earlier effective date for claims for disability benefits on behalf of certain World War II veterans who did not file their claims within one year of discharge. If the one-year grace period already were amenable to equitable tolling, that statute would have been largely superfluous.

The VA has long construed Section 5110 to preclude equitable tolling, and the Federal Circuit likewise has repeatedly adhered to that view. Congress has repeatedly amended the relevant statutes without disturbing that understanding. Furthermore, because the effective date of an application is one factor the VA considers in determining the amount of compensation a veteran will receive, any "tolling" of the one-year grace period would displace *substantive* limitations on the amount of benefits, which is not a conventional role for tolling. Finally, the exceptions in Section 5110 might themselves be viewed as a species of tolling provision, and petitioner identifies no analogous precedent for tolling a tolling rule.

3. The immense practical problems that equitable tolling would create in this context further counsel against finding that Congress intended tolling to be available here. The VA handles millions of disability benefits claims each year. Requiring the agency to eval-

uate assertions of equitable tolling would introduce a highly individualized and fact-intensive inquiry into the process, with likely adverse effects on adjudicative efficiency. And the agency must determine the existence, type, and severity of the veteran's disability as of the effective date—a task that is relatively straightforward when the effective date is no earlier than one year before the application-receipt date, but which would become much more difficult if the effective date were years or decades earlier. Equitable tolling thus would add even more complexity to an already overburdened system.

C. Petitioner's reliance on the pro-veteran canon is misplaced. That canon applies only to resolve interpretive doubt created by ambiguous statutory text. Section 5110(b)(1) creates no interpretive doubt. Its literal meaning is clear and undisputed; the question in this case is whether a judge-made doctrine can displace that clear text. The pro-veteran canon has no bearing on that question. And in any event, as explained above, the one-year grace period unambiguously is not a statute of limitations to which a presumption of equitable tolling applies, and the text and structure of Section 5110 would unambiguously rebut any such presumption.

II. Even if equitable tolling of the one-year grace period in Section 5110(b)(1) were available in some circumstances, petitioner is not entitled to tolling here. Petitioner does not allege that he diligently pursued any remedies in the nearly 30 years between his discharge and the filing of his claim for disability benefits in 2011; nor does he allege that he was tricked or misled into not filing an application within the year following his discharge. A remand for further factual development is thus unnecessary, especially given that all six judges on

the Federal Circuit who agreed with petitioner that equitable tolling is available also determined that he is not entitled to tolling.

In addition, petitioner's only allegation in support of equitable tolling is that his total disability prevented him from filing a claim before 2011. But as noted, Subsection (b)(4) specifically addresses that circumstance. Because the specific governs the general, especially in a comprehensive statutory scheme, the Court should not rely on equitable principles to provide additional protection against the same risk.

ARGUMENT

I. EQUITABLE TOLLING DOES NOT APPLY TO THE ONE-YEAR GRACE PERIOD IN SECTION 5110(b)(1)

Petitioner argues that the one-year grace period in Section 5110(b)(1) is subject to equitable tolling. That argument lacks merit. Subsection (b)(1) does not function as a statute of limitations to which a presumption of equitable tolling would apply. In any event, Section 5110's text and structure would rebut any such presumption even if Subsection (b)(1) were viewed as a statute of limitations.

A. No Presumption Of Equitable Tolling Applies To The One-Year Grace Period In Section 5110(b)(1)

1. The presumption that statutory time limits may be tolled applies only to statutes of limitation

This Court generally interprets statutes in accordance with the ordinary meaning of the statutory text. See, *e.g.*, *Artis* v. *District of Columbia*, 138 S. Ct. 594, 603 (2018) ("In determining the meaning of a statutory provision, 'we look first to its language, giving the words used their ordinary meaning.'") (citation omitted). Because "a reviewing court's 'task is to apply the text of

the statute, not to improve upon it,'" *EPA* v. *EME Homer City Generation, L.P.*, 572 U.S. 489, 508-509 (2014) (brackets and citation omitted), the court should "follow the text even if doing so will supposedly 'undercut a basic objective of the statute,'" *Baker Botts L.L.P.* v. *ASARCO LLC*, 576 U.S. 121, 135 (2015) (citation omitted). This Court has also observed, however, that "Congress 'legislates against a background of common-law adjudicatory principles.'" *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 10 (2014) (brackets and citation omitted). "Equitable tolling, a long-established feature of American jurisprudence derived from 'the old chancery rule,' is just such a principle." *Id.* at 10-11 (citations omitted).

Congress thus may be presumed to have incorporated equitable tolling into certain statutory time limits even in the absence of express language to that effect. See *Lozano*, 572 U.S. at 10-11. Whether Congress has done so in a particular law "is fundamentally a question of statutory intent." *Id.* at 10. Because the effect of equitable tolling is to engraft an implied exception onto facially unqualified statutory text, see *ibid.* (observing that "the doctrine effectively extends an otherwise discrete limitations period set by Congress"), it is particularly important to confine the presumption to the sorts of time limits for which equitable tolling is an entrenched practice. With respect to other time limits, for which no comparable tolling tradition exists, there is no basis for imputing to Congress any expectation that courts will deviate from the express text of statutory rules.

Accordingly, this Court has "only applied [the] presumption [of equitable tolling] to statutes of limitations." *Lozano*, 572 U.S. at 13-14. In *Irwin* v. *Depart-*

ment of Veterans Affairs, 498 U.S. 89 (1990), for example, this Court considered whether equitable tolling could be invoked to suspend the running of the statute of limitations for filing a district-court action against a federal governmental employer under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* 498 U.S. at 91-92; see *John R. Sand & Gravel Co.* v. *United States*, 552 U.S. 130, 136-137 (2008). The Court noted that, in past cases, it had attempted to determine "on an ad hoc basis" whether Congress intended to allow equitable tolling of a particular "statutory filing deadline." *Irwin*, 498 U.S. at 94-95. That approach had produced unsatisfactory results, creating "unpredictability without the corresponding advantage of greater fidelity to the intent of Congress." *Id.* at 95. The *Irwin* Court therefore adopted a new interpretive rule: "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." *Id.* at 95-96. The Court viewed that rule as "likely to be a realistic assessment of legislative intent." *Id.* at 95.

The Court in *Irwin* concluded that the Title VII statute of limitations is amenable to equitable tolling in suits against the government because "[t]ime requirements in lawsuits between private litigants are customarily subject to 'equitable tolling,'" a principle that the Court had previously applied to "the statutory time limits applicable to lawsuits against private employers under Title VII." 498 U.S. at 95 (citation omitted). For that premise, the Court relied (see *ibid.*) on its holding in *Hallstrom* v. *Tillamook County*, 493 U.S. 20 (1989), that "both the language and legislative history of [Title VII] indicate that the filing period operated as a statute of limitations. The running of such statutes is tradition-

ally subject to equitable tolling." *Id.* at 27 (citation omitted). At the same time, however, *Hallstrom* rejected the notion that a type of timing requirement that was "[u]nlike a statute of limitations"—there, a "60-day notice provision"—"should be subject to equitable modification and cure." *Ibid.*

Consistent with that reasoning, and notwithstanding *Irwin*'s supposedly "broad language" (Pet. Br. 14), this Court has applied *Irwin*'s presumption only to statutes of limitations. *E.g.*, *Boechler, P.C.* v. *Commissioner of Internal Revenue*, 142 S. Ct. 1493, 1500 (2022); *Holland* v. *Florida*, 560 U.S. 631, 645-646 (2010); *Young* v. *United States*, 535 U.S. 43, 49-50 (2002); see *Lozano*, 572 U.S. at 13-14 ("[W]e have only applied that presumption to statutes of limitations."). That limited scope flows from the Court's stated rationale for the presumption, *i.e.*, that for certain time limits it "is likely to be a realistic assessment of legislative intent." *Irwin*, 498 U.S. at 95. While "Congress must be presumed to draft *limitations periods* in light of th[e] background principle" that "*limitations periods* are 'customarily subject to equitable tolling,'" *Young*, 535 U.S. at 49-50 (emphases added; citation omitted), no similar background principle or "long-established feature of American jurisprudence," *Lozano*, 572 U.S. at 10, applies to timing provisions more generally. Cf. *id.* at 12 (explaining that the presumption generally "has no proper role in the interpretation of treaties"); *Sebelius* v. *Auburn Regional Medical Center*, 568 U.S. 145, 159 (2013) (explaining that the presumption "is inapt in the context of providers' administrative appeals under the Medicare Act"). Accordingly, there is no sound basis to presume that Congress expects time periods *other than* statutes of limitations to be extendable by equitable tolling.

Petitioner contends (Br. 14-19) that the *Irwin* presumption is not limited to statutes of limitations. But this Court in *Lozano* could not have been clearer: "We therefore presume that equitable tolling applies *if the period in question is a statute of limitations* and if tolling is consistent with the statute." 572 U.S. at 11 (emphasis added). The Court emphasized that it has "only applied that presumption to statutes of limitations." *Id.* at 13-14. And the Court held that the time limit at issue in that case was not subject to the presumption of equitable tolling precisely because it was "not a statute of limitations." *Id.* at 11; see *id.* at 15.

Petitioner's reliance (Br. 14-17) on this Court's decisions in *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385 (1982), and *Scarborough* v. *Principi*, 541 U.S. 401 (2004), is misplaced. Both decisions predate *Lozano*'s explicit recognition that the *Irwin* presumption applies only to statutes of limitations, and neither decision addressed the applicability of the presumption.

Zipes addressed whether Title VII's 90-day administrative filing deadline was jurisdictional. 455 U.S. at 393. In holding that the deadline was not jurisdictional, the Court contrasted a "jurisdictional prerequisite" with "a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling," and the Court observed that "Congress intended the filing period [in Title VII] to operate as a statute of limitations." *Id.* at 393-394. *Scarborough* addressed whether an amended fee application under the Equal Access to Justice Act, 28 U.S.C. 2412, would relate back to an original, timely application filed within the specified 30-day deadline. 541 U.S. at 406. Although the Court briefly discussed *Irwin*, it ultimately "express[ed] no opinion on the applicability of equitable tolling" because

its "decision rest[ed] on other grounds." *Id.* at 421 n.8; see *id.* at 420-421. In neither decision did the Court have occasion to address whether a presumption of equitable tolling would apply to time limits other than statutes of limitations—a question that *Lozano* later answered in the negative. *Lozano*, 572 U.S. at 13-14; cf. *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 681 (2014) ("Tolling * * * applies when there is a statute of limitations; it is, in effect, a rule of interpretation tied to that limit."); *Heimeshoff* v. *Hartford Life & Accident Insurance Co.*, 571 U.S. 99, 114-115 (2013) (describing *Irwin* as holding that "limitations defenses in lawsuits between private litigants are customarily subject to equitable tolling") (citation and internal quotation marks omitted).

2. The one-year grace period in Section 5110(b)(1) is not a statute of limitations

Irwin's presumption of equitable tolling is inapplicable here because the one-year grace period in Section 5110(b)(1) is not a statute of limitations.

a. As petitioner recognizes (Br. 19), "the determination whether [a particular time] period is a statute of limitations depends on its functional characteristics." *Lozano*, 572 U.S. at 15 n.6. A statute of limitations is a "law that bars claims after a specified period." *Black's Law Dictionary* 1636 (10th ed. 2014). Statutes of limitations "'establish the period of time within which a claimant must bring an action'"; "characteristically embody a 'policy of repose, designed to protect defendants'"; and "foster the 'elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities.'" *Lozano*, 572 U.S. at 14 (citations omitted). Such statutes are "designed to encourage plaintiffs 'to pursue diligent prose-

cution of known claims.'" *California Public Employees' Retirement System* v. *ANZ Securities, Inc.*, 137 S. Ct. 2042, 2049 (2017) (citation omitted).

The one-year grace period in Subsection (b)(1) shares none of those features or functions. Most important, Subsection (b)(1) does not establish a deadline by which a veteran must bring a claim, and it does not bar or eliminate claims after the one-year period expires. To the contrary, a veteran seeking disability compensation "faces no time limit for filing a claim." *Henderson* v. *Shinseki*, 562 U.S. 428, 431 (2011); see *Walters* v. *National Association of Radiation Survivors*, 473 U.S. 305, 311 (1985) ("There is no statute of limitations."). A veteran who files an application for disability benefits years or even (like petitioner) decades after discharge is entitled to benefits if his disability is shown to be service-connected. At no point does the claim for compensation expire or become time-barred. Instead, the one-year grace period is simply one factor the agency (or a court) must consider in determining the *amount* of compensation to which a veteran is entitled.

Put differently, an application for benefits is not analogous to a lawsuit alleging the past (or ongoing) violation of a legal right. This Court has contrasted "a typical statute of limitation[s]," which "provide[s] that a cause of action may or must be brought within a certain period of time," with a statutory time limit that "govern[s] the life of the underlying right." *Beach* v. *Ocwen Federal Bank*, 523 U.S. 410, 416-417 (1998). The one-year grace period does not speak to the time within which an application for benefits must be filed. Rather, it governs the magnitude of the underlying right to benefits by identifying which of two provisions—Subsection (b)(1) or Subsection (a)(1)—will determine the effective

date of the award. Unlike the tolling of a typical statute of limitations, "tolling" the one-year grace period thus would not have the effect of permitting consideration of an application for benefits that otherwise would be rejected as untimely. Instead, it would increase the amount of the benefits to be paid on an application that would be deemed timely regardless. Petitioner identifies no "statute of limitations" that operates in that fashion.

For that reason, petitioner's renewed reliance (Br. 23-24, 27) on *Zipes* and *Scarborough* is again misplaced. In both of those decisions, the Court's interpretation of the relevant timing provisions determined whether particular claims could be heard *at all*. In *Zipes*, the lower court had held that "approximately 92% of the [class members'] claims were jurisdictionally barred by" the class members' respective failure to file timely administrative charges. 455 U.S. at 390. In *Scarborough*, the Veterans Court dismissed the claimant's fee application in its entirety and the court of appeals affirmed. 541 U.S. at 405-406. Here, by contrast, resolution of the disputed interpretive issue will determine only the *amount* of benefits that petitioner will obtain.

Nor does the statute here embody a policy of repose or encourage diligent prosecution of claims. Cf. *Lozano*, 572 U.S. at 14; *California Public Employees' Retirement System*, 137 S. Ct. at 2049. If a qualifying veteran can establish a service connection for a qualifying disability, "the United States will pay * * * compensation," no matter how much time has elapsed since the veteran's discharge and/or the onset of the disability. 38 U.S.C. 1131; see 38 U.S.C. 1110 (same). Indeed, even a veteran whose claim for benefits has been denied is free to bring the same claim again at any time if it is

supported by new and material evidence. 38 U.S.C. 5108; see *Walters*, 473 U.S. at 311 (explaining that "a denial of benefits has no formal res judicata effect; a claimant may resubmit as long as he presents new facts").

Petitioner's case illustrates those aspects of the statutory scheme. Since 2011, petitioner has received monthly disability benefits for mental illness found to have been contracted or aggravated by military service that ended in 1981, based in part on evidence (including treatment records) that was decades old. See Pet. App. 141a, 150a. Petitioner's claim was subject to Subsection (a)(1)'s general default rule that, for purposes of determining when compensation payments may begin, the effective date of a claim is the date when the VA received the benefits application (here, June 3, 2011). 38 U.S.C. 5110(a)(1); see 38 U.S.C. 5111(a)(1). But at no point in the thirty years between petitioner's discharge and the filing of his application for disability benefits did petitioner's claim expire or otherwise become time-barred. The date on which a benefits application is filed simply "determines one of many elements of a benefits claim that affects the amount of a veteran's award but, unlike a statute of limitations, does not eliminate a veteran's ability to collect benefits for that very disability." Pet. App. 30a (Chen, J., concurring in the judgment)

That Section 5110(b)(1) establishes a one-year window for taking action having a specified legal effect does not convert it into a statute of limitations. Subsection (b)(1) is an exception to Subsection (a)(1)'s general rule that the effective date of a veteran's-benefits award can be no earlier than the application-receipt date. Subsection (b)(1) permits a veteran to obtain an effective date up to (but not more than) a year earlier than the

application-receipt date, if the application is filed within a year after the applicant's discharge from active service and seeks compensation for a service-connected disability. 38 U.S.C. 5110(b)(1). A veteran who applies for disability compensation outside the one-year window does not lose his right to all benefits; the effective date of his application is simply determined in accordance with the default rule in Subsection (a)(1).

The *Lozano* Court observed that the "continued availability of the [treaty's specified] remedy after one year" distinguished the one-year limit in that case from a traditional statute of limitations. 572 U.S. at 15. Although "the expiration of the 1-year period open[ed] the door to consideration of a third party's interests" (which otherwise would not have been considered), that change in the applicable legal rules did not convert the limit into a statute of limitations because "that is not the sort of interest addressed by a statute of limitations." *Ibid.* Here too, expiration of the one-year grace period in Section 5110(b)(1) does not preclude the veteran from later seeking and obtaining benefits under the statute. Instead, as noted, the expiration of that grace period is simply one factor bearing on the amount of benefits a veteran may collect if his disability-benefits claim is successful. Resolving that sort of interstitial question with respect to a claim that can go forward regardless is not the usual role of a statute of limitations. See *id.* at 14.

The structure of Section 5110 reinforces the conclusion that the one-year grace period in Subsection (b)(1) is not a statute of limitations. The default rule in Subsection (a)(1)—which provides that the effective date of the award "shall not be earlier than" the application-receipt date, 38 U.S.C. 5110(a)(1)—is not itself a statute

of limitations. Instead, that provision (1) makes clear that the filing of an application with the VA is a prerequisite to benefits entitlement, and (2) imposes a substantive limit on the amount of benefits that may be awarded if the veteran satisfies other statutory criteria.

Subsections (b) through (n), in turn, set forth enumerated veteran-friendly exceptions to the default rule regarding the effective date (and thus the amount) of benefits. See 38 U.S.C. 5110(b)-(n). It would be quite strange to treat the time periods contained in those provisions as statutes of limitations when they are expressly framed as limited exceptions to a default rule that itself is not a statute of limitations. Petitioner identifies no analogous example of a statute of limitations that operates in that manner. And there is no sound textual basis to conclude that Congress intended Section 5110 to operate in that idiosyncratic fashion.

b. Petitioner relies heavily (Br. 20-21) on this Court's holding in *Young*, *supra*, that the "'three-year lookback period'" in the Bankruptcy Code, see 11 U.S.C. 523(a)(1)(A), 507(a)(8)(A)(i), "is tolled during the pendency of a prior bankruptcy petition." 535 U.S. at 44. The relevant Code provision precludes discharge in bankruptcy of certain tax liabilities "for which the return was due within three years before the bankruptcy petition was filed." *Id.* at 46. But when a debtor files back-to-back petitions (by voluntarily dismissing the first immediately before filing the second), a tax debt that was within the three-year lookback period of the first petition (and thus nondischargeable) may be outside the lookback period of the second petition (and thus dischargeable)—even though the automatic stay would have "prevent[ed] the IRS from taking steps to collect the unpaid taxes" during the pendency of the first peti-

tion. *Ibid.* To close that apparent "loophole," *ibid.*, the Court treated the three-year lookback period as a limitations period that may be equitably tolled during the pendency of the first petition, *id.* at 47. The Court explained that the relevant Code provision "prescribes a period within which certain rights (namely, priority and nondischargeability in bankruptcy) may be enforced," and "serves the same 'basic policies furthered by all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities.'" *Ibid.* (brackets and citation omitted).

Petitioner's reliance on *Young* is misplaced. Section 5110(b)(1) does not prescribe a period within which certain rights must be enforced or else will be lost. Rather, as explained above, a veteran can still claim entitlement to compensation for a service-connected disability even if his application is filed more than one year after his military discharge. Instead, the application itself is an element of the claim, see 38 U.S.C. 5101(a)(1)(A), and its date of receipt determines only the effective date of any benefits award, and thus the *amount* of aggregate compensation. Cf. *United States* v. *Brockamp*, 519 U.S. 347, 352 (1997) (rejecting a proposed form of equitable tolling that would evade "limitations on the amount of recovery—a kind of tolling for which [this Court] ha[s] found no direct precedent"). And as explained above, the time limits in Section 5110 do not bar claims filed after the expiration of those limits or otherwise promote repose.

Furthermore, although it is colloquially referred to as a "lookback," the three-year period at issue in *Young* "commences on the date the return for the tax debt 'is last due.'" 535 U.S. at 48 (citation omitted). It thus op-

erates like a classic statute of limitations, being "triggered by the violation giving rise to the action," *Hallstrom*, 493 U.S. at 27—namely, the nonpayment of the tax when due. The one-year grace period in Section 5110(b)(1), by contrast, commences upon the veteran's discharge, which is not a "violation" of any law and does not otherwise give rise to liability. Instead, as the statutory structure makes clear, the government's legal obligation to pay the type of benefits at issue in this case does not arise unless and until the veteran submits an application for benefits, with the amount of benefits determined, in part, by the effective date assigned to the award. See 38 U.S.C. 5110(a).

Under the Code provision at issue in *Young*, moreover, the lookback period for each return would be computed separately to determine the dischargeability of any tax owed on that particular return. Cf. *Young*, 535 U.S. at 49 (explaining that the lookback period "define[s] a subset of claims eligible for certain remedies") (emphasis omitted). That is also true of the three-year lookback period for copyright damages claims, see *Petrella*, 572 U.S. at 670, and the six-year lookback period for patent damages claims, see *SCA Hygiene Products Aktiebolag* v. *First Quality Baby Products, LLC*, 137 S. Ct. 954, 961 (2017); cf. Pet. Br. 22-23. Both of those statutes treat each infringing act as giving rise to a separate claim, damages for which are available only if a civil action is commenced by a specified date, *i.e.*, "within three years after the claim accrued" in the case of copyright, 17 U.S.C. 507(b), or six years in the case of patent, 35 U.S.C. 286; see *SCA Hygiene*, 137 S. Ct. at 961-962.

A claim for service-connected disability compensation, by contrast, is unitary and indivisible, and a quali-

fying veteran "faces no time limit for filing a claim." *Henderson*, 562 U.S. at 431; see *Walters*, 473 U.S. at 311. Petitioner suggests that a claim for disability compensation is really two claims—"a retrospective claim for benefits for past disability" and "a prospective claim for future benefits"—and that Section 5110(b)(1) imposes "'a one-year statute of limitations for [the] retrospective claim[].'" Br. 21-22 (citation omitted). But nothing in Section 5110 suggests that a veteran who applies for service-connected disability benefits thereby asserts two independent claims. Rather, the statute contemplates a single claim for benefits, and the relevant provisions of Section 5110 address the effective date to be assigned to that single claim. A veteran who applies for benefits within one year of discharge need not file separate applications for prospective and retrospective relief. Instead, he may invoke the one-year grace period in Section 5110(b)(1) by filing a single application, which will result in a single award with a single effective date. Cf. 38 U.S.C. 5110(b)(1) (referring to "[t]he effective date of an award" (singular)).

B. Even If The Presumption Of Equitable Tolling Were Applicable, The Text And Structure Of The Statute Would Rebut That Presumption

1. Even when a particular time limit qualifies as a statute of limitations subject to *Irwin*'s presumption of equitable tolling, the statute's text and structure may rebut that presumption. See *Nutraceutical Corp.* v. *Lambert*, 139 S. Ct. 710, 714 (2019) ("Whether a rule precludes equitable tolling turns * * * on whether the text of the rule leaves room for such flexibility."); *United States* v. *Beggerly*, 524 U.S. 38, 48 (1998) ("Equitable tolling is not permissible where it is inconsistent with the text of the relevant statute."); *Brockamp*, 519

U.S. at 350 (assuming arguendo that the *Irwin* presumption governed, and then asking whether "there [was] good reason to believe that Congress did *not* want the equitable tolling doctrine to apply").

The Court in *Brockamp*, for example, held that statutory time limits for filing tax-refund claims (see 26 U.S.C. 6511) are not subject to equitable tolling. 519 U.S. at 350-354. The Court observed that, while "limitations statutes use fairly simple language," Section 6511 was "unusually emphatic" in "set[ting] forth its limitations in a highly detailed technical manner, that, linguistically speaking, cannot easily be read as containing implicit exceptions." *Id.* at 350. The Court also observed that the provision "reiterates its limitations several times in several different ways," and "sets forth explicit exceptions to its basic time limits, and those very specific exceptions do not include 'equitable tolling.'" *Id.* at 351. The Court emphasized that allowing equitable tolling in that statutory context would effectively displace "not only procedural limitations, but also substantive limitations on the amount of recovery—a kind of tolling for which we have found no direct precedent." *Id.* at 352. The Court concluded that "Section 6511's detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend courts to read other unmentioned, open-ended, 'equitable' exceptions into the statute that it wrote." *Ibid.*

The Court in *Beggerly* likewise held that the 12-year statute of limitations in the Quiet Title Act, 28 U.S.C. 2409a(g), could not be equitably tolled. 524 U.S. at 48-49. The Court emphasized that the Act, "by providing that the statute of limitations will not begin to run until

the plaintiff 'knew or should have known of the claim of the United States,' has already effectively allowed for equitable tolling." *Id.* at 48. The Court also observed that the 12-year period was "unusually generous," and that "[i]t is of special importance that landowners know with certainty what their rights are, and the period during which those rights may be subject to challenge." *Id.* at 48-49.

As in *Brockamp* and *Beggerly*, tolling the one-year grace period in 38 U.S.C. 5110(b)(1) would be inconsistent with the statutory text and structure. Section 5110 creates a "highly detailed statutory scheme dictating specific legislative choices for when a veteran's claim may enjoy an effective date earlier than the date it was received by the VA." Pet. App. 55a (Chen, J., concurring in the judgment). Section 5110 begins with Subsection (a)(1), which sets forth a clear default rule: "Unless specifically provided otherwise in this chapter, the effective date of an award * * * shall not be earlier than the date of receipt of application therefor." 38 U.S.C. 5110(a)(1). The phrase "unless specifically provided otherwise in this chapter" imposes two relevant limitations.

First, the quoted language makes clear that the statutory exceptions to the default effective-date rule are intended to be exclusive. Only Congress can draft provisions to be included "in this chapter" of the United States Code. The phrase "shall not be earlier" underscores that point, since "the mandatory 'shall' normally creates an obligation impervious to judicial discretion." *Shapiro* v. *McManus*, 577 U.S. 39, 43 (2015) (citation and ellipsis omitted).

Second, the inclusion of the word "specifically" in the phrase "unless specifically provided otherwise" con-

firms Congress's intent to pretermit judicial discretion. The adverb is no mere throwaway. In addition to emphasizing that courts should not fashion new exceptions beyond those enumerated in the statute, it makes clear that the enumerated exceptions themselves must be confined to their literal terms. The adverb thus confirms that the post-discharge grace period established by Subsection (b)(1) cannot be extended beyond the one year specified in that provision.

Taken together, those two limitations foreclose petitioner's contention that the exception in Section 5110(b)(1) is amenable to an atextual judicial gloss that is not "in this chapter," and that would modify the exception in Subsection (b)(1) in a way not "specifically provided" by Congress. Cf. *Nutraceutical*, 139 S. Ct. at 715 (rejecting the availability of equitable tolling of a time limit in a rule where the text of the rules directed courts not to extend the deadline); *Carlisle* v. *United States*, 517 U.S. 416, 421 (1996) (similar); *United States* v. *Robinson*, 361 U.S. 220, 224 (1960) (similar).

Equitable tolling also would be inconsistent with the structure of Section 5110. After stating the default rule, Section 5110 lists sixteen specific exceptions under which an award of benefits will have an effective date earlier than the application-receipt date, with precise and detailed descriptions of the circumstances in which each exception will apply. See 38 U.S.C. 5110(b)-(n). As in *Brockamp*, Congress's intent that the sixteen exceptions enumerated in Section 5110 will be exclusive is readily inferable from the number and specificity of the exceptions themselves. Allowing a claimant to obtain an effective date earlier than the application-receipt date in additional circumstances would effectively add a seventeenth exception to the list. See *Brockamp*, 519 U.S.

at 352 (explaining that a statute's "detail," "technical language," and "explicit listing of exceptions" supported the conclusion that "Congress did not intend courts to read other unmentioned, open-ended, 'equitable' exceptions into the statute that it wrote"); cf. *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28 (2001) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.") (citation omitted).

To adopt the "tolling" rule that petitioner advocates would be particularly anomalous because none of the sixteen exceptions in Section 5110—including the exception in Subsection (b)(1)—allows an effective date earlier than one year before the application-receipt date. See 38 U.S.C. 5110(b)-(n). That emphatic and repeated insistence upon a one-year limit is inconsistent with the open-ended exceptions that could be read into Section 5110 if equitable tolling were permitted. See *Brockamp*, 519 U.S. at 351 (finding a statute incompatible with equitable tolling in part because that statute "reiterates its limitations several times in several different ways"). That concern is particularly salient here, where petitioner seeks an effective date that is more than 29 years earlier than his application-receipt date.

Several of the enumerated statutory exceptions to the default effective-date rule in Section 5110, moreover, are triggered by circumstances—namely, disruptive life events that might reasonably cause a veteran to delay submission of an application for benefits—resembling those that might support equitable tolling in other contexts. Those circumstances include discharge from the military, 38 U.S.C. 5110(b)(1); an increase in the severity of a disability, 38 U.S.C. 5110(b)(3); the pro-

gression of a disability to the point that a veteran has become "permanently and totally disabled," 38 U.S.C. 5110(b)(4)(A); the death of a spouse, 38 U.S.C. 5110(d); and the need to obtain a correction of military records in order to qualify for VA benefits, 38 U.S.C. 5110(i). Those exceptions reinforce the inference that Congress already has identified the "equitable" concerns that it believes warrant a deviation from the default effective-date rule. See *Brockamp*, 519 U.S. at 351-352; *Beggerly*, 524 U.S. at 48. Relying upon the doctrine of equitable tolling to create an additional exception, or to extend an existing exception beyond its specific terms, thus "would be doing little more than overriding Congress' judgment as to when equity requires that there be an exception to the" default rule. *United States* v. *Dalm*, 494 U.S. 596, 610 (1990); see *Lozano*, 572 U.S. at 18 ("We do not apply equitable tolling as a matter of some independent authority to reconsider the fairness of legislative judgments balancing the needs for relief and repose.").

Particularly relevant in that regard is Subsection (b)(4), which provides that the "effective date of an award of disability pension" for a "veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension" generally "shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date." 38 U.S.C. 5110(b)(4)(A)-(B). Congress thus specifically addressed the precise circumstance that petitioner alleges applies to him—namely, a permanent and total disability that prevented the earlier filing of an application. But rather than directing that all statutory time limits should be tolled through-

out the period of permanent and total disability, Congress both limited the grace period to one year and made the provision applicable only to a disability pension, see 38 U.S.C. 1521, not to the type of service-connected disability compensation that is at issue here, see 38 U.S.C. 1131.

Subsection (b)(4) directly addresses the concern that the very disability for which a veteran seeks benefits might delay the filing of an application. Use of equitable tolling to provide additional protection against the same risk would subvert the balance struck by Congress. See *Rotkiske* v. *Klemm*, 140 S. Ct. 355, 361 (2019) ("Atextual judicial supplementation is particularly inappropriate where, as here, Congress has shown that it knows how to adopt the omitted language or provision."); *Hamdan* v. *Rumsfeld*, 548 U.S. 557, 578 (2006) ("[A] negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute."). Petitioner's proposed approach is particularly unwarranted because it would allow courts to mandate a grace period for service-connected disability compensation that is far longer (petitioner asks for 29 years) than the one-year period that Congress prescribed for disability-pension benefits.

2. Additional considerations confirm that equitable tolling does not apply to the one-year grace period in Section 5110(b)(1).

a. Petitioner's position, if accepted, would require the VA itself to apply tolling to modify the effective date of an award of benefits, but the statutory scheme indicates that Congress did not intend to grant the agency that authority. Cf. *City of Arlington* v. *FCC*, 569 U.S. 290, 297 (2013) (observing that for agencies like the VA, "[b]oth their power to act and how they are to act are

authoritatively prescribed by Congress"). As noted, Section 5110(b)(1) does not define the period for seeking relief in court. Filing a benefits application within one year after discharge likewise is not a prerequisite to obtaining judicial review of whatever benefits determination the VA ultimately makes. Rather, Section 5110(b)(1) specifies one of several criteria that are used to determine the appropriate effective date of any benefits award the veteran receives. Because that determination is made by the VA in the first instance, the agency itself would be required to apply any tolling rule that the Court found to be applicable in this context.

In the veterans'-benefits context as elsewhere, a court reviewing agency action asks whether the agency whose decision is under review permissibly exercised its own responsibilities. It therefore would make no sense for a reviewing court to invoke equitable tolling as a ground for mandating an effective date earlier than the one the VA had chosen unless Congress intended the agency itself to apply the same tolling principle. Indeed, Congress first authorized judicial review of VA benefits decisions in 1988, see Veterans' Judicial Review Act, Pub. L. No. 100-687, Div. A, 102 Stat. 4105, but it had established the one-year grace period several decades earlier, at a time when the grace period could have been implemented *only* by the agency and not by any court. See Veterans' Benefits Act of 1957, Pub. L. No. 85-56, Tit. IX, § 910(b), 71 Stat. 119 (enacting current version of one-year grace period); Act of July 13, 1943, ch. 233, § 17, 57 Stat. 560 (predecessor version); see also *Henderson*, 562 U.S. at 432. Consistent with that understanding, petitioner has argued not simply that the Veterans Court or the Federal Circuit should have tolled Section 5110(b)(1)'s grace period, but that

the Board erred in declining to do so. See Pet. 14-15 (citing Pet. App. 3a).

In at least one current and one now-lapsed provision of the veterans'-benefits statutes, however, Congress directly authorized the agency to modify the effective date of certain types of awards on equitable grounds. Those provisions supply a strong negative inference that Congress did not intend the agency to make similar modifications of the effective dates set forth in Section 5110(b)(1). See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (brackets and citation omitted).

The currently effective provision, 38 U.S.C. 5113, concerns the effective dates of educational benefits. There, after specifying a default effective-date rule that mirrors the default rule for "disability compensation," 38 U.S.C. 5113(a), Congress authorized the Secretary to make awards of educational benefits effective earlier than one year before the application-receipt date under certain specific circumstances, 38 U.S.C. 5113(b)(1); see 38 U.S.C. 5113(b)(2)(A)-(C). Congress added that provision in 2000 to correct a perceived injustice. See Veterans Benefits and Health Care Improvement Act of 2000, Pub. L. No. 106-419, Tit. I, § 113(a)(3), 114 Stat. 1832; cf. *Erspamer* v. *Brown*, 9 Vet. App. 507, 510 (1996). The obvious inference from the absence of comparable language in Section 5110 is that the Secretary possesses no such authority with respect to service-connected disability compensation.

The other provision is a 1949 statute that provided for an earlier effective date to be assigned to claims for disability benefits on behalf of certain World War II veterans who were "unable to file such claim[s] by reason of being interned by a country with which the United States was at war or w[ere] otherwise prevented from filing such claim[s] by action of such country." Act of Aug. 1, 1949, ch. 376, 63 Stat. 485. As relevant here, the statute directed that in those circumstances, "the award of * * * compensation shall be adjusted so as to be effective as of the date the award would have been effective had claim been filed on the date of * * * discharge from the armed forces," as long as the veteran sought that adjustment before August 1, 1950. *Ibid.* The Senate committee report acknowledged the VA's position that the statute "'would constitute a departure from the generally uniform laws governing the effective dates of awards,'" but it found modification of the effective-date rules in those circumstances to be warranted "as a matter of equity." S. Rep. No. 336, 81st Cong., 1st Sess. 2-3 (1949) (citation omitted); see *id.* at 1-2 (observing that under the then-existing laws, "benefits are payable in the disability cases from the date of discharge if the claim is filed within 1 year from the date of discharge," but "otherwise benefits are payable from the date of application"). If the one-year grace period already were amenable to equitable tolling, Congress's provision for equitable adjustment of the effective date in the circumstances listed in the 1949 statute would have been largely superfluous and inexplicable.

b. The VA has long construed Section 5110 to preclude equitable tolling. The agency's longstanding regulations provide that the effective date for an award of compensation for a service-connected disability gener-

ally is the "[d]ay following separation from active service * * * if claim is received within 1 year after separation from service; otherwise, date of receipt of claim." 38 C.F.R. 3.400(b)(2)(i). And since issuing the 2003 decision in *Andrews* v. *Principi*, 351 F.3d 1134, the Federal Circuit has repeatedly adhered to the holding in that case that Section 5110 is not subject to equitable tolling. *E.g.*, *Titone* v. *McDonald*, 637 Fed. Appx. 592, 593 (2016) (per curiam); *Butler* v. *Shinseki*, 603 F.3d 922, 926 (2010) (per curiam). "Congress has amended § 5110 four times since *Andrews*, and at no point has it expressed disapproval of *Andrews* and its progeny or otherwise indicated that equitable tolling is available under this statute." Pet. App. 62a-63a (Chen, J., concurring in the judgment). As noted above, Congress's understanding that equitable tolling does not apply to the one-year grace period dates back to at least 1949. The longstanding regulatory practice, court of appeals holdings, and apparent congressional acquiescence all reinforce the most natural reading of Section 5110's text. See *Auburn Regional Medical Center*, 568 U.S. at 159 (rejecting equitable tolling in light of a longstanding administrative practice prohibiting any deadline extensions, especially given that "Congress amended [the statute] six times" without "express[ing] disapproval" of the agency's practice).

c. As noted above, the effective date of an application is one of the criteria the VA considers in determining the amount of compensation a veteran will receive if his claim for service-related disability benefits is accepted. Any tolling of the one-year grace period in Section 5110(b)(1) therefore would effectively displace substantive statutory limitations on the amount of benefits to which veterans are entitled. Cf. *Office of Personnel*

Management v. *Richmond*, 496 U.S. 414, 432 (1990) ("[F]unds may be paid out only on the basis of * * * a substantive right to compensation based on the express terms of a specific statute."). That, too, counsels against the availability of equitable tolling in this circumstance. Cf. *Brockamp*, 519 U.S. at 352 ("Moreover, such an interpretation would require tolling, not only procedural limitations, but also substantive limitations on the amount of recovery—a kind of tolling for which we have found no direct precedent."). Petitioner's case starkly illustrates the point. Although each of the sixteen exceptions enumerated in Section 5110 limits the amount of compensation by ensuring that the effective date of the award will be no earlier than one year before the application-receipt date, petitioner seeks an effective date more than 29 years before the VA received his benefits application.

d. Finally, the exceptions in Section 5110 might themselves be viewed as a species of tolling provision. Those exceptions operate against the background of the general rule that the effective date of a VA benefits award can be no earlier than the application-receipt date, and each allows a veteran who files an application within one year after a specified event to be treated as having filed the application on the date of the event. And as noted above, many of the exceptions are triggered by the types of events that might warrant equitable tolling of a statute of limitations. Petitioner's contention that the one-year grace period in Subsection (b)(1) is amenable to tolling thus amounts to a contention that a congressionally enacted tolling provision may itself be judicially tolled. Cf. *Beggerly*, 524 U.S. at 48 (rejecting equitable tolling where the statute "has already effectively allowed for equitable tolling"). The

logic of petitioner's argument, moreover, applies equally to the other fifteen exceptions enumerated in Section 5110. Yet petitioner identifies no analogous precedent for such tolling-on-tolling, or any basis to conclude that Congress intended such an anomalous result. The lack of precedent for judicially tolling a statutory tolling rule further rebuts any presumption that equitable tolling applies here.

3. The immense practical problems that equitable tolling would create in this context additionally counsel against finding that Congress intended such tolling to be available here. Under the statutory text, determining the effective date of an award of benefits is relatively straightforward: the effective date "shall be fixed in accordance with the facts found, but shall not be earlier than" either (1) the application-receipt date or (2) the date of another event specified in the statute *if* that event occurred no more than one year before the VA received the veteran's application. 38 U.S.C. 5110(a)(1); see 38 U.S.C. 5110(b)-(n).

Such bright-line rules serve a vital function in a large administrative program. In fiscal year 2021, the Veterans Benefits Administration (VBA) "provided disability assistance to more than 5.2 million Veterans" and "completed 1.4 million disability compensation rating claims." Department of Veterans Affairs, *FY 2023 Budget Submission*, Vol. 3, at VBA-56 (Mar. 2022), go.usa.gov/xJJxG. During fiscal year 2021, the 108 administrative judges serving on the Board held 23,777 hearings and issued 99,721 decisions—yet the Board still had a growing backlog of 197,555 cases as it entered fiscal year 2022. See Board of Veterans' Appeals, Department of Veterans Affairs, *Annual Report: Fiscal Year (FY) 2021*, at 7, 37-38, 43 (Dec. 2021), go.usa.gov/

xJJa3. In part because of that massive volume of claims and appeals, veterans sometimes endure long delays in receiving benefits decisions. See, *e.g.*, H.R. Rep. No. 135, 115th Cong., 1st Sess. 5 (2017) (observing that "veterans currently wait an average three years for their appeal to be resolved at the [regional office] level," and that "[v]eterans who file an appeal with the Board wait an average five years for a final decision").

Requiring the agency to evaluate claims of equitable tolling would introduce a highly individualized and fact-intensive inquiry into the process, with likely adverse effects on adjudicative efficiency. The VA informs this Office that as of March 10, 2022, VBA had identified nearly 2.6 million veterans who had filed original disability claims more than one year after their release from service. Every such veteran would have an incentive to request equitable tolling of Subsection (b)(1)'s one-year grace period if that relief were available. And petitioner's theory logically suggests that the other grace periods in Section 5110 likewise would be subject to equitable tolling. VA regional offices and the Board thus would be required to ascertain, in a non-adversarial system involving little traditional discovery, whether each veteran claiming the right to equitable tolling had actually been prevented by some extraordinary circumstance from filing a benefits application within one year of the relevant triggering event. The results produced by such an open-ended "'fact-intensive' inquiry," *Holland*, 560 U.S. at 654 (citation omitted), would likely vary between adjudicators, resulting either in disparate outcomes or in additional layers of review in an attempt to ensure some degree of uniformity.

Equitable tolling also would make the disability rating process itself more difficult. The VA must for each

application determine, among other things, "the existence of disability, * * * the degree of the disability, and the effective date of the disability." *Maggitt* v. *West*, 202 F.3d 1370, 1375 (Fed. Cir. 2000). Those elements are interrelated. The VA pays monthly benefits based on the type and degree of disability, see 38 U.S.C. 1114, thus requiring the VA to evaluate the applicant's disability as it existed on the effective date. That task is relatively straightforward when the effective date is on or within one year of the application-receipt date. But attempting to reconstruct the existence and degree of a disability years or even decades earlier is difficult and burdensome; medical records might have been lost, memories inevitably have faded, and retrospective medical opinions are not entirely reliable. And the burden does not fall only on the claimant; the VA is statutorily obligated to assist veterans in obtaining relevant medical records and examinations, see 38 U.S.C. 5103A, and in fiscal year 2021, the VA provided 1.7 million medical examinations to evaluate disabilities, *FY 2023 Budget Submission*, *supra*, at VBA-58.

Equitable tolling thus would add even more complexity to an already overburdened system. But because equitable tolling is, by tradition and design, to be afforded "only sparingly," *Irwin*, 498 U.S. at 96, the number of cases in which tolling actually would be warranted likely would be a small fraction of the number of cases in which it would be requested. There is no sound basis to conclude that Congress intended that result, or that the consequent reallocation of agency resources would ultimately serve the interests of veterans as a class. Cf. *Brockamp*, 519 U.S. at 352 ("To read an 'equitable tolling' exception into § 6511 could create serious administrative problems by forcing the IRS to respond to, and

perhaps litigate, large numbers of late claims, accompanied by requests for 'equitable tolling' which, upon close inspection, might turn out to lack sufficient equitable justification.").

4. Petitioner briefly contends (Br. 30-31) that equitable tolling applies to the one-year grace period in Section 5110(b)(1) because that time limit is not jurisdictional. But "[n]either party here argues that § 5110(b)(1)'s effective-date provision is jurisdictional." Pet. App. 56a (Chen, J., concurring in the judgment). "[S]how[ing] that Congress made the time bar at issue jurisdictional" is "[o]ne way to" rebut *Irwin*'s presumption that equitable tolling is available, *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 408 (2015), but it is not the only way, see *id.* at 408 n.2 ("Congress may preclude equitable tolling of even a nonjurisdictional statute of limitations."). "Whether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility." *Nutraceutical*, 139 S. Ct. at 714. As explained above, the text and structure of the VA disability-benefits scheme leave no room for equitable tolling.

C. Petitioner's Reliance On The Pro-Veteran Canon Is Misplaced

In arguing both that the *Irwin* presumption applies and that the presumption has not been rebutted, petitioner invokes (Br. 26-29, 39-47) the pro-veteran canon of construction. Petitioner's reliance on that canon is misplaced. Under the pro-veteran canon, "provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Henderson*, 562 U.S. at 441 (citation omitted). But "canons of construction are no more than rules of thumb that help courts determine the meaning of legislation." *Connecticut Na-*

tional Bank v. *Germain*, 503 U.S. 249, 253 (1992); see *Chickasaw Nation* v. *United States*, 534 U.S. 84, 94 (2001) (explaining that "canons are not mandatory rules," but instead are "guides * * * designed to help judges determine the Legislature's intent as embodied in particular statutory language"). Accordingly, as petitioner recognizes (Br. 28), the pro-veteran canon should be invoked only to resolve "interpretive doubt" when the relevant statutory text remains ambiguous after applying traditional tools of statutory interpretation. *Brown* v. *Gardner*, 513 U.S. 115, 118 (1994); see *King* v. *St. Vincent's Hospital*, 502 U.S. 215, 220 n.9 (1991); see also *Shinseki* v. *Sanders*, 556 U.S. 396, 416 (2009) (Souter, J., dissenting).

Section 5110(b)(1) presents no interpretive doubt. To the contrary, its literal meaning is clear and unambiguous: the relevant exception to the default effective-date rule is available only if an application for benefits is filed within one year of discharge. 38 U.S.C. 5110(b)(1). The question in this case is whether a judge-made equitable doctrine can displace the operation of that unambiguous text. The pro-veteran canon, like other interpretive canons used to resolve textual ambiguities, has no bearing on that determination.

In any event, for the reasons set forth above, the one-year grace period in Section 5110(b)(1) unambiguously is not a statute of limitations for purposes of the *Irwin* presumption. And Section 5110's text and structure would unambiguously rebut that presumption even if it applied. For those reasons as well, the relevant statutory provisions leave no interpretive doubt for the pro-veteran canon to resolve.

II. EVEN IF THE ONE-YEAR GRACE PERIOD WERE AMENABLE TO EQUITABLE TOLLING, TOLLING WOULD BE UNWARRANTED HERE

Even where it is available with respect to a particular timing provision, equitable tolling should be applied "only sparingly." *Irwin*, 498 U.S. at 96. This Court has "allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Ibid.* (footnote omitted). On the other hand, the Court "ha[s] generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." *Ibid.* Even if tolling of the Subsection (b)(1) deadline were available in some circumstances, petitioner would not be entitled to tolling here.

A. Petitioner does not allege that he actively pursued any remedies under Subsection (b)(1) (*e.g.*, by filing a defective application for benefits) during the one-year period after his discharge. Nor does he allege that he was tricked or misled into not filing an application during that one-year period. To the contrary, as the Board observed, petitioner's representative "candidly acknowledged that it was not until after their father, who was [petitioner's] principal source of support, died in December 2010 that [petitioner], having no income, was able to be convinced by his brother and his psychiatrists to file the June 3, 2011 application." Pet. App. 114a; cf. *Irwin*, 498 U.S. at 96 (explaining that equitable tolling is unavailable for "a garden variety claim of excusable neglect"). Indeed, petitioner filed an application for *educational* benefits within one year of his dis-

charge, further undermining any claim that an extraordinary circumstance prevented him from filing an application for service-connected disability benefits during that window. See Record Before the Agency 2492-2493 (application for educational assistance dated November 10, 1981); see also *id.* at 2480-2481, 2484-2487 (enrollment certifications filed in January, February, and June 1982).

Petitioner urges this Court to remand the case for further factual development, contending (Br. 48) that "[t]he only issue raised before the Federal Circuit in this case was whether [Section] 5110(b)(1) is amenable to equitable tolling as a matter of law." But all six of the Federal Circuit judges who found equitable tolling to be available as a matter of law went on to address—and reject—petitioner's contention that equitable tolling was warranted in light of the factual record in this case. See Pet. App. 70a-97a (Dyk, J., concurring in the judgment). Those judges explained that "[t]here is no allegation that [petitioner's representative] was somehow prevented from filing, or faced obstacles in his attempt to file, [petitioner's] request for benefits sooner." *Id.* at 96a. They found "nothing in the record that justifies the inordinate thirty-year delay in filing the application at issue." *Id.* at 97a.

Petitioner asserts (Br. 48) that Judge Dyk's concurrence "errs by relying on an undeveloped evidentiary record." But petitioner's request to remand the case simply underscores the practical difficulties that acceptance of his position on the first question presented would create. If further factual development (potentially including discovery, depositions, and the like) is necessary to evaluate a claim of equitable tolling in a case where the claimant waited nearly 30 years to file

an initial application and provided no compelling reason for the delay, it potentially would be necessary in a broad range of cases. Forcing the agency to engage in that inquiry on a regular basis would inevitably inject further delays into an already backlogged system of benefits administration, to the detriment of all veterans.

B. In support of his request for equitable tolling, petitioner alleged only that his "mental illness prevented him from filing a claim earlier than June 3, 2011." Pet. App. 116a. But as the Board explained, Congress addressed precisely that circumstance in Subsection (b)(4). *Ibid.*; see pp. 31-32, *supra*. That provision applies to "a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled." 38 U.S.C. 5110(b)(4)(B). It states that "[t]he effective date of an award of disability pension to [such] a veteran * * * shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date." 38 U.S.C. 5110(b)(4)(A).

"'It is a commonplace of statutory construction that the specific governs the general,'" and "[t]hat is particularly true where * * * 'Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.'" *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (brackets and citations omitted). Subsection (b)(4) is Congress's targeted response to the specific prospect that a veteran's disability may sometimes prevent him from filing a benefits claim. Petitioner is ineligible for relief under that provision, however, both be-

cause Subsection (b)(4)'s grace period applies only to disability-*pension* benefits, and because petitioner did not apply for benefits within one year after the date when he alleges that he became permanently and totally disabled. Even if the Court holds that equitable tolling of Subsection (b)(1)'s one-year grace period is potentially available in some circumstances, it should find tolling to be unavailable here, since petitioner's proffered ground for tolling would negate the specific limits that Congress placed on relief under Subsection (b)(4).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 38 U.S.C. 5110 provides:

Effective dates of awards

(a)(1) Unless specifically provided otherwise in this chapter, the effective date of an award based on an initial claim, or a supplemental claim, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.

(2) For purposes of determining the effective date of an award under this section, the date of application shall be considered the date of the filing of the initial application for a benefit if the claim is continuously pursued by filing any of the following, either alone or in succession:

(A) A request for higher-level review under section 5104B of this title on or before the date that is one year after the date on which the agency of original jurisdiction issues a decision.

(B) A supplemental claim under section 5108 of this title on or before the date that is one year after the date on which the agency of original jurisdiction issues a decision.

(C) A notice of disagreement on or before the date that is one year after the date on which the agency of original jurisdiction issues a decision.

(D) A supplemental claim under section 5108 of this title on or before the date that is one year after the date on which the Board of Veterans' Appeals issues a decision.

(E) A supplemental claim under section 5108 of this title on or before the date that is one year after the date on which the Court of Appeals for Veterans Claims issues a decision.

(3) Except as otherwise provided in this section, for supplemental claims received more than one year after the date on which the agency of original jurisdiction issued a decision or the Board of Veterans' Appeals issued a decision, the effective date shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of the supplemental claim.

(b)(1) The effective date of an award of disability compensation to a veteran shall be the day following the date of the veteran's discharge or release if application therefor is received within one year from such date of discharge or release.

(2)(A) The effective date of an award of disability compensation to a veteran who submits an application therefor that sets forth an original claim that is fully-developed (as determined by the Secretary) as of the date of submittal shall be fixed in accordance with the facts found, but shall not be earlier than the date that is one year before the date of receipt of the application.

(B) For purposes of this paragraph, an original claim is an initial claim filed by a veteran for disability compensation.

(C) This paragraph shall take effect on the date that is one year after the date of the enactment of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012 and shall not apply with respect to claims filed after the date that is three years after the date of the enactment of such Act.

(3) The effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.

(4)(A) The effective date of an award of disability pension to a veteran described in subparagraph (B) of this paragraph shall be the date of application or the date on which the veteran became permanently and totally disabled, if the veteran applies for a retroactive award within one year from such date, whichever is to the advantage of the veteran.

(B) A veteran referred to in subparagraph (A) of this paragraph is a veteran who is permanently and totally disabled and who is prevented by a disability from applying for disability pension for a period of at least 30 days beginning on the date on which the veteran became permanently and totally disabled.

(c) The effective date of an award of disability compensation by reason of section 1151 of this title shall be the date such injury or aggravation was suffered if an application therefor is received within one year from such date.

(d) The effective date of an award of death compensation, dependency and indemnity compensation, or death pension for which application is received within one year from the date of death shall be the first day of the month in which the death occurred.

(e)(1) Except as provided in paragraph (2) of this subsection, the effective date of an award of dependency and indemnity compensation to a child shall be the first day of the month in which the child's entitlement arose

if application therefor is received within one year from such date.

(2) In the case of a child who is eighteen years of age or over and who immediately before becoming eighteen years of age was counted under section 1311(b) of this title in determining the amount of the dependency and indemnity compensation of a surviving spouse, the effective date of an award of dependency and indemnity compensation to such child shall be the date the child attains the age of eighteen years if application therefor is received within one year from such date.

(f) An award of additional compensation on account of dependents based on the establishment of a disability rating in the percentage evaluation specified by law for the purpose shall be payable from the effective date of such rating; but only if proof of dependents is received within one year from the date of notification of such rating action.

(g) Subject to the provisions of section 5101 of this title, where compensation, dependency and indemnity compensation, or pension is awarded or increased pursuant to any Act or administrative issue, the effective date of such award or increase shall be fixed in accordance with the facts found but shall not be earlier than the effective date of the Act or administrative issue. In no event shall such award or increase be retroactive for more than one year from the date of application therefor or the date of administrative determination of entitlement, whichever is earlier.

(h) Where an award of pension has been deferred or pension has been awarded at a rate based on anticipated income for a year and the claimant later establishes that

income for that year was at a rate warranting entitlement or increased entitlement, the effective date of such entitlement or increase shall be fixed in accordance with the facts found if satisfactory evidence is received before the expiration of the next calendar year.

(i) Whenever any disallowed claim is readjudicated and thereafter allowed on the basis of new and relevant evidence resulting from the correction of the military records of the proper service department under section 1552 of title 10, or the change, correction, or modification of a discharge or dismissal under section 1553 of title 10, or from other corrective action by competent authority, the effective date of commencement of the benefits so awarded shall be the date on which an application was filed for correction of the military record or for the change, modification, or correction of a discharge or dismissal, as the case may be, or the date such disallowed claim was filed, whichever date is the later, but in no event shall such award of benefits be retroactive for more than one year from the date of readjudication of such disallowed claim. This subsection shall not apply to any application or claim for Government life insurance benefits.

(j) Where a report or a finding of death of any person in the active military, naval, air, or space service has been made by the Secretary concerned, the effective date of an award of death compensation, dependency and indemnity compensation, or death pension, as applicable, shall be the first day of the month fixed by that Secretary as the month of death in such report or finding, if application therefor is received within one year from the date such report or finding has been made;

however, such benefits shall not be payable to any person for any period for which such person has received, or was entitled to receive, an allowance, allotment, or service pay of the deceased.

(k) The effective date of the award of benefits to a surviving spouse or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.

(*l*) The effective date of an award of benefits to a surviving spouse based upon a termination of a remarriage by death or divorce, or of an award or increase of benefits based on recognition of a child upon termination of the child's marriage by death or divorce, shall be the date of death or the date the judicial decree or divorce becomes final, if an application therefor is received within one year from such termination.

[(m) Repealed. Pub.L. 103-446, Title XII, § 1201(i)(8), Nov. 2, 1994, 108 Stat. 4688.]

(n) The effective date of the award of any benefit or any increase therein by reason of marriage or the birth or adoption of a child shall be the date of such event if proof of such event is received by the Secretary within one year from the date of the marriage, birth, or adoption.

2. 38 C.F.R. 3.400 provides in pertinent part:

General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation, or dependency and indemnity compensation based on an initial claim or supplemental claim will be the date of receipt of the claim or the date entitlement arose, whichever is later. For effective date provisions regarding revision of a decision based on a supplemental claim or higher-level review, see § 3.2500.

(Authority: 38 U.S.C. 5110(a))

(a) *Unless specifically provided.* On basis of facts found.

(b) *Disability benefits*—(1) *Disability pension (§ 3.3).* An award of disability pension may not be effective prior to the date entitlement arose.

(i) *Claims received prior to October 1, 1984.* Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within one year from such date, whichever is to the advantage of the veteran.

(ii) *Claims received on or after October 1, 1984.* (A) Except as provided in paragraph (b)(1)(ii)(B) of this section, date of receipt of claim.

(B) If, within one year from the date on which the veteran became permanently and totally disabled, the veteran files a claim for a retroactive award and establishes that a physical or mental disability, which was not the result of the veteran's own willful misconduct, was so incapacitating that it prevented him or her from filing a disability pension claim for at least the first 30 days

immediately following the date on which the veteran became permanently and totally disabled, the disability pension award may be effective from the date of receipt of claim or the date on which the veteran became permanently and totally disabled, whichever is to the advantage of the veteran. While rating board judgment must be applied to the facts and circumstances of each case, extensive hospitalization will generally qualify as sufficiently incapacitating to have prevented the filing of a claim. For the purposes of this subparagraph, the presumptive provisions of § 3.342(a) do not apply.

(2) *Disability compensation*—(i) *Direct service connection (§ 3.4(b))*. Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(ii) *Presumptive service connection (§§ 3.307, 3.308, 3.309)*. Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

* * * * *