



VFW GUIDE FOR POST SERVICE OFFICERS

Part 1



PART 1: BENEFITS OVERVIEW



VFW GUIDE FOR POST SERVICE OFFICERS

Version: December 4, 2020

Foreword

Unprecedented Leadership in Unprecedented Times

If you're reading this guide, I want to personally thank you for your commitment to helping our veterans understand and navigate the benefits that they have earned in service to our nation. For more than half a century, the VFW National Veterans Service has developed this comprehensive guide to help you effectively advocate for veterans in your community. As veterans' benefits have evolved, so has this guide. However, the year 2020 has been an unprecedented year of change and, many times, hardship for our veterans and even for ourselves.

National Veterans Service and the entire VFW needed to rethink the ways in which we offer service to our veterans. But as you already know first-hand, the VFW was up to this task. When the pandemic took root in the United States last spring, the VFW took action. Posts around the country and around world showed unprecedented leadership by taking up the cause to serve our communities in whatever ways we could, whether it was sewing masks for first responders, serving meals to families in need, or wholesale rethinking the ways in which we connect with one another.

I am proud to report that the VFW's global network of VA-accredited service officers also met this challenge, quickly adapting to provide claims assistance anytime, from anywhere with a reliable internet connection. Though many of our advocates still cannot meet face-to-face with veterans, we have the technology at our disposal to continue providing the advocacy our veterans deserve.

With this in mind, NVS has decided to change the way in which we deliver this guide and the resources you need as Post Service Officer to better meet the needs of the 21st century.

For the first time, the VFW Guide for Post Service Officers is available to you as a FREE online resource for your quick reference whenever – and wherever – you may need it.

By making this guide available online, our goal is to ensure that your Posts and Departments can better utilize the resources that you dedicate to veterans service in meeting veterans where they are. Moreover, with advancements in smart phone technology, our hope is that you will have this guide bookmarked on your devices so that you can use them as a reference any time a veteran may need it.

In 2015, NVS set forward with a strategic objective to be able to provide real time benefits assistance to any veteran, anytime, anywhere, leveraging modern technology. I am proud to report that by publishing this Guide in a free, readily-available online format, we are taking another critical step to meeting this objective.

As always, my hope is that this Guide offers you the information you need on the full scope of programs offered by the Department of Veterans Affairs to serve as advocates for your communities. Veterans' benefit programs are complicated and ever-changing, which also means that we will be updating this guide frequently. But now, as an advocate, you will no longer need to track these changes on your own, as the guide will show you when it was last updated.

We hope this Guide helps you understand the full scope of veterans' benefits and the role you play in helping veterans navigate this complicated landscape. And remember, just like when we served in the military, we never go it alone. Your VFW maintains a solid and effective cadre of highly-trained and professional Department and National service officers and claims consultants, accredited by the Department of Veterans Affairs to represent veterans and eligible dependents in their benefit claims. These accredited service officers work largely in VA regional offices where they have access to VA computer data systems and personnel.

These dedicated advocates should be your go-to people when it comes time for your veterans to file their claims. If you have any questions, your District, Department, and National Service Officers always stand ready to assist.

This Guide provides information and advice on how to navigate this ever-changing landscape, and how to avoid pitfalls that can cost both veterans and your Post time and money. It is easier than ever to do something wrong and the stakes have never been higher – especially during these uncertain times, when veterans are losing jobs and access to health care. Your work as a Post Service Officer remains critical to our mission of connecting all service members, veterans, and their families with their earned benefits.

These are unprecedented times that call for unprecedented leadership. I want to thank you for your commitment to leading in this time when our veterans need us the most. Our nation has faced challenges like this before, and I am inspired to know that the VFW will continue to take up this challenge to ensure that our veterans receive the care and benefits they deserve, no matter the obstacles. Thank you, again, for volunteering for this mission. Be safe, be healthy, and be confident that “NO ONE DOES MORE FOR VETERANS” than the VFW.

Yours in Comradeship,

RYAN M. GALLUCCI
Director, National Veterans Service

PART 1

BENEFITS OVERVIEW

TABLE OF CONTENTS

GENERAL BENEFITS INFORMATION.....	5
SERVICE CLASSIFICATION.....	7
VA AND OTHER BENEFITS FOR RESERVISTS AND NATIONAL GUARD MEMBERS.....	9
DEPENDENCY AND RELATIONSHIPS.....	13
REGULATIONS AFFECTING BENEFITS.....	16
EFFECTIVE DATES.....	19
APPEALS FOR VA BENEFITS.....	22
MISCELLANEOUS BENEFITS AND REGULATIONS.....	25

GENERAL BENEFITS INFORMATION

Sec. 1. Representation: Post Service Officers (PSOs) are local advocates who assist veterans and their loved ones in navigating a complicated benefits landscape. Post Service Officers serve as a conduit to critical programs and services in the community, but they are not accredited by the Department of Veterans Affairs for the purposes of representing claimants in their benefit claims before VA.

Therefore, Post Service Officers do not hold legal standing to represent claimants in their benefit claims before the Department of Veterans Affairs. This distinction is reserved for individuals accredited by VA through the Veterans of Foreign Wars of the U.S. in accordance with Title 38 U.S.C. § 5902 - *Recognition of representatives of organizations* and the VFW National Veterans Service Policy & Procedure.

Post Service Officers may assist veterans in understanding their benefits as outlined in this *VFW Guide for Post Service Officers* and should refer any potential claimants to the appropriate VFW-accredited individual for representation that conforms to VA regulations.

The following pertains to the use of VA form 21-22, “*Appointment of Veterans Service Organization as Claimants Representative*”:

- a. A VA form 21-22 designating the Veterans of Foreign Wars as the individual’s representative is necessary to authorize the VFW to represent a claimant for benefits from the Department of Veterans Affairs.
- b. No fee or compensation of any nature can be charged, requested or expected by anyone for assistance provided in connection with any claim the VFW provides representation.
- c. The VFW may represent any veteran other than those with a Dishonorable Discharge.
- d. Membership in the VFW is not required for representation.

IMPORTANT: VA form 21-22 must be completed and signed by an accredited VFW representative to be valid for VA benefit purposes. As a non-accredited individual, a Post Service Officer can assist a veteran in filling out the form, but it is not valid until signed by an accredited VFW representative and submitted to VA.

Sec. 2. Confidentiality of Records: Public Law 93-579, *The Privacy Act of 1974*, requires written authorization for release of any information from records maintained by Federal agencies. The Department of Veterans Affairs, Department of Defense, Social Security Administration, and other Federal agencies restrict the release of confidential information, such as address of the claimant, etc. to parties other than the claimant. An accredited representative of a Veterans Service Organization may release information necessary for development of a specific claim to a local service officer, only if authorized by the claimant in writing on VA Form 21-0845.

Sec. 3 Procedures for submitting claims and Intent to File forms to the DSO: Post Service Officers must return claims and supporting evidence to the claimant for the claimant to forward to the Department Service Officer (DSO). Since VA awards benefits based on the date of claim, it is vital that claimants immediately send the documents to the DSO or proper VFW-accredited representative. Claims must never be retained by the Post Service Officer, as there may be a loss of a monetary benefit to the claimant. If a claimant cannot submit a claim immediately, they should submit an Intent to File form (VA Form 21-0966) to the DSO instead. Please note that in this *Guide for Post Service Officers*, whenever the term Post Service Officer (PSO) is used, it applies to District Service Officers and any other non-accredited VFW personnel or volunteers as well.

Note: VA now requires that claims for benefits be filed on standardized forms. PSOs should be familiar with the following standardized claim forms:

- 21-22: Appointment of Veterans Service Organization as Claimant’s Representative
- 21-0966: Intent to File
- 21-526ez: Application for Disability Compensation
- 21p-527ez: Application for Pension
- 21p-534ez: Application for Dependency and Indemnity Compensation & Survivor’s Pension
- 20-0995: Decision Review Request, Supplemental Claim
- 20-0996: Decision Review Request, Higher-Level Review
- 10182: Decision Review Request, Board Appeal / Notice of Disagreement

Failure to use the correct form when submitting a claim or an appeal may result in substantial delays and/or VA refusing to process the claim or appeal.

Sec. 4. Guide for Post Service Officers: The *VFW Manual of Procedure*, Sec. 218, mandates that each Post Service Officer have the latest edition of the *Guide for Post Service Officers*. District Service Officers should also have a copy of the *Guide for Post Service Officers*. In the past, this guide was available for purchase through the VFW Store. However, starting in 2020, the VFW elected to make this resource available electronically via the VFW National Website. PSOs and District Service Officers should ensure that they have convenient access to this linked document or print this document for quick reference.

Sec. 5. National Veterans Service Advisory Committee: This committee, under the supervision of the National Council of Administration and subject to provisions of the National By-Laws and orders of the National Convention, supervises the VFW National Veterans Service Program. The committee is comprised of the Commander-in-Chief, Senior Vice Commander-in-Chief, Junior Vice Commander-in-Chief and the four immediate Past Commanders-in-Chief.

Sec. 6. Code of Conduct for Post Service Officers

The Post Service Officer:

- Will perform their duties under the supervision of the Department Service Officer.
- Shall assist members of the Post, their widows and orphans and other veterans in obtaining rightful benefits from the federal and state governments.
- Will not take possession of or release confidential information (Personally Identifiable Information, or PII), such as what conditions were claimed or the address of the claimant, to anyone other than the DSO without the express written consent of the claimant.
- Should keep members informed of veterans' entitlements and benefits offered and administered by federal, state and local governments.
- Will provide guidance and assistance to veterans and survivors free of charge; under no circumstances, shall they request, demand or accept cash or any other form of payment for such assistance or use their knowledge of a veteran's claim status or compensation to solicit funds.
- May serve as a "scribe" to assist veterans in filling out prescribed forms and other paperwork for the veteran to immediately transmit either directly to VA or to the proper accredited VFW representative.
- Shall not fill out forms on behalf of a claimant or act as the representative of the claimant before VA, to include seeking to secure status updates on VA claims or signing/submitting forms on the claimant's behalf. These are representative functions reserved for VFW accredited representatives in accordance with VA laws and regulations.
- Shall not under any circumstances present themselves as accredited representatives for the purposes of claims representation before the Department of Veterans Affairs on behalf of the VFW.
- Shall return all claims forms, documents, and protected health and personal information to potential claimants so that the claimant may transmit the claim and documents to the accredited VFW representative, usually the VFW Department Service Officer (DSO). Since VA awards benefits based on the date of claim, it is vital to advise claimants that claims should be sent to the VFW accredited representative immediately.
- Will not keep any forms, documents, evidence, records, or materials of any kind pertaining to the veteran's claims and containing PII of the claimant.
- Will refer claimants to the most recent version of all VA forms to include (but not limited to), 21-22 Appointment of Veteran Service Organization as Claimant's Representative, 21-526ez Application for

Compensation, 21-0966 Intent to File a Claim for Compensation or Pension, 21-527ez Application for Pension, & 21-534ez Application for Survivor Benefits. Contact your DSO for these forms; Post Service Officers may also download them from VA: www.va.gov/vaforms/

- Will attend all Post Service Officer training conducted by the VFW Department Service Officer. While the Department Service Officer is responsible for providing training to the Post Service Officers, the District Service Officer is responsible for ensuring that their Post Service Officers attend training.
- If the Post Service Officers receives any documentation affirming that they have completed Post Service Officer training, to include certificates of completion, the Post Service Officer shall not under any circumstances represent themselves as “certified VFW Service Officers” or any variation thereof that implies they are legally qualified to assist and represent claimants in their VA benefit claims. This distinction is reserved for VFW representatives accredited by the Department of Veterans Affairs for prosecution of benefits claims before VA and can only be approved by the Director, VFW National Veterans Service in accordance with the VFW National Veterans Service Policy & Procedure.
- Shall not refuse to assist any veteran or survivor unless it is clear that the claim is fraudulent. Shall not refuse to assist any veteran or survivor because they do not feel the veteran or survivor is eligible for the benefit sought. The accredited Department Service Officer will make the final decision as to whether the VFW will provide representation in all cases.
- Will refrain from the use of racial, religious, age-related, sexual, or ethnic epithets, innuendoes, slurs or jokes in the work place.
- Must conduct themselves in a totally professional manner and refrain from any forms of harassment based on race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other characteristic protected by law.
- Further requirements are listed in the VFW National Veterans Service Policy & Procedure, which can be found on www.vfw.org/NVS.

Sec. 7. Due Process: Proceedings before VA are non-adversarial and are for the benefit of the claimant only. It is, therefore, the obligation of VA to assist claimants in the development of their claims and to make decisions which establish every benefit that can be supported by law and regulation. Claimants are afforded virtually unlimited opportunities to present any evidence to prove or controvert any material fact bearing or on any issue involved in a claim. It also allows representation of the claimant’s own choice to prosecute the claim at every stage of the adjudicative process. Finally, due process requires notification to claimants of any decision affecting their rights to benefits. The notice must include the reason for the decision as well as the right to a hearing. The notification will also advise claimants of their right to appeal simply by filing a Notice of Disagreement to the decision. Once accomplished, this will entitle them to a Statement of the Case containing information, which will assist in perfecting an appeal. For further information on hearings and appeals, see section on APPEALS FOR VA BENEFITS.

SERVICE CLASSIFICATION

Sec. 1. General:

- A. In order to qualify for benefits from VA, an individual must have served in the armed forces of the United States and have been discharged under conditions other than dishonorable. Veterans with an Other than Honorable or Bad Conduct Discharge should check with a DSO to see what, if any, benefits may be available.
- B. Qualification for VA benefit purposes may include active duty or any period of active duty for training which the individual concerned was disabled or died from a disease or injury incurred or aggravated in the line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred in or aggravated in the line of duty or from a covered disease (myocardial infarction, cardiac arrest, or stroke) in the Army, Air Force, Navy, Marine Corps and Coast Guard; attendance at Service Academies; Merchant Marine Seamen; and, full-time duty as a

commissioned officer of the Public Health Service or National Oceanic and Atmospheric Administration.

Sec. 2. Periods of Service:

A. Wartime Service (wartime service prior to WWI is not shown):

1. *World War I:* April 6, 1917 through November 11, 1918 and extended to April 1, 1920 for those who served in Russia. Service after November 11, 1918 through July 1, 1921 qualifies for benefit purposes if active duty was performed for any period during the basic World War I period.

2. *World War II:* December 7, 1941 through December 31, 1946, inclusive. If the veteran was in the service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.

3. *Korean Conflict:* June 27, 1950 through January 31, 1955, inclusive.

4. *Vietnam Era:* February 28, 1961 through May 7, 1975, inclusive, in the case of a veteran who physically served in the Republic of Vietnam during that period. The period beginning on August 5, 1964 and ending on May 7, 1975, inclusive, in all other cases.

5. *Persian Gulf:* (Operation Desert Shield or Desert Storm) August 2, 1990 through a date yet to be determined by Presidential proclamation or law.

6. *Future Dates.* The period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by Presidential proclamation or concurrent resolution of the Congress.

B. Peacetime Service: All service other than wartime service as classified in subsection A above.

Sec. 3. Classification of Duty:

A. Active Duty:

1. Full-time duty in the Armed Forces other than active duty for training.

2. Full-time duty for other than training purposes, as a Commissioned Officer of the Regular or Reserve Corps of the Public Health Service.

3. Full-time duty as a Commissioned Officer in the National Oceanic and Atmospheric Administration (formerly the Coast and Geodetic Survey and Environmental Science Services Administration).

4. Service as a cadet in the United States Military, Air Force or Coast Guard Academies, or as a midshipman at the United States Naval Academy.

5. Authorized travel to and from the above duty or service.

NOTE: A list of additional persons included in this category can be found in Title 38 Code of Federal Regulations, section 3.6 & 3.7. The Code of Federal Regulations can be viewed at www.ecfr.gov.

B. Active Duty for Training:

1. Full-time duty in the Armed Forces performed by members of the Reserves for training purposes.

2. Full-time duty by commissioned officers of the Reserve Corps of the Public Health Service for training purposes.

3. Full-time duty in the Army or Air Force performed by members of the National Guard under Title 32 United States Code.

4. Duty by members of the Senior Reserve Officers Training Corps for field training or practice cruises.

5. Authorized travel to and from such training.

C. Inactive Duty for Training:

1. Members of a reserve component of uniformed services for drill or other equivalent period of training, instruction or duty other than full time duty for training. Does not include work or study performed in connection with military correspondence courses.

2. Duty, other than full-time duty by members of the National Guard as instructors at rifle ranges for training of civilians in the use of military arms, or as participants in schools and field exercises conducted by the Army or Air Force.

3. Special authorized additional duties performed by Reserves on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

D. National Guard or Reserve Enlistees:

1. Individuals may enlist in the National Guard or the Reserves for a minimum period of three years. At the beginning of the 3-year enlistment, the individual is required to perform active duty for training for a period not less than four months. The remainder of the 3-year enlistment is spent as a member of the Ready Reserves. Only certain VA benefits accrue to these individuals such as compensation for residuals of a disease or injury that actually was incurred or aggravated during a period of active duty.

Sec. 4. Separation or Discharge: Active duty may be terminated by discharge, resignation, retirement, transfer to reserve status or entry level uncharacterized separation. Discharges and separations from active duty are classified as to the character of service performed and determine whether the individual is qualified for veteran's benefits. A veteran is a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

VA AND OTHER BENEFITS FOR RESERVISTS AND NATIONAL GUARD MEMBERS

Sec. 1. Due to the unique circumstances of how Reservists and National Guard members attain "veteran status," a separate section has been devoted to this subject. The purpose of this section is to provide Post Service Officers with a ready reference to determine the status of an inquiring Reservist or National Guard member and ascertain benefit programs to which they may be eligible. As there are full sections in this Guide on the various VA benefit programs, once it is determined that a Reservist or National Guard member may be eligible for a specific program, you should go to that section of this Guide for the specific entitlement information.

The primary factor in determining basic eligibility for VA benefits is "veteran status." The most direct way for a Reservist or National Guard member to establish veteran status is to be called to active duty under Title 10 U.S.C. The Reservists and National Guard members activated under this provision are on full active duty, and a DD Form 214 will be issued at the conclusion of the period of mobilization. As with any type of active military service, to qualify for VA benefit programs under Title 38 U.S.C. the character of service must be other than dishonorable.

Minimum active-duty service requirement. Generally, most VA benefit programs under Title 38 U.S.C. require twenty-four months of continuous active duty. Where that program requirement exists, Reservists and National Guard members called to duty under Title 10 U.S.C. only have to serve the *full period for which called or ordered to active duty* to fulfill this (38 CFR 3.12a(ii)). Additionally, there are circumstances where the full period may be cut short such as a disability in the line of duty that would still allow the member to qualify. See 38 CFR 3.12a(d) for all of the exclusions.

There are other ways that a Reservist or National Guard member can attain veteran status that have to do with the specific features of this type of military service:

Active Duty for Training (ACDUTRA) during which the member is disabled or dies from a *disease or injury* incurred or aggravated in the line of duty. See 38 CFR 3.6(c) for specific duties that constitute ACDUTRA.

Inactive Duty Training (IDT) during which the member is disabled or dies from an *injury* incurred or aggravated in the line of duty **or** from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident that occurs during such training. See 38 CFR 3.6(d) for specific duties that constitute IDT.

Compensation

In addition to providing the basis to attain veteran status, if a disability incurred or aggravated during ACDUTRA or IDT is found to be service-connected the member may be entitled to monthly compensation, a monetary tax-free benefit, if the disability is evaluated at least 10 percent disabling. The member may also incur or aggravate a disability during a period of activation if called to active duty under Title 10 U.S.C., and this could also lead to a granting of compensation if the disability or disabilities are evaluated 10 percent or more. Members should also be aware that if they serve at least 90 days during a period of activation under Title 10 U.S.C. they could be service-connected for certain chronic diseases that manifest within the one-year period following release from that period of active duty. Please refer to the Section on compensation for a detailed summary of this benefit program.

Pension

A Reservist or National Guard member may also be eligible for pension, which is a monetary benefit program based on nonservice-connected disability or age, wartime service, and having a limited income. To be eligible for this program, the member must have served at least 90 days or more with one of those days during a wartime period, or, if less than that, be separated by reason of a service-connected disability or have a service-connected disability which

in medical judgment would have justified a discharge for disability. The disability requirement for eligibility is met if the member is permanently and totally disabled due to nonservice-connected disabilities or at least 65 years old. Please refer to the section on Pension for a detailed summary of this benefit program.

Medical

If a Reservist or National Guard member has attained veteran status, the opportunity to enroll for VA health care exists. VA operates an annual enrollment system that places eligible veterans in one of 8 priority groups, with 1 being the highest priority for enrollment. A major factor in determining a veteran's priority group is whether service-connected disabilities have been recognized and the level of evaluation for those disabilities. The lower priority groups based on 0% service-connected disability or nonservice-connected status require that the veteran meet income and net worth thresholds to qualify for enrollment. However, all veterans may receive treatment for service connected disabilities free of charge regardless of income.

Many Reservists and National Guard members who have been activated in recent years have been deployed to a combat theater of operations, and special consideration has been given to recognize that service.

Combat Enhanced Eligibility and Enrollment. Veterans, including activated Reservists and National Guard members, are eligible for cost-free health care services for conditions possibly related to military service and enrollment in **Priority Group 6** if they served on active duty in a theater of combat operations after November 11, 1998, and have been discharged under other than dishonorable conditions as follows:

- Currently enrolled veterans and new enrollees who were discharged from active duty on or after January 28, 2003, are eligible for the enhanced benefits for 5 years post discharge.
- Combat veterans who were enrolled in VA's health care system on or after January 28, 2008, are covered by the new authority. Combat veterans who applied after January 16, 2003, but were not accepted for enrollment based on high income will be automatically enrolled under the new authority.
- Veterans who enroll with VA under this authority will continue to be enrolled even after their enhanced eligibility period ends. At the end of their enhanced eligibility period, veterans enrolled in Priority Group 6 without service connected disabilities may be shifted to Priority Group 7 or 8, depending on their income level, and required to make co-pays.

It is important to note that a veteran may be eligible for more than one enrollment Priority Group. In that case, VA will always place the veteran in the highest Priority Group for which he or she is eligible. Please refer to the section on Health Care for a detailed summary of this benefit program.

Education

There are multiple VA programs involving educational benefits to which a Reservist or National Guard member may be eligible. Two of the programs are specifically for these members:

Montgomery GI Bill – Selected Reserve (MGIB-SR) – Chapter 1606. Members of the reserve elements of the Army, Navy, Air Force, Marine Corps and Coast Guard, and members of the Army National Guard and the Air National Guard, may be entitled to up to 36 months of educational benefits under the Montgomery GI Bill – Selected Reserve. To be eligible, the member must:

1. Have a six-year obligation in the Selected Reserve or National Guard signed after June 30, 1985, or, if an officer, agree to serve six years in addition to the original obligation.
2. Complete initial active duty for training.
3. Have a high school diploma or equivalency certificate before applying for benefits.
4. Remain in good standing in a Selected Reserve or National Guard unit.

Reserve components determine eligibility for benefits. VA does not make decisions about eligibility and cannot make payments until the reserve component has determined eligibility and notified VA.

Benefits generally end the day a Reservist or National Guard member separates from the military. One exception to this rule exists if the member is mobilized (or recalled to active duty from his or her reserve status), in this case their eligibility may be extended for the amount of time they are mobilized PLUS four months. For example, if a member is mobilized for 12 months, the eligibility period is extended for 16 months (12 months active duty PLUS 4 months.) So even if the member leaves the reserves after mobilization, they may have additional eligibility to the MGIB-SR.

Members may use this education assistance program for degree programs, certificate or correspondence courses, cooperative training, independent study programs, apprenticeship/on-the-job training, and vocational flight training programs. Remedial, refresher and deficiency training are available under certain circumstances. The current rate for full-time training effective since October 1, 2014 is \$367 a month. Part-time benefits are reduced proportionately. For current rates visit www.gibill.va.gov/.

Reserve Educational Assistance Program (REAP) – Chapter 1607. This program provided up to 36 months of educational assistance to members of National Guard and Reserve components who were called or ordered to active duty service in response to a war or national emergency on or after September 11, 2001, for at least 90 consecutive days under a contingency operation. This program has been sunset by Congress in favor of the Post-9/11 GI Bill, which provides enhanced educational benefits for deployed members of the National Guard and Reserve. This program is discussed in the Education section of this guide.

Other VA Educational programs. As noted earlier, when a member of the Reserves or National Guard is ordered to active duty, this constitutes active military service and provides the eligibility to other VA educational programs that are available to regular full-time active duty individuals, including the Montgomery **GI Bill – Active Duty (Chapter 30)**, the **Post-9/11 GI Bill**, and the **Forever GI Bill**. Please refer to the section on Education for a detailed summary of these educational programs and a comparison chart so that all of the available programs can be considered concurrently.

NOTE: If a veteran is eligible for VA educational benefits under Chapter 30, Chapter 1606, or Chapter 1607 and becomes eligible for the Post-9/11 GI Bill or Forever GI Bill, an election may be requested to receive benefits.. A veteran may only receive entitlement to one VA educational program at a time, and may not use more than 48 months of entitlement under any combination of VA educational programs.

Vocational Rehabilitation. While not considered an “educational program” per se, one method of rehabilitation is through a program of education with a vocational goal. Reservists and National Guard members who establish service-connection for disabilities evaluated 20 percent or more disabling are eligible to apply for this program. Members with only a 10 percent disability may apply if it is determined that the 10 percent disability presents a severe employment handicap. If a member of the Reserves or National Guard meets the basic criteria to apply, he or she may wish to compare this program with other VA educational programs to see if Vocational Rehabilitation might be their best option based on their vocational goal. Please refer to the section on Vocational Rehabilitation for a detailed summary of the services provided by this program.

Veteran Employment. Many Reservists and National Guard members have been ordered to active duty in the recent past, and most of these individuals left regular full-time employment in the civilian sector. A person who left a civilian job to enter active duty in the armed forces is entitled to return to the job after discharge or release from active duty if they:

- Gave advance notice of military service to the employer.
- Did not exceed five years cumulative absence from the civilian job (with some exceptions).
- Submitted a timely application for re-employment.
- Did not receive a dishonorable or other punitive discharge.

The law calls for a returning veteran to be placed in the job as if he or she had never left, including benefits based on seniority such as pensions, pay increases, and promotions. The law also prohibits discrimination in hiring, promotion or other advantages of employment on the basis of military service. Veterans seeking re-employment should apply, verbally or in writing, to the company's hiring official and keep a record of their application. If problems arise, contact the Department of Labor's Veterans' Employment and Training Service (VETS) in the state of residence.

Loan Guaranty. When eligibility is based *solely* on reserve or guard service, members must have completed at least six years of honorable service. Eligibility may also be established if an individual was released prior to six years' service due to a service-connected disability.

Reservists and National Guard members who are activated and serve under Title 10 U.S.C. are eligible if they were activated after August 1, 1990, served at least 90 days, and receive an honorable discharge. **Eligibility based on current activation begins after 90 days of active service.**

VA guarantees loans to purchase a home, manufactured home, and certain types of condominiums, or to build, repair, and improve homes. This benefit may also be used to refinance an existing home loan. Please refer to the section on Loan Guaranty for a detailed summary of all the features of this program.

Insurance. Reservists and National Guard members are all eligible to receive Servicemembers' Group Life Insurance (SGLI), Veterans Group Life Insurance (VGLI), and Family Group Life Insurance (FGLI).

Additionally, if ordered to active duty, they may also be eligible for SGLI Traumatic Injury Protection (TSGLI) if they become severely injured and suffer a qualifying loss, and also be eligible for Service Disabled Veterans Insurance (SDVI) if they establish service connection for a compensable disability incurred or aggravated during active duty, active duty for training, or inactive duty training.

Please refer to the section on Insurance for detailed information about all of the VA insurance programs.

Burial Benefits. The following members of reserve components are eligible for the full array of VA burial and memorial benefits such as burial allowance, interment in a national cemetery, memorial plot, flag of the United States, Presidential Memorial Certificate, and headstones and markers:

- Reservists and National Guard members who are called to active duty under Title 10 U.S.C., serve the full period of active duty for which ordered, and are discharged under conditions other than dishonorable.
- Members of reserve components who, during a period of active duty for training, were disabled or died from a disease or injury incurred or aggravated in the line of duty or, during a period inactive duty training, were disabled or died from an injury incurred or aggravated in the line of duty.
- Reservists and National Guard members who, at the time of death, were entitled to retired pay under Chapter 1223, Title 10, U.S.C., or would have been entitled but for being under the age of 60.

Additionally, a flag of the United States will be furnished by the VA to drape the casket of a member of the Selected Reserves or National Guard who completed at least one enlistment. Please refer to the section on Burial Benefits for a detailed summary of all of the benefits available under this program.

DEPENDENCY AND RELATIONSHIPS

Sec. 1. Spouse, Surviving Spouse or Formerly Remarried Spouse:

A. *Spouse*: A person whose marital relationship to the veteran is valid under the laws of their residence at the time of marriage or the law of their residence when the right to benefits accrued.

B. *Surviving Spouse*: A person who was the lawful spouse of a veteran at the time of the veteran's death and who lived with the veteran continuously from the date of marriage to the date of death, except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse, and who has not remarried.

C. *Inference of Remarriage*: A surviving spouse who has not actually remarried but since the death of the veteran and after September 19, 1962, lived with another person and held themselves out openly to the public to be the spouse of such other person, may be ruled to have been remarried.

Sec. 2. Marriage: Acceptable evidence of marriage is original certificates of marriage, copies of public records; church records; official report from service department; affidavit of clergyman or magistrate who officiated, or other acceptable secondary evidence.

A. Dates of Marriage for Surviving Spouse's Entitlement: Dependency and Indemnity Compensation (DIC) and Death Compensation:

If a veteran dies of a service-connected disability, and has a surviving spouse,

- they must have been married within 15 years of the veterans separation from the service in which the injury or disease which caused the veteran's death was incurred or aggravated; or,
- For any period if a child was born of the marriage, or was born to them before the marriage; or,
- For one year or more.

Pension: Death pension may be paid to a surviving spouse who was married to the veteran

- For one year or more prior to the veterans death,
- For any period if a child was born of the marriage, or was born to them before the marriage; or,
- prior to the following dates:

World War	Before	01-01-1957
Korean Conflict	Before	02-01-1965
Vietnam Era	Before	05-08-1985
Persian Gulf War	Before	01-01-2001

B. *Deemed Valid Marriage*. A valid marriage will be established if the marriage occurred one year or more before the veteran's death or existed for any period of time if a child was born of the marriage or was born to the parties before the marriage; the surviving spouse entered into the marriage without knowledge of the impediment; the surviving spouse lived with the veteran at the time of the veteran's death or, if they were separated, the surviving spouse was not at fault in the separation and no other claimant has established entitlement to VA benefits as the veteran's legal surviving spouse.

C. *Common Law Marriage*: VA will recognize a common law marriage provided the state in which they reside recognizes common law marriage. Post Service Officers should take the application and refer it to our Department Service Officer. Generally, VA staff will refer the issue to the VA District Counsel's office for an opinion as to the validity of the marriage.

D. *Same-sex Marriage*: For VA benefits the process for determining the validity of a same-sex marriage is now no different than the process for determining the validity of a marriage between individuals of the opposite sex.

NOTE: Continuous cohabitation from the date of marriage to the date of death of the veteran is required. This requirement will be met when the evidence shows there was no separation due to the fault of the surviving spouse. Temporary separations by mutual consent, which ordinarily occur, for purposes of convenience, health, job, or other reasons, will not break the continuity of continuous cohabitation.

D. *Remarriage*: Remarriage of a surviving spouse after the death of the veteran may be a bar to the surviving spouses receiving DIC benefits, see Sec. 1-17.

Sec. 3. Dissolution of Marriage: Marriage may be terminated by divorce, annulment, or death of either party.

- A. *Void Marriage*: A certified statement from the claimant setting forth the circumstances which rendered the marriage void, together with such evidence as may be required for a determination.
- B. *Divorce*: Marriage may be terminated by divorce and will be established by a copy of the divorce decree or written statement of the claimant. Divorce procedures and criteria are controlled by the requirements of the state of legal domicile.
- C. *Annulment*: A copy or abstract of the decree of annulment. A decree regular on its face will be accepted unless there is reason to question the basic authority of the court to render annulment decrees or there is evidence indicating that the annulment may have been obtained through fraud by either party or by collusion.
- D. *Death*: Proof of death should be established by one of the following types of evidence:
 - 1. Copy of the public record of the State or community where death occurred, or
 - 2. A copy of the coroner's report of death or a verdict of coroner's jury of the State or community where death occurred.
 - 3. A death certificate or clinical summary or other report showing the facility and date of death signed by a medical officer when death occurs in a hospital or institution under the control of the U.S. government.
 - 4. Official report of death of a member of the uniformed services from the Secretary of the department concerned when death occurs while deceased was on the retired list, in an inactive duty status or in the active service.
 - 5. In the absence of evidence to the contrary, a finding of fact of death by another Federal agency will be accepted.
 - 6. When death is attributable to common disaster, evidence must be secured to show as definitively as possible that the disappearance and death were attributable to the catastrophe.
 - 7. *Missing in Service*: An official determination of death may be made in the case of a member of the Armed Forces who is missing in action, at any time that the Secretary of the service concerned determines that the facts so warrant. Otherwise, the general rule is that an Armed Forces member in "missing in action" status for twelve months will be presumed dead.
 - 8. *Presumption of Death*: For benefit purposes State laws concerning presumption of death do not apply. A finding of presumption of death requires evidence establishing the continued and unexplained absence of any individual from home and family for seven or more years. If after a diligent search no evidence of existence after the date of disappearance can be found, the date of death will be established as of the date of expiration of the seven-year period.

Sec. 4. Restoration of Entitlement (DIC and death pension): Effective October 1, 1998, a formerly remarried surviving spouse may be restored to the status of a surviving spouse for VA benefits upon dissolution of the remarriage or ceasing a relationship of holding himself or herself openly to the public as the spouse of another person. Effective December 1, 1999, a formerly remarried spouse may be restored to the status of surviving spouse for the purpose of DIC, Dependents' Educational Assistance, and home loan guaranty. In addition, effective December 16, 2003, remarriage of a surviving spouse after age 57 shall not bar the payment of DIC and death pension.

Sec. 5. Child: The term "child of a veteran" means an unmarried person who is a biological child of the veteran, one legally adopted before 18 years of age, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was at the time of the veteran's death, an illegitimate child who is under the age of 18 years, a child who before becoming 18 years of age becomes permanently incapable of self-support, or who is between the ages of 18 and 23 pursuing a course of instruction at an approved educational institution.

A. *Legitimate Child*: When required to prove legitimacy of a child, it will be necessary to show legality of the mother's marriage to the veteran, or show that birth is legitimate under state law by securing a birth certificate or other acceptable evidence.

B. *Illegitimate Child*: As to the father, proof of relationship will exist when acknowledgement in writing has been signed by him; evidence identifying him as the child's father; or, secondary evidence supporting the relationship exists such as public record of birth, church record of baptism, statements of persons, information from service departments or records of public agencies acknowledging the veteran to be the father.

C. *Adopted Child*: The term means a child adopted pursuant to a final decree of adoption, and a child adopted pursuant to an undecided provisional decree of adoption while remaining in the custody of the adopted parent (or parents) during the provisional period. A child under 18 who was a member of the veteran's household at the time of the veteran's death and was adopted by the veteran's spouse within two years of the date of death will be considered the adopted child of the veteran.

D. *Stepchild*: Evidence of relationship of a stepchild will consist of proof of birth, evidence of the marriage of the veteran to the natural parent of the child, and evidence that the child is a member of the veteran's household or was a member of the veteran's household at the date of the veteran's death.

E. *Child Adopted Out of Family*: A child adopted out of the family of the veteran either prior or subsequent to the veteran's death is nevertheless the veteran's child.

F. *School age Child*: This is a child (A through E above) that is between the age of 18 and 23 that is enrolled in a VA approved education program.

Sec. 6. Parent: The term "parent" means a biological mother or father, a mother or father through adoption, or a person who stood in the relationship of a parent for not less than one year at any time prior to the veteran's entry into active service. If two persons stood in relationship of father or mother for one year or more, the last person who stood in such relationship, prior to entry into service, will be recognized as the parent. Foster relationship must have begun prior to the veteran's 21st birthday.

Evidence of Relationship: Parent's relationship to the veteran may be shown by copy of public record such as a birth certificate showing the name of the veteran and/or the parents, certified copy of adoption records and revised birth certificate showing parents' names. Secondary evidence in the form of statements, affidavits or family records may be accepted if sufficient to prove the issue.

Sec. 7. Proof of Birth: When it is necessary to prove the birth of a veteran, child, spouse or parent, the following evidence will be acceptable if sufficient to prove the issue:

- A. Copy of public record of birth.
- B. Copy of church record of baptism.
- C. Official report from service department as to birth occurring during active service.
- D. Affidavit or certified statement from physician or midwife.
- E. Certified information from family bible or other records.
- F. Certified statements from two or more creditable persons as to their personal knowledge as to the age, name, date and place of birth.
- G. Other public or private records such as census, baptismal or hospital records or records of insurance companies, schools, employers, immigration, or naturalization papers.
- H. Effective November 9, 2001, a written statement, which can be sent by e-mail or FAX, will be sufficient to establish a birth provided the information is submitted on the VA form 21-686c, Declaration of Status of Dependent or VA Form 21-4138, Statement in Support of Claim as long as the forms are signed by the veteran.

Sec. 8. Guardian: VA benefits due persons under a qualifying disability because of minority or mental condition may be paid to one of the following:

- A. Guardian appointed by and responsible to an appropriate court of law.
- B. Legal custodian, an institutional award, or the spouse as payee with responsibility exclusively to the VA. The veteran, if it is established that funds are necessary to provide food, clothing and shelter. Some funds may also be approved for distribution to a friend who will assure the responsible VA officials that food, clothing and shelter will be provided for the veteran.
- C. When there is no court-appointed fiduciary or need for one to protect the interests of the veteran, the individual recognized by one of the military services, as trustee will be acceptable to the VA as a Federal fiduciary. The trustee will be authorized to sign VA Form 21-651, *Election of Compensation or Pension in lieu of Retired Pay or Waiver of Retired Pay to Secure Compensation or Pension from the VA*. VA benefits may be released to spouse-payee if the service department as trustee has designated him.

Sec. 9. Evidence: Claims for benefits must be supported by acceptable evidence and should be submitted as soon as received to ensure the earliest possible entitlement date. Evidence may include public documents, certified statements and affidavits, armed forces personnel and medical records, hospital reports and summaries, doctor's statements, employment and unemployment records and other records.

A. *Affidavit Evidence:* An affidavit is a statement made under oath before an official with legal authority to administer it. The document must bear the signature of the person testifying as well as the signature and seal of the certifying official.

B. *Certified Statement:* A certified statement is not under oath but is sworn to by the claimant or other person making the statement. The language "I certify that the foregoing statements are true and correct to the best of my knowledge and belief" should be included. A statement by any person sworn to and certified but with intent to deceive or defraud may serve as a basis for criminal action.

Sec. 10. Military Records: When claims for disability or death benefits are filed with the VA, the VA office having jurisdiction will request all available service department records. Records requested may include clinical, inpatient and outpatient medical records, line of duty determinations and other military service records as appropriate.

It is the responsibility of the claimant to indicate the dates and places of treatment as nearly as possible in order to facilitate the location and securing of pertinent records. Clinical records are created on military service members while on active duty, on dependents of service members and on retired personnel. Clinical records are filed according to the hospital at which the person was treated. To locate a record of treatment, the records center needs the name of the hospital and date of admission, along with the name and service/social security number of the service member or retiree. When hospital treatment is indicated and the official request fails to produce records of hospitalization, a second request should be made directly to the hospital involved in view of the possibility that the hospital records have been retained and not forwarded to the Records Center for inclusion in the veteran's record.

The National Personnel Records Center, Military Personnel Records (NPRC-MPR) and VA Records Management Center (RMC) are the repositories of millions of military personnel, health, and medical records of discharged and deceased veterans of all services during the 20th century. The NPRC (MPR) & RMC also store medical treatment records of retirees from all services, as well as records for dependent and other persons treated at naval medical facilities. The exceptions are veterans of service before 1912 whose records are located in the National Archives, Washington DC, and reservists whose records are located at the reserve centers of the various services. Requests for military personnel records cannot be accepted by e-mail at this time however, they may be requested on-line at www.archives.gov/veterans.

Sec. 11. Identification by Fingerprints: When an unknown or unidentified person thought to be a veteran dies, the local law enforcement agency should obtain a complete set of fingerprints and forward them to the Director (232), VA Records Processing Center, St. Louis, Missouri 63115, for possible comparison. If the fingerprints can be identified, notification will be furnished to the VA.

Sec. 12. Forms: Statements in support of claims for VA benefits may be made on VA Form 21-4138, *Statement in Support of Claim*, which can be downloaded at: <http://www.va.gov/vaforms/>.

REGULATIONS AFFECTING BENEFITS

Sec. 1. Veterans Benefits: The term "veterans benefits" means the various allowances, awards, preferences, rights and advantages given to veterans for service in the Armed Forces. Certain benefits are available to members of the Armed Forces still on active duty.

Sec. 2. Duty Determinations: In defining eligibility for veteran's benefits, certain duty determinations must be made by the DOD or VA.

A. Line of Duty: Injury or disease incurred in or aggravated during a period of active service, including authorized leave, will be considered to be in the line of duty unless such injury or disease was the result of the veteran's own willful misconduct. Requirements as to line of duty are not met if at the time the injury was suffered or the disease contracted, the veteran was:

1. Avoiding duty by desertion or absent without leave which materially interfered with the performance of the veteran's military duty.
2. Confined under the sentence of a court martial involving an unremitted Dishonorable Discharge.
3. Confined under the sentence of a civil court for a felony as determined under the laws of jurisdiction where the person was convicted by such court.

B. Willful misconduct means an act involving conscious wrongdoing or known prohibited action. The following criteria are to be used in determining willful misconduct:

1. It involves deliberate or intentional wrongdoing with knowledge of, or wanton and reckless disregard of its probable consequences. Mere technical violations of police regulations or ordinances will not *per se* constitute willful misconduct. Willful misconduct will not be determinative unless it is the proximate cause of injury, disease or death.

2. **Alcohol:** Effective October 31, 1990, the simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results proximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin.

3. **Drug Usage:** The isolated and infrequent use of drugs by itself will not be considered willful misconduct; however, the progressive and frequent use of drugs to the point of addiction will be considered willful misconduct. Where drugs are used to enjoy or experience their effects and the effects result in proximately and immediately

disability or death, such disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities, which are a secondary result of the chronic use of drugs and infections coinciding with the injection of drugs, will not be considered of willful misconduct origin. The use of drugs or addiction thereto resulting from a service-connected disability will not be considered of misconduct origin. (See paragraph (d) of this section regarding service connection where disability or death is a result of abuse of drugs.) Where drugs are used for therapeutic purposes or where the use of drugs or addiction thereto, results from a service-connected disability, it will not be considered of misconduct origin.

4. *Smoking.*

(a) For claims received by VA after June 9, 1998, a disability or death will not be considered service-connected on the basis that it resulted from injury or disease attributable to the veteran's use of tobacco products during service. For the purpose of this section, the term "tobacco products" means cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

(b) The provisions of paragraph (a) of this section do not prohibit service connection if:

(1) The disability or death resulted from a disease or injury that is otherwise shown to have been incurred or aggravated during service. For purposes of this section, "otherwise shown" means that the disability or death can be service-connected on some basis other than the veteran's use of tobacco products during service, or that the disability became manifest or death occurred during service; or

(2) The disability or death resulted from a disease or injury that appeared to the required degree of disability within any applicable presumptive period under 38 CFR §§3.307, 3.309, 3.313, or 3.316; or

(3) Secondary service connection is established for ischemic heart disease or other cardiovascular disease under §3.310(b).

(c) For claims for secondary service connection received by VA after June 9, 1998, a disability that is proximately due to or the result of an injury or disease previously service-connected on the basis that it is attributable to the veteran's use of tobacco products during service will not be service-connected under §3.310(a). (Authority: 38 U.S.C. 501(a), 1103, 1103 note)

5. *Venereal Disease:* The residuals of venereal disease are not to be considered the result of willful misconduct. Consideration of service connection for residuals of venereal disease as having been incurred in service requires that the initial infection must have occurred during active service. Increase in service of manifestations of venereal disease will usually be held due to natural progress unless the facts of record indicate the increase in manifestations was precipitated by trauma or by the conditions of the veteran's service, in which event service connection may be established by aggravation. Medical principles pertaining to the incubation period and its relation to the course of the disease; i.e., initial or acute manifestation, or period and course of secondary and late residuals manifested, will be considered when time of incurrence of venereal disease prior to or after entry into service is at issue. In the issue of service connection, whether the veteran complied with service regulations and directives for reporting the disease and undergoing treatment is immaterial after November 14, 1972, and the service department characterization of acquisition of the disease as "willful misconduct" or as "not in line of duty" will not govern.

C. **Time Lost:** In computing a period of active duty, time lost is deducted from the total period of service. Time lost may result from time spent on industrial, agricultural or indefinite furlough; or time lost because of absence without leave, desertion or under confinement.

D. **Travel Time:** In computing active duty period, travel time from place of release from active duty to place of permanent residence will be counted in the total period of duty. The service department concerned will certify travel time.

Sec. 3. Claims: The term "claim for VA benefits" is defined as a request to be granted any of the rights or benefits administered by the VA, which may accrue as a result of active military service. Specific forms have been devised for the purpose of initiating claims to VA for benefits. However, it is important to note that a claim may be initiated without the necessity of filing the prescribed form by filing an Intent to File form (VA Form 21-0966), thus protecting the effective date of award when adjudication has been made. Once VA receives an Intent to File form, the claimant has one year in which to submit a completed application

Sec. 4. Apportionment: The term “apportionment,” as applied to gratuitous monthly benefits payable by the VA, means payment of a share thereof directly to a dependent. When hardship is shown to exist, benefits may be specially apportioned between the veteran and dependents, or the surviving spouse and children, on the basis of the facts in the individual case as long as it does not cause undue hardship to the person in interest. An apportionment will only be authorized after considering the following factors:

A. The amount of VA benefits payable, income and other sources of the veteran and dependents, and special needs of the veteran and dependents.

B. Ordinarily, apportionment of more than 50% of the veteran’s benefits would constitute undue hardship. Apportionment of less than 20% of the benefits would not provide a reasonable amount for any dependent.

C. *Benefits will not be apportioned when:*

1. The spouse of the disabled veteran has been found guilty of conjugal infidelity by a court of competent jurisdiction.

2. The estranged spouse of a veteran has been determined to have lived with another person “and appeared openly to the public as married.” However, if there is a subsequent reconciliation and a later estrangement, apportionment may be in order.

3. The child of the disabled veteran has been legally adopted by another person, except the additional compensation payable for the child.

4. The child of the disabled veteran enters the Armed Forces unless such child is included in an existing apportionment to an estranged spouse.

5. The estranged spouse of a veteran has not filed a claim.

6. The veteran, the veteran’s spouse (when paid as wife or as husband), surviving spouse, or fiduciary is providing for dependents.

In accordance with NVS Policy & Procedures and due to conflict of interests, the VFW will not simultaneously represent both the veteran and dependent seeking the apportionment.

Sec. 5. Concurrent Benefits: Not more than one award of pension, compensation, or military retirement pay will be made concurrently to any person based on the individual’s own service except special pension for those persons entered on the Medal of Honor rolls, those in receipt of Combat Related Special Compensation (CRSC) and those military retirees with twenty or more years of service rated 50 percent or above who are receiving additional payments for Concurrent Retired Disability Pay (CRDP) from the Department of Defense to the extent allowed by law. VA benefits may be paid to other military retirees to the extent that retired pay is waived. Temporary Early Retirement (TERA Retirees) are entitled to concurrent disability pay.

A. *Active Duty Pay:* Pension, compensation or retirement pay by reason of the individual’s own service will not be paid to any person for any period during which active service pay was received. This includes reservists on active duty or active duty for training.

B. *Lump-Sum Readjustment Pay:* Receipt of readjustment pay or separation pay, when entitlement to VA compensation was established on or after September 15, 1981, will preclude payment of compensation until 100% of the readjustment pay or separation pay has been offset.

C. *Severance Pay:* Receipt of severance pay will preclude payment of compensation until such time that an amount equal to the amount of disability severance pay is offset. Compensation for disability other than the disability for which severance pay was granted is payable without offset. Severance pay can only be recouped at a rate not in excess of the percentage rate of disability compensation which would be payable on the initial compensable evaluation by the VA. This does not include convalescence or temporary initial ratings. Those in receipt of “disability” severance pay from the military will not have their severance pay recouped by the VA.

NOTE: Persons who have been awarded lump-sum readjustment pay or disability severance pay should immediately, upon release from active duty, file a claim for disability compensation with the VA.

D. *Pension Benefits:* Entitlement to pension benefits is not subject to the prohibition against concurrent benefits.

E. *Dependents:* Receipt of VA compensation or pension on account of the person’s own service, or the receipt of compensation, dependency and indemnity compensation or pension by a surviving spouse, child, or parent on account of death of any person, shall not bar the payment of any such benefits on account of the death or disability of another person, the exception is that: Under laws administered by the VA, other than insurance, such benefits may not be awarded on behalf of any child by reason of the death of more than one parent in the same parental line. However, there is the right of election and reelection to receive the most advantageous benefit.

Sec. 6. Overpayment: The term “overpayment” means payments made and determined to be erroneous, indebtedness resulting from services erroneously furnished, and indebtedness of a veteran-borrower or veteran-transferee under the loan guaranty program or the indebtedness of the spouse, under laws administered by the Department of Veterans Affairs. Claimants notified of an overpayment should contact the Department Service Officer in order to discuss options for disposing of the debt.

Benefits subject to waiver include indebtedness due the Department of Veterans Affairs because of, or in connection with, hospitalization, domiciliary care, or treatment of a veteran, a person claiming to be a veteran, or a person to whom such benefits were granted on the assumption that he or she was an eligible veteran.

In any case where there is a finding of fraud, misrepresentation of a material fact, or bad faith on the part of the debtor, or any other party having an interest in the claim, waiver is automatically precluded.

A. *Termination:* VA may permanently discontinue any further collection effort.

B. *Compromise:* VA may accept an offer of less than the full amount of a debt in settlement of same and such acceptance will constitute full satisfaction of such debt.

C. *Bankruptcy:* If a court of competent jurisdiction has discharged indebtedness in bankruptcy, the debt is cancelled.

Sec. 7. Claims of Creditors: VA benefits, except certain insurance benefits, are not assignable. Such benefits are exempt from the claims of creditors and are also exempt from taxation. However, benefits may be withheld to satisfy a Federal income tax lien. Proceeds of Government life insurance policies are included in a descendant’s gross estate for Federal estate tax purposes. The Department of Veterans Affairs usually is precluded by law from garnishing veteran’s benefits to pay just debts. Once the payments are delivered to the veteran they become subject to civil suit the same as other wages earned by the veteran.

Sec. 8. Garnishment of Active Duty, Retired Pay and VA Compensation: Although VA compensation cannot be attached or assigned, there is no statutory prohibition against garnishment of military retired pay. Under Public Law 95-30, the *Tax Reduction and Simplification Act*, 42 USC, 659, a veteran’s disability compensation can be garnished to pay child support and alimony pursuant to a court order, if, and only if, the veteran receives compensation in lieu of an equal amount of military retired pay in accordance with a total or partial retired pay waiver.

Sec. 9. Offset Payments: A claim of the U.S. Government against veterans, their estates or their dependents may be satisfied by offset of VA benefits payable. Offset may be made against a veteran or his estate and not against dependents, except where overpayment or illegal payment was made to the dependent. A veteran may voluntarily authorize deduction from VA benefits to repay a debt due to the United States, including the VA. This authorization may be cancelled at any time. As to United States Government Life Insurance and National Service Life Insurance, an amount equal to any indebtedness against the contract may be withheld to satisfy the debt upon maturity of the policy.

EFFECTIVE DATES

Sec. 1. General: Unless specifically provided elsewhere, the effective date of an award based on an original or reopened claim for compensation, dependency and indemnity compensation or pension or claim for increase, shall be based on the facts found, but not earlier than, the date of receipt of application or the date entitlement arose, whichever is the later.

Effective November 1, 1990, payment of monetary benefits based on the above claim categories may not be made for any period before the first day of the calendar month following the month in which the award would otherwise be effective.

Sec. 2. Live Cases:

A. *Disability Benefits:*

1. *Disability Pension:* An award of disability pension may not be effective prior to the date entitlement arose. For claims on or after October 1, 1984, the effective date will be date of receipt of claim, unless otherwise provided by regulations. If within one year from the date 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 is not the result of his or her own willful misconduct, was so incapacitating that it prevented the filing of a disability pension claim for at least the first 30 days immediately following the date the veteran became totally disabled, the pension award may be effective the date the veteran became permanently and totally disabled or the date of receipt of claim, whichever is to the advantage of the veteran. Decision will be determined by the rating board based on facts and circumstances which indicate hospitalization was required.

2. Disability Compensation:

(a) *Direct service connection*: Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service in which the disability was incurred or aggravated; otherwise, date of receipt of claim or date entitlement arose, whichever is later.

(b) *Presumptive service connection*: 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.

(c) *Increased Ratings*: Date it can be shown that an increase had occurred, if claim is received within 1 year after that date, or date of receipt of claim.

B. *Aid and Attendance or Housebound*: Date of receipt of claim or date entitlement arose; whichever is later; date of termination of hospital, institutional or domiciliary care at U.S. Government expense.

C. *Dependents, Additional Benefits for*: The latest of the following dates:

(1) Date of claim or date of marriage and/or birth of a child or adoption, if the evidence is received within 1 year after date of request.

(2) Date dependency arose.

(3) Effective date of the qualifying disability rating provided the evidence is received within 1 year of notification of such rating action.

(4) Date commencement of the veteran's award.

D. *Waiver of Retired Pay*: Day following date of discontinuance or reduction of retired pay

E. *Disability Due to VA Treatment or Vocational Rehabilitation*: Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.

F. *Temporary Increase*: Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

Sec. 3. Death Cases:

A. *Surviving Spouse*: The effective date of an award of Dependency and Indemnity Compensation or compensation or pension is the first day of the month in which death occurred if claim is received within 1 year from date of death; otherwise, date of receipt of claim.

1. *Additional DIC Allowance for Children*: Commencing date of surviving spouse's award.

2. *Termination of Remarriage*:

(a) *By Annulment or Divorce*: Date decree became final if claim is received within 1 year; otherwise, date of receipt of claim.

(b) *Void*: Date claimant ceased to cohabit with the other party or date of receipt of claim, whichever is later.

(c) *By Death*: Date of death if claim is received within 1 year, otherwise, date of receipt of claim.

B. *Child*: First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.

C. *Death Due to VA Treatment*: First day of month in which the veteran's death occurred if claim is received within 1 year following the date of entitlement; otherwise, date of receipt of claim.

NOTE: Benefits were not payable for the termination of a remarriage that occurs after October 31, 1990 unless the proceeding to terminate was begun prior to November 1, 1990. Congress reinstated entitlement to DIC benefits for spouses whose remarriage was terminated by death or divorce effective December 1, 1998. A change in law occurred as a result of PL 108-183, the *Veterans Benefits Act of 2003*. Effective December 16, 2003, a surviving spouse receiving DIC benefits, who remarries on or after their 57th birthday, will still be entitled to receive those benefits.

Sec. 4. Miscellaneous VA Regulations:

A. *Election of VA Benefits*: Unless otherwise provided, the date of receipt of election, subject to prior payments.

B. *Liberalizing Laws or Issues*: Where pension, compensation, or Dependency and Indemnity Compensation is awarded or increased pursuant to a liberalizing law or VA 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.

1. If a claim is reviewed on the initiative of the VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant, if such request is received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

2. If a claim is reviewed on the initiative of the VA, or, more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement or date of receipt of such request.

C. Children Permanently Incapable of Self Support: In a claim for continuation of payments when a child is incapable of self-support, the effective date will be the 18th birthday if claim is filed prior to or within 1 year after that date; otherwise, from date of receipt of claim.

D. Apportionment: In original claims, in accordance with the facts found. In other than original claims, it will be from the first day of the month following the month in which:

1. Claim is received for apportionment of a veteran's award, except that where payments to the veteran have been interrupted, apportionment will be effective the day following date of last payment if a claim for apportionment is received within 1 year after that date.

2. Notice is received that a child included in a surviving spouse's award is not in the surviving spouse's custody, except that where payment to the surviving spouse has been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date.

E. Correction of Military Records: Where entitlement is established because of the correction, change or modification of a military record, or a discharge or dismissal by a board established by competent military authority, the award will be effective on the latest of these dates:

1. Date application for change, correction, or modification is filed with the service department, in either an original or a disallowed claim; or

2. Date of receipt of claim if claim was disallowed; or

3. One year prior to date of reopening of disallowed claim.

F. Error: Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision.

G. Difference of opinion:

- (1) For decisions that are not final, the date from which benefits would have been payable if the former decision had been favorable.

- (2) If the decision had become final, either because there was no appeal, or the appeal was denied, date of claim or date entitlement arose, whichever is later.

Sec. 5. Effective dates for reductions and discontinuances:

A. The effective date of a reduction or discontinuance by reason of marriage, remarriage, or death of a payee will be the last day of the month before such event occurs.

B. The effective date of reduction or discontinuance because of marriage, divorce, or death of a dependent will be the last day of the calendar year in which the event occurred for Section 306 and Old Law pension; otherwise, the last day of the month in which the event occurred.

C. The effective date of reduction or discontinuance by reason of receipt of active service pay or retirement pay will be the day before entrance on active duty or effective date of retirement pay.

D. The effective date of reduction or discontinuance of pension because of a change in disability or employability of a veteran will be the last day of the month in which discontinuance was approved.

E. The effective date of reduction or discontinuance by reason of change of law or administrative issue or interpretation of such law or issue shall be the last day of the month following a 60-day period from the date the notice is mailed to the payee (address of record).

F. The effective date of reduction or discontinuance of school attendance of a payee or a dependent of a payee will be the last day of the month in which such attendance was discontinued. If reduction or discontinuance happens during a school break or vacation the effective date will be 1st day of the month school resumes or the date of last payment, whichever is earlier.

G. The effective date of reduction or discontinuance by reason of termination of a temporary increase in compensation payments due to hospitalization or treatment will be the last day of the month of hospital discharge or termination of treatment, whichever is earlier.

H. The effective date of reduction or discontinuance of an erroneous award based upon an act of commission or omission by the beneficiary or with the beneficiary's knowledge shall be effective the date of the erroneous award or day preceding the act, whichever is later.

I. The effective date of reduction or discontinuance solely because of an administrative error or error in judgment will be the date of last payment.

J. The effective date of discontinuance of pension or Dependency and Indemnity Compensation by reason of failure of the beneficiary to return the Eligibility Verification Report (EVR) will be the end of the year for which income was to be reported for Section 306 and Old Law Pension; otherwise, the first day of the year for which income was to be reported.

Sec. 6. Failure to Report for Examination: Upon the failure of a veteran, without good cause, to report for a physical or mental examination requested by the VA for disability compensation or pension purposes, the VA will

issue a pre-termination notice to the veteran advising the veteran that compensation or pension payments will be discontinued or reduced, and the proposed date for such discontinuance or reduction. The veteran will be allowed 60 days to indicate a willingness to report for the examination. If there is no response within the 60 day period the compensation or pension payment will be discontinued or reduced effective the date shown in the pre-termination notice or the date of last payment, whichever is later.

Sec. 7. Imprisonment: Upon the imprisonment of a veteran, benefits will discontinued/terminated under the following circumstances:

A. Pension to any person who has been imprisoned in a federal, state or local penal institution as the result of a conviction of a *felony or misdemeanor*, will be discontinued effective 61 days after such imprisonment begins.

B. Payment of compensation, DIC or death compensation to any person who is incarcerated for conviction of a *felony* will be reduced effective 61 days after imprisonment begins.

Sec. 8. Payments during Hospitalization:

A. General pension is subject to reduction as specified under 38 CFR 3.551 when a veteran without spouse, child or dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease (leprosy). The term hospitalized means treatment in a VA hospital or any hospital at VA expense. On improved pension cases after January 31, 1990, VA hospitalization or expense requires reduction of the pension benefit to a rate of \$90 a month or less for veterans who are hospitalized after the end of the third full calendar month following the month of admission.

B. Payments to a veteran hospitalized on or after October 1, 1964 entitled to additional pension or special monthly compensation, based on need for regular aid and attendance will be reduced effective the last day of the month following the month of admission. This reduction will not be made if the aid and attendance payments are based on blindness (in pension cases) or for paraplegia involving paralysis of both lower extremities together with loss of bowel and bladder control or Hansen's disease. If the veteran has no dependents and is receiving pension, payments will also be subject to reduction as provided in paragraph A and B above.

C. Care in a State Soldiers' Home, U.S. Soldiers' and Airman's' Home or U.S. Naval Home is not considered hospitalization at VA expense, and, therefore, is not subject to reduction.

If section 306 or improved pension is being paid to a veteran without dependents and the veteran is furnished hospital or domiciliary care by VA, pension shall be reduced to \$50.00 for 306 pension and \$60.00 per month for improved pension, effective the end of the second full calendar month following the month of admission.

APPEALS FOR VA BENEFITS

Overview

VA's appeal process is designed to be non-adversarial in nature. VA decisions may be complex and contain legal sounding language. Decision letters are often lengthy and confusing. A claimant should speak with an accredited VFW representative (Department Service Officer) if he/she has questions or concerns about the decision. If they disagree with a decision after speaking with their service officer, they should consider an appeal.

In August 2017, the President signed the Appeals Modernization Act into law, creating a new system of recourse for veterans who disagree with their VA benefit rating decisions. This new system, referred to as "Appeals Modernization" went into effect in **February 2019**. Veterans who appealed rating decisions issued before February 2019 will remain in the "Legacy Appeals System" until their appeals are completed or they opt-in to the modernized appeal system. Both appeals systems are explained below.

Legacy Appeals (Rating Decisions prior to 02/19/2019)

Step 1: Filing a Notice of Disagreement (NOD) was once as simple as sending a letter to VA stating their disagreement with the decision. **This is no longer allowed.** Effective March 24, 2015, VA requires the submission of a VA Form 21-0958 (<http://www.vba.va.gov/pubs/forms/VBA-21-0958-ARE.pdf>). The form asks for specific information concerning the appealed issue(s). Claimants should fill this form out and return it to VA. However, it is recommended that they NOT specify the level of evaluation sought on appeal.

Following receipt of the NOD, VA will review the evidence in the record and either grant the benefit sought, in whole or in part, and/or issue a Statement of the Case (SOC).

A SOC is a summary of the decision and contains references to laws and regulations used in making the decision. After reviewing the SOC, if the claimant still disagrees, he/she should file a formal appeal.

Step 2: The claimant should complete and return the “Appeal to the Board of Veterans Appeals” (Form 9) that accompanied the SOC if he/she still disagrees with the decision. Generally, this form must be returned within 60 days of the date of the SOC or the decision becomes final.

Once VA receives the Form 9, the appeal will continue until all benefits have either been granted or denied or the appeal withdrawn by the claimant.

Note: The appeal process can be long and taxing. It is often frustrating. Claimants who work with a service officer often experience better outcomes than do those claimants who go it alone. Consequently, claimants are urged to work with service officers during the appeal process.

Appeals Modernization (Rating Decisions on or after 02/19/2019)

Commencing February 19, 2019, veterans who disagree with their original rating decision from the VA Regional Office will have three options to pursue a new rating decision, which VA calls decision review options or “lanes”: Filing a supplemental claim, requesting higher level review, or filing an appeal to the Board of Veterans Appeals (BVA).

Processes like the SOC and Form 9 will no longer apply to appeals. Instead, veterans will receive rating decisions containing eight specific points explaining how VA arrived at its decision. These points are:

- Identification of the issues adjudicated
- A summary of evidence considered
- A summary of applicable laws and regulations
- Identification of favorable findings
- Identification of elements not satisfied that lead to a denial
- An explanation of how to obtain evidence used in making the decision
- Identification of the criteria that must be satisfied to either grant service connection or grant the next higher level of compensation
- Notice of procedures on how to seek a new decision

The new process is designed to once again be non-adversarial and offer veterans more recourse at the lowest possible level without formally filing lengthy appeals that can take years to resolve. **If a veteran disagrees with their rating and wants to pursue further action, they should discuss which “lane” to pursue with their accredited VFW Department Service Officer.** In all three lanes, the veteran’s original effective date is preserved, provided that the veteran satisfies the criteria and established filing timelines for each lane. The three lanes are explained below:

Supplemental Claims (VA Form 20-0995): Veterans have one year from the date of a VA rating decision to file a supplemental claim containing new and relevant evidence in an effort to receive a more favorable rating decision. Veterans must submit new and relevant evidence for VA to issue a new decision under this section. If veterans still are not satisfied with their new decisions, they can infinitely pursue new rating decisions dating back to their original effective date through the supplemental claims lane, provided they file their supplemental claim within one year of the previous VA decision and submit new and relevant evidence to the issue under consideration. Supplemental claims submitted in excess of one year from the VA rating decision will be treated as a reopened claim (date of supplemental claim submission will be the new earliest possible effective date).

Higher Level Review (VA Form 20-0996): Veterans have one year from the date of a VA rating decision to request Higher Level Review of the VA record. This means that a more senior member of VA Regional Office staff will review the current evidentiary record and render a new rating decision. Veterans may wish to consider this lane if they believe that VA erred in their prior decision and that VA has all of the evidence it needs to render a more favorable decision. Veterans considering this option should discuss with their accredited VFW Representative before pursuing this option.

Board of Veterans Appeals (VA Form 10182): Veterans have one year from the date of a VA rating decision to file an appeal with the BVA. During this election, veterans can choose either to submit new evidence and request a hearing or choose to simply have their evidence of record proceed to be reviewed by BVA without submission of new evidence or a hearing. The BVA is explained in detail below.

Sec. 1. Board of Veterans Appeals (BVA): The BVA reviews and decides appeals on claims for benefits under laws administered by the Department of Veterans Affairs, including the question of the timely filing and adequacy of the Notice of Disagreement, and the timely filing of an appeal. The Board is bound by VA regulations, instructions of the Secretary of Veterans Affairs, and the precedent opinions of the VA General Counsel, and final U.S. Court of Appeals for Veterans Claims decisions.

Sec. 2. Jurisdiction: The Board of Veterans' Appeals jurisdiction extends to all questions on claims involving benefits under the laws administered by the VA to include questions of eligibility for hospitalization, outpatient treatment and nursing home care.

Medical determinations made as to the need for, and the nature and extent of, medical treatment, cannot be appealed to the Board of Veterans Appeals because they are not benefit questions.

Sec. 3. Procedures: An individual whose claim is not resolved to his satisfaction by a VA regional office is notified of the right of appeal and of required procedures, including the time limitation. To appeal to the Board, the claimant or the VFW Department Service Officer must file a Notice of Disagreement (VA Form 10182) within one year of notification of the VA regional office decision. While completing the 10182, the claimant must choose one of three BVA dockets.

- 1) **Direct Review Docket:** In the direct review docket additional evidence may not be submitted. A BVA law judge will review the claims folder and render a new decision (reasons & basis for the appeal may be submitted with the 10182).
- 2) **Evidence Only Docket:** New evidence and basis for the appeal may be submitted within 90 days of the Notice of Disagreement. A BVA law judge will review the claims folder and new evidence submitted in order to render a new rating decision
- 3) **Hearing Docket:** This is the only BVA option which will result in a hearing/meeting with the BVA law judge. New evidence and basis for the appeal must still be submitted within 90 days of the Notice of Disagreement.

Sec. 4. Hearings on Appeal: When a Hearing Docket is selected on the Notice of Disagreement the claimant is entitled to a personal hearing before the Board of Veterans Appeals either in Washington D.C. or by videoconference or tele-hearing/Virtual Hearing. Witnesses may appear with the claimant at any of these hearings. The Department of Veterans Affairs is not authorized to pay travel or other expenses of claimants, representatives or witnesses in connection with a personal hearing. If a hearing is requested in Washington D.C., the VFW staff at the Board of Veterans Appeals will attend the Board of Veterans Appeals hearing with the appellant.

Sec. 5. Appeal Decisions: The Board issues a written decision, which contains pertinent laws and regulations, findings of fact, conclusions of law, reason(s) for decision and a summary of the evidence. Frequently, the Board will return a case to the VA Regional Office or Appeals Management Office (AMO) in Washington, DC, for further development. This type of action is called a Remand decision. Once the development is completed the regional office or the AMC will make another review of the case, and if the benefit sought by the claimant is not allowed, the case will be returned to the Board for a final determination. The appellant will be provided a copy of the decision by the regional office and/or the AMO.

When the Board disallows a claim, it may not thereafter be reopened and allowed on the same factual evidence. Where the appellant believes that the Board made an error in its decision, the appellant should contact the VFW Department Service Officer to discuss the possibility of filing a motion for reconsideration or filing a motion based on clear and unmistakable error in the decision. The claimant may also appeal the decision to the Court of Appeals for Veterans Claims (discussed in Sec 7 below).

Requests for reconsideration or clear and unmistakable error should be sent to the Director, National Veterans Service through the appropriate Department Service Officer.

The Board's decision represents final administrative action on the claim. Therefore, it is extremely important that representation be secured from the VFW Department Service Officer and that all development be accomplished before the appeal is filed.

Sec. 6. Due Process: It is the obligation of the VA to assist a claimant in the development of the facts pertinent to the claim and to render a decision, which grants every benefit that can be supported by law. Due process applies to all claims for benefits and decisions related to such benefits. The four areas of due process are (1) the right to representation of choice (2) the right to a hearing (3) the right to notification of any decision rendered by the VA, and (4) the right of submission of evidence in support of a claim for benefits as well as the right to appeal.

NOTE: If during the review of a claim, a deficiency(s) in due process is noted, it is incumbent upon the VFW representative to initiate action to have the deficiency(s) corrected.

Sec. 7. United States Court of Appeals for Veterans Claims: Any claimant who files a Notice of Disagreement with an adverse VA regional office decision and whose claim remains denied in whole or part after exhaustion of all VA administrative remedies up to and through the Board of Veterans Appeals, may appeal to the United States Court of Appeals for Veterans Claims (CAVC).

The Court has broad authority to review all relevant questions of law; interpret constitutional, statutory and regulatory provisions; and determine the meaning or applicability of terms of an action of the VA.

In order to obtain review by this Court, a claimant must file a Notice of Appeal to the Court within 120 calendar days after the date stamped on the Board of Veterans Appeals decision. The Court imposes a non-refundable fee of \$50.00 for the filing of an appeal. The fee may be waived if the claimant can demonstrate that it will cause financial hardship.

The Court is a court of review and not a trial court. The appellant is not entitled to a personal hearing before the Court, nor is the appellant permitted to furnish additional evidence. The Court limits its review of a case to the Board of Veterans Appeals decision and the evidence that was included in the VA file at the time of the Board's decision.

More information about the court can be found at: www.uscourts.cavc.gov.

Sec. 8. United States Court of Appeals for the Federal Circuit: After a decision of the United States Court of Appeals for Veterans Claims, any party to the case may appeal to the United States Court of Appeals for the Federal Circuit. In this appeal, a review of the Court of Appeals for Veterans Claims decision may be obtained with respect to the validity of any statute or regulation that was relied on by the Court in making its decision. More information about the Federal Circuit can be found at www.ca9c.uscourts.gov.

Sec. 9. United States Supreme Court: A ruling by the United States Court of Appeals for the Federal Circuit may be reviewed by the United States Supreme Court. More information about the court can be found at <http://www.supremecourt.us.gov/>.

NOTE: The VFW does not represent appellants before the United States Court of Appeals for Veterans Claims, the Court of Appeals for the Federal Circuit or before the United States Supreme Court. However, in 2014 the VFW entered into an arrangement with a law firm to represent certain claimants before the Court of Appeals for Veterans Claims. Denials by the BVA are reviewed by attorneys. Some cases are identified as having potential for relief by the Court. Those claimants are contacted by the law firm and are offered representation free of charge.

For those claimants not represented by the VFW, we suggest that veterans seeking to appeal a BVA decision to the CAVC retain counsel to represent them. The Veterans Consortium Pro Bono Program at <http://www.vetsprobono.org/> may provide representation at no cost.

MISCELLANEOUS BENEFITS AND REGULATIONS

Sec. 1. Allied Veterans: VA is authorized to furnish medical, surgical and dental treatment, hospital care, prosthetic appliances, education, training and other benefits to veterans of nations allied with the United States in World War II, if authorized by the nation concerned. Burial expenses may be paid for veterans of the Canadian and British forces who die in a VA facility.

Sec. 2. Naturalization: Certain applicants who have served in the U.S. Armed Forces are eligible to file for naturalization based on current or prior U.S. military service. Such applicants should file the N-400 Military Naturalization Packet.

Lawful Permanent Residents with Three Years U.S. Military Service: An applicant who has served for three years in the U.S. military and who is a lawful permanent resident is excused from any specific period of required residence,

period of residence in any specific place, or physical presence within the United States if an application for naturalization is filed while the applicant is still serving or within six months of an honorable discharge. To be eligible for these exemptions, an applicant must:

- have served honorably or separated under honorable conditions;
- completed three years or more of military service;
- be a legal permanent resident at the time of his or her examination on the application; or
- established good moral character if service was discontinuous or not honorable.

Applicants who file for naturalization more than six months after termination of three years of service in the U.S. military may count any periods of honorable service as residence and physical presence in the United States.

Applicants Who Have Served Honorably in Any Specified Period of Armed Conflict with Hostile Foreign Forces: This is the only section of the Immigration and Naturalization Act that allows persons who have not been lawfully admitted for permanent residence to file their own application for naturalization. Any person who has served honorably during a qualifying time may file an application at any time in his or her life if, at the time of enlistment, reenlistment, extension of enlistment or induction, such person shall have been in the United States, the Canal Zone, American Samoa, or Swains Island, or on board a public vessel owned or operated by the United States for noncommercial service, whether or not he has been lawfully admitted to the United States for permanent residence.

An applicant who has served honorably during any of the following periods of conflict is entitled to certain considerations:

- World War II - 9/1/39 to 12/31/46;
- Korean Conflict - 6/25/50 to 7/1/55;
- Vietnam Conflict - 2/28/61 to 10/15/78;
- Operation Desert Shield/ Desert Storm - 8/2/90 to 4/11/91
- Operation Enduring Freedom – 9/11/01 to (open); or
- Any other period, which the President, by Executive Order, has designated as a period in which, the Armed Forces of the United States are or were engaged in military operations involving armed conflict with hostile foreign forces.

Applicants who have served honorably during any of the aforementioned conflicts may apply for naturalization based on military service and no period of residence or specified period of physical presence within the United States or any State is required.

Sec. 3. Servicemembers' Civil Relief Act (formerly Soldiers' and Sailors' Civil Relief Act): The purpose of this Act is to alleviate financial hardship to a person while in service due to contractual obligations assumed prior to entry into active service. It is a temporary relief, continuing for a time after the person has been discharged from the Armed Forces.

A. *Insurance:* The Government will guarantee the payment of premiums on life insurance up to a total amount of \$10,000, provided such policy was in effect under premium-paying conditions 180 days prior to entrance into active service. The unpaid premiums become a lien against the policy. If not paid by the insured, the Government pays any loss to the insurer. The serviceman is indebted to the Government for the amount paid. File VA Form 29-380, *Application for Protection of Commercial Life Insurance Policy*.

B. *Contractual Relief:* Protection is provided as to obligations incurred prior to entry into service, including installment plan purchase of real or personal property. If the serviceman defaults on a payment after entering service, the creditor is without redress except through the court of jurisdiction. *The Soldiers and Sailors Civil Relief Act* was

not intended to provide immunity from lawsuits or shield service members from civil action or provide them with otherwise unfair “breaks”. Courts of jurisdiction may grant temporary delays in civil action when it determines that a member’s military service has “materially affected” (either geographically or monetarily) the member’s ability to appear and defend or prosecute an action. Execution of judgments against a service member may be stayed, and attachment/garnishments may be vacated or stayed at the discretion of the court. Repossession or foreclosure may be postponed until the veteran’s return from military service. Courts may stay a repossession or rescission, or provide equitable relief upon three conditions:

- I) the installment contract originated prior to active duty
- II) the service member paid a deposit or installment payment prior to service and
- III) the member’s ability to make payments is “materially affected” by the member’s military service.

C. Other Relief:

1. Protection in court proceedings of the interest of a defendant, who is in service, requires a special order for judgment against the defendant and an appointment of an attorney to represent him, before such order is made. In any action commenced in any court where there is a default of any appearance by the defendant, the plaintiff before entering judgment shall file in the court an affidavit setting forth showing that the defendant is not in military service. If an affidavit states that a defendant is in military service, or the plaintiff has no knowledge of military service, a court representative is appointed to ascertain the military status of the defendant and provide the defendant notice. Failure to appoint a representative or file an affidavit makes the default judgment voidable but not void.

2. Defendant may, on his own behalf, submit to the court unsworn statements (subject to perjury penalties) rather than affidavits.

3. A member has up to 90 days post termination of military service to attempt to reopen a case. The service member must show:

- I) he has never made an appearance
- II) military service materially affected ability to appear/prejudiced ability to defend
- III) there is a meritorious defense to part or all of the underlying action.

4. Postponement of any action or proceeding occurring during military service of either plaintiff or defendant, or within 60 days thereafter.

5. Relief against fines or penalties accruing by reason of failure to comply with terms of a contract involved in stayed proceedings or for failure to perform any obligations.

6. Postponement of execution of judgment or stay of an attachment or garnishment of property, money or debts in the hands of another whether court action was begun before, during or within 60 days after period of military service.

7. Exclusion of period of military service in computing time under existing or future statutes of limitations, except IRS proceedings.

8. Limitation to six percent during military service of interest rate on any obligation incurred prior to entry into service. Except federally guaranteed student loans, which are not subject to the *Soldiers and Sailors Civil Relief Act*.

9. Power of attorney executed by those persons in active service will remain in effect so long as the person is in a missing status.

Public Law 108-189, *The Servicemembers Civil Relief Act*, renamed the protections outlined in the *Soldiers’ and Sailors Civil Relief Act* and strengthened the protections of the act for National Guard and reserve members called to active duty, especially for extended periods such as Operation Iraqi Freedom. The reduction in income can place significant economic pressure on them and their families. The *Servicemembers Civil Relief Act* recognizes that these men and women need and deserve special relief to meet a number of financial obligations and liabilities, such as rent, mortgages, installment contracts and leases. Other key features include:

- 1. Outstanding credit card debt
- 2. Mortgage payments
- 3. Pending trials
- 4. Taxes
- 5. Terminations of Lease.
- 6. Expand current law that protects service members and their families from eviction from housing while on active duty due to nonpayment of rents that are \$1,200 per month or less. Under the new provisions, this protection would be significantly updated to meet today’s higher cost of living covering housing leases up to \$2,400 per month, and then be adjusted annually to account for inflation.

7. Provide a service member who receives permanent change of station orders or who is deployed to a new location for 90 days or more the right to terminate a housing lease.
8. Clarify and restate existing law that limits to 6 percent interest on credit obligations, including credit card debt, for active duty service members. This legislation unambiguously states that no interest above 6 percent can accrue for credit obligations while on active duty, nor can that excess interest become due once the service member leaves active duty. Instead, that portion above 6 percent is permanently forgiven. Furthermore, the monthly payment must be reduced by the amount of interest saved during the covered period.
9. Update life insurance protections provided to activated Guard and reserve members by increasing from \$10,000 to \$250,000 the maximum policy coverage that the federal government will protect from default for nonpayment while on active duty.
10. Prevent service members from a form of double taxation that can occur when they have a spouse who works and is taxed in a state other than the state in which they maintain their legal residence. This legislation also prevents states from using the income earned by the service member in determining the spouse's tax rate when they do not maintain their permanent legal residence in that state.

Sec. 4. State Benefits: Various states provide benefits for veterans and their dependents, which generally are in addition to Federal Government benefits. Included are State Veterans Homes, home loans, educational benefits for veterans and educational benefits for spouses and children of prisoners of war and servicemen missing in action. Some states provide, for certain disabled veterans, free car licenses, tax exemptions, and special exceptions as to residence requirements for various programs, particularly welfare assistance. A unique state program is land grants for veterans.

Sec. 5. State Bonus: Some states have had a state bonus for veterans. For specific information, contact the appropriate Department Service Officer.

Sec. 6. Social Security Benefits: Social Security benefits are payable to workers and their families who have paid into Social Security. The amount of Social Security benefits is determined by the amount of a worker's Social Security earnings. The Social Security Administration operates the following programs:

- (A) Retirement Insurance - full benefits payable when reach appropriate age while reduced benefits payable as early as 62.
- (B) Survivors Insurance - payable to widows, and minor children.
- (C) Disability Insurance - payable to severely disabled who are unable to work for at least 12 months.
- (D) Medicare - payable at age 65 or after receiving disability benefits for 2 years.
- (E) Supplemental Security Income (SSI) - special payment for the blind, disabled, or age 65 or older with limited resources (assets).

It is generally advisable for a potential beneficiary to contact the local Social Security Office for specific information concerning any benefit program listed in the preceding paragraph. Due to the complexity of the Social Security laws and regulations, it is not possible to cover these programs in this Guide. A Social Security Handbook may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Or call toll free 1-800-772-1213 or visit the web site at www.ssa.gov.

Reconsideration and Appeal: When a claimant is dissatisfied with a decision rendered by the Social Security Administration, he/she may request reconsideration by using Social Security Form SSA 561, *Request for Reconsideration*. This form should be forwarded to the Social Security office having jurisdiction over the claim within 60 days of the date of the adverse determination.

1. **Hearing:** If the reconsideration decision is negative, the claimant may request a hearing before an Administrative Law Judge of the Office of Hearings and Appeals within 60 days of the notice of the adverse determination on reconsideration. The claimant should use Social Security Form HA-501, *Request for Hearing*. This form should be forwarded to the Social Security Office having jurisdiction of the claim.

2. If the claimant disagrees with the Administrative Law Judge's action on his/her claim, a request may be made to the Appeals Council for review, on Social Security Form HA-520 *Request for Review of Hearing Examiner's Action*, which can be downloaded at <http://www.ssa.gov/online/ha-520.pdf>. This form should be forwarded within 60 days of the Administrative Law Judge's decision to the Social Security Office having jurisdiction.



NO ONE DOES MORE FOR VETERANS.®

Veterans of Foreign Wars of the United States

www.vfw.org