



**A HANDBOOK FOR
INJURED SERVICE MEMBERS
AND THEIR FAMILIES**



Intrepid Fallen Heroes Fund

AND THE

Wounded Warrior Project



INTRODUCTION

A service member recovering from a serious wartime injury may face a long and difficult process that is both physically and emotionally challenging for all involved. Once the service member is out of harm's way and receiving proper medical care, he or she must begin to consider the future. During the healing process, service members and their families will face a host of practical issues ranging from the military disability evaluation system and continuation of military service to the possible transition back into civilian life.

Fortunately, the United States Armed Forces, the Department of Veterans Affairs (VA) and an array of other government and private organizations are committed to meeting the needs of our wounded service members and helping them and their families through this difficult time. In recognition of their service and sacrifice, these organizations and federal and local laws provide a number of benefits and rights for service members and their families to help with financial, medical, educational, employment and other needs.

The purpose of this handbook is to assist injured service members and their families by providing information about what lies ahead, an overview of resources at their disposal, and a discussion of certain issues they are likely to confront. It is designed to supplement the information provided directly by the various branches of the military, as well as governmental and nongovernmental organizations.

How to Use this Handbook

The information is presented in the form of responses to questions service members and their families are likely to have. It should serve as a starting point and a reference guide. It is not meant to be a source of authoritative information, to provide legal, financial or other advice, or to eliminate the need to seek advice from qualified professionals. Rather, each chapter contains lists of resources, including websites and telephone numbers, of organizations that can provide more information and further assistance. Over time, some of the information in this handbook may become outdated. To ensure the most up-to-date information, please visit the websites listed in each chapter as well as the websites of the organizations that published this handbook: the Intrepid Fallen Heroes Fund, www.fallenheroesfund.org, and the Wounded Warrior Project, www.woundedwarriorproject.org.

Service members are strongly encouraged to share this handbook with their families and to continually refer to it as different issues become relevant over time. In addition, they should maintain detailed records of all medical treatment received, meetings attended and any other

actions taken regarding the rights and benefits referred to in this handbook. For example, when making a telephone call, the caller should record the name, title and contact information of the person with whom he or she spoke, the date and time of the call and a summary of the matters discussed. Similarly, copies of all written correspondence, both sent and received, should be retained. Family members should be prepared to assist service members with these types of tasks during the recovery process.

The Intrepid Fallen Heroes Fund, the Wounded Warrior Project, and Davis Polk & Wardwell, who prepared this handbook on their behalf, have published this handbook for informational purposes only. While we hope and believe that it will be a valuable and helpful resource, it is provided solely as a source of general background information. We do not warrant that the handbook is complete or that all the information is accurate. In addition, the handbook may not apply to the factual or legal situation that a particular reader may face. In any event, the handbook does not constitute legal advice and should not be relied upon as such. Davis Polk & Wardwell renders legal advice only after compliance with certain procedures for accepting clients and when it is legally permitted to do so. Readers are strongly encouraged to seek advice from professional legal and financial advisers before acting upon information contained in this handbook. If you have questions with respect to any of the topics discussed in this handbook, please contact the Intrepid Fallen Heroes Fund at (800) 340-HERO (4376) or info@fallenheroesfund.org or the Wounded Warrior Project at (904) 296-7350 or info@woundedwarriorproject.org.

Intrepid Fallen Heroes Fund
Wounded Warrior Project
and
Davis Polk & Wardwell
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HANDBOOK SUMMARY

This handbook is divided into the following 11 chapters:

Chapter 1: Immediate Concerns: Important Documents, Family Travel and Immediate Financial Assistance. This chapter describes various issues that arise at the earliest stages of the recovery process and how to address them. It begins by briefly discussing the important documentation service members should have available when receiving medical treatment for serious injuries. Next, it discusses assistance available for immediate family members who wish to visit service members receiving treatment at military medical facilities – both government benefits that help cover travel costs as well as discounted or free transportation and lodging available through private organizations. This is followed by a brief description of family members’ legal right to time off from work to visit and care for injured service members. In addition, the latter parts of this chapter describe how the military helps service members and their families meet immediate financial needs by continuing to pay service members’ regular salaries and providing large lump-sum payments of up to \$100,000 to those covered by the new

Chapter 2: The Disability Evaluation System. This chapter contains information about the process the military uses to evaluate a service member’s medical condition and determine his or her ability to continue military service. Chapter 2 explains the service member’s rights during two major stages of the process – the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) – as well as how these Boards make decisions and the various possible outcomes for the service member.

Chapter 3: The Disability Rating System. This chapter provides a more detailed description of the criteria that both the military and the VA use to assign disability ratings to service members. The military’s rating (based on ability to perform the required tasks for military service) determines whether the service member is eligible to receive disability retirement pay (instead of just severance pay). A separate rating from the VA (based on the overall severity of the service member’s medical condition) determines eligibility for separate VA disability benefits.

Chapter 4: DoD and VA Disability Compensation. This chapter contains information on the different types of disability benefits and other forms of compensation available from the DoD and the VA. These include severance pay and disability retirement pay for those separating from the armed forces, VA disability benefits and VA disability pension.

Chapter 5: Health Care: Medical, Psychological and Dental Care Coverage. This chapter offers a detailed description of coverage available to discharged service members, their spouses and dependents. It also contains basic information about federal benefits available under the Medicare and Medicaid programs.

Chapter 6: Education and Employment Benefits. This chapter contains information for veterans planning to pursue higher education or reenter the workforce following their military service. Veterans may be eligible for monthly benefits toward earning a degree or other career training through the Montgomery GI Bill and related federal programs. The federal Survivors' and Dependents' Educational Assistance Program (DEA) and numerous organizations provide similar benefits and scholarships for service members and their families. Veterans seeking to reenter the workforce may benefit from the military's Transition Assistance Program (TAP), the VA's Vocational Rehabilitation & Employment Service (VR&E), the federal government's Veterans Preference Program or a number of other state and federal programs. Chapter 6 also contains a list of general employment resources for service members and their families.

Chapter 7: Miscellaneous Federal Benefits. This chapter describes various special benefits available to service members and their families from the federal government. The list includes: Social Security disability benefits, grants to purchase special equipment or make modifications to disabled veterans' homes and automobiles, Service-Disabled Veterans Life Insurance, VA home loan benefits and Thrift Savings Plans (TSPs) to help save for retirement. Some of these benefits are available only to disabled veterans and others are available regardless of disability status.

Chapter 8: Federal Tax Issues. This chapter presents general information about certain federal income tax rules that may be relevant to military personnel, disabled service members, their spouses and families. After some basic information about how to file a tax return on behalf of an injured service member, the chapter goes on to describe tax benefits for service members, some of which are based on disability status. The end of chapter 8 provides information for those seeking specific tax advice and assistance in resolving tax matters.

Chapter 9: Legal Rights. This chapter gives a basic summary of certain federal laws that create special rights for service members and their families. The Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA) provide important protections by guaranteeing reemployment and reinstatement of health care coverage upon return from service as well as other rights relating to employment, health insurance, home mortgage and other loans and automobile leases and loans. The SCRA also prohibits certain legal actions against service members while they are away performing military service. Chapter 9 also describes the Family and Medical Leave Act (FMLA), which guarantees employees unpaid leave to care for sick family members, as well as the Americans with Disabilities Act (ADA), which prohibits disability-based discrimination and may be of interest to disabled veterans.

Chapter 10: Legal Assistance. This chapter provides information on legal representation and tips on hiring and having discussions with a lawyer. It contains a list of useful resources for service members and families looking for an attorney. Chapter 10 also includes information for veterans and their dependents who need assistance filing claims for VA benefits. The discussion covers the process for appealing VA determinations when benefits are denied or awarded benefits are considered insufficient. The chapter ends with a list of veterans' service organizations (VSOs) that can help prepare applications for VA benefits and represent veterans and their dependents before the Board of Veterans' Appeals (BVA) and the United States Court of Appeals for Veterans Claims (USCAVC).

Chapter 11: State Resources. This chapter provides brief descriptions of certain benefits available to service members through state governments as well as other resources at the state level. It contains information relating to each state's department of veterans affairs, military service-related education benefits and tax authority.

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CHAPTER 1: IMMEDIATE CONCERNS: IMPORTANT DOCUMENTS, FAMILY TRAVEL AND IMMEDIATE FINANCIAL ASSISTANCE

Introduction

The primary concern for all wounded service members is making sure they receive medical attention and the best treatment possible. Depending on the severity of a service member's injuries, his or her condition may be subject to sudden and dramatic changes. The first step in preparing for any issues that may arise is to have certain documents available as soon as possible: a health care proxy, a power of attorney, advanced medical directives (also called a "living will"), the service member's last will and testament and copies of any outstanding life insurance policies.

Injured service members are often treated at medical facilities a great distance away from their homes. The military recognizes the benefits of a family's visit while a service member recuperates and often provides assistance in transporting family members to the facility where the service member is recuperating. In addition, a number of private organizations provide further travel assistance to qualified family members. These organizations include the Fisher House Foundation, which provides free or low-cost lodgings at Fisher Houses located on the grounds of military and VA medical centers throughout the country, as well as free airline tickets through its Hero Miles program. In addition, family members who need time off from work to be with a recuperating service member may benefit from the Family and Medical Leave Act (FMLA), a federal law that guarantees many workers up to 12 weeks of unpaid leave during a 12-month period to care for family members suffering from serious medical conditions.

The financial consequences of an injury are generally not the first concern for service members and their families. However, understanding the various benefits available to assist with financial needs is an important part of the recovery process. Service members, including reservists, may continue to receive full pay while recovering from injury and awaiting a medical evaluation. In addition, a new program called Traumatic Servicemembers' Group Life Insurance (TSGLI) provides qualified service members with up to \$100,000 of assistance in the direct aftermath of a severe injury. Coverage is retroactive to qualifying service members who suffered traumatic injuries in Iraq and Afghanistan on or after October 7, 2001.



Important Documents

Why is it important for service members to have legal documents available during the recovery process?

The process of recovering from a serious injury can be long and unpredictable. In addition, many of the surgeries and medical procedures recommended for recovery include some risk that a service member will become temporarily or permanently incapacitated. While incapacitated, a service member will be unable to manage his or her own affairs and may need others to make decisions about personal, financial and medical matters. Taking the time to gather and prepare the proper documents in advance allows service members to choose people to act on their behalf, to make their wishes known to their loved ones and, if they wish, to give legally binding instructions. While it may be uncomfortable to talk about certain possibilities, doing so in advance may help avoid conflict and allow for quick and decisive action in the event of an emergency.

What types of documents should injured service members have prepared?

Service members and their relatives should try to locate identification documents such as birth certificates, marriage certificates and any other similar documents that can verify family relationships as soon as possible once medical treatment has begun. These documents may become important when dealing with insurance companies, financial institutions and government agencies. It is a good idea to keep the originals of these documents in a safe place together with other important documents and to keep copies in a second, easily accessible place in case the service member or a relative needs access to them at any point. In addition, certain documents empowering others to act on a service member's behalf, such as a financial power of attorney, a health care advance directive or a living will, should be made available in case the service member becomes unable to make decisions or to communicate his or her wishes to others. These documents are discussed in more detail below. Finally, all service members should make sure they have a legally valid will and should review the beneficiary designation forms for any life insurance policies they have to make sure they are current and accurate.

What is a financial power of attorney?

A financial power of attorney is a legal document by which one person gives another person the authority to act in his or her place regarding financial affairs. For example, a financial power of attorney empowers one person to sign a binding contract on behalf of another person. The person who signs the power of attorney is called the principal or grantor, and the person who gains rights to act under the power of attorney is called the attorney-in-fact. Service members are often encouraged to grant powers of attorney prior to deployment to enable a spouse or other family member to manage their affairs while they are away.

A financial power of attorney can be general – giving the attorney-in-fact unlimited authority over the principal's affairs – or limited to specific actions, such as filing tax returns or signing insurance forms. Powers of attorney may be limited to a specific period of time or may extend until the death of the principal or until revocation. A power of attorney must be “durable,” however, in order to remain valid if the principal becomes incapacitated – for example, if the principal falls into a coma or suffers severe brain damage. Depending on the nature of a service member's condition, it may be advisable for him or her to sign a **durable** power of attorney, be it general or limited.



Most powers of attorney become effective immediately when signed by the principal. There is also the option, however, to use a “springing” power of attorney that only becomes effective after a designated event, such as travel overseas or incapacity. The rules regarding powers of attorney vary by state. In addition, some banks and financial institutions require the attorney-in-fact to present an original power of attorney, so it is often advisable to execute multiple original documents. Service members and their families should consult a legal professional when preparing a power of attorney.

What is a health care advance directive?

A health care advance directive, sometimes called a health care proxy or medical power of attorney, is a form that designates someone as an agent to make health care decisions on behalf of a person in the event that he or she becomes unable to do so. A service member may also use a health care advance directive to list limitations regarding which types of treatment he or she is willing to receive. Health care advance directives often become important in situations when a service member is unconscious and a physician requires authorization to perform certain procedures. In the absence of a health care advance directive, these decisions will fall to a service member’s spouse, parents or next of kin, depending on state law. Signing a health care proxy may avoid conflict in situations when state law is unclear or family members might disagree on the appropriate course of action.

What is a living will? How is that different from a last will and testament?

A living will is a document directing a physician to refrain from taking lifesaving measures (such as CPR), or to remove life-sustaining treatment (such as a feeding tube) under certain conditions, such as a permanent coma following brain death. In the absence of a living will or other intervention, doctors are bound to use all available life-sustaining and lifesaving measures to keep a patient alive.

A last will and testament governs the distribution of a person’s property after he or she dies. The laws about what constitutes a valid will are complex, and they vary by state. A service member who wishes to create a will or modify an existing will should consult a qualified legal professional.

What should service members who do not have all of these documents do to obtain them?

Creating these documents often involves making difficult personal decisions and also requires legal expertise. Service members who wish to create a will or sign a power of attorney, health care advance directive or living will should consult a qualified legal professional. For more information on finding someone who can assist in drafting legal documents, see *Chapter 10, Legal Assistance*.

The Military’s Travel Assistance Program

What visitation rights and travel assistance are available to families of injured service members?

If the service member is not seriously injured or at risk of imminent death, but is expected to remain hospitalized as an inpatient due to combat-related injuries, up to three qualifying family members may be issued invitational travel orders (ITOs) and provided

The Caring Connections website contains information about living wills, health care proxies and other useful planning tools and resources. Please visit www.caringinfo.org for more information.

Certain qualifying members of a service member’s family may be eligible for military travel orders to the service member’s medical treatment facility and per diem to cover certain expenses. The Joint Federal Travel Regulations paragraph U5246 governs family travel assistance. Information on these regulations is available at www.ramstein.af.mil/library/factsheets/factsheet.asp?id=5021. Additional information should be available through the Family Assistance Center at the military treatment facility where the service member is located.



Family members that qualify for an ITO are limited to:

- › spouses
- › children
- › siblings
- › parents



round-trip transportation to the medical facility in the Continental United States (CONUS) where the injured or ill service member is being treated. The traveling family members may also be provided up to 30 days of per diem (discussed below) to cover certain expenses.

If the service member is seriously ill or injured or at risk of imminent death, up to three qualifying family members may be issued ITOs and provided round-trip transportation to the medical facility anywhere in the world where the injured or ill service member is being treated. The traveling family members will also be provided per diem (discussed below) to cover certain expenses.

“Seriously ill or injured” means that the service member’s condition is so severe that there is cause for immediate concern, but there is no immediate danger to life.

In extenuating circumstances, the military may authorize transportation and per diem to cover certain expenses for more than three qualifying family members. However, under all circumstances, only certain family members are eligible for travel to the medical facility.

Regardless of the severity of the service member’s medical condition, an ITO must be issued to the qualifying family member before travel in order for the expenses to be reimbursable.

Which family members qualify so that they may visit through an ITO?

The family members who may visit an injured service member under an ITO are limited to the service member’s spouse, children (including step, adoptive and out-of-wedlock children) and the service member’s siblings and parents (including fathers and mothers through adoption, but only one father and one mother or their counterparts may be allowed).

How does a family member request an ITO?

Family members may not request an ITO; rather, the service member’s attending physician generally initiates a request for an ITO if the presence of family members is considered necessary to aid in the physical recovery of the patient. **Requests made by the families of service members will not be considered.** The military treatment facility must complete a DA Form 2984, *Very Seriously Ill/Seriously Ill/Special Category Patient Report*, which must be signed by the attending doctor or hospital commander. The ITO generally will be approved if the service member has qualifying family members eligible to receive family travel assistance.

How are family members informed of their receipt of an ITO?

If the service member’s attending physician authorizes an ITO, the military will contact the family members via telephone to inform them of the ITO. The military coordinates with the family to try to arrange the most convenient travel for them. The military handles making the relevant reservations (plane, train, hotel, etc.). The military also sends the family members a copy of the ITO and provides the family members with information on how to record their expenses so that they may later submit a claim for any additional travel expenses.

How long may family members visit a service member under an ITO?

Typically, ITOs allow family members to visit an injured or ill service member for an initial period of 21 days. The service member's attending physician can then extend the duration of the ITO.

Are there limitations on the categories of service members who are eligible to receive family travel assistance?

Yes. However, as described above, **only active duty service members, including members of the "Reserve Components" on active duty** (also referred to as "Reserve Component service members"), who are seriously injured or ill or at risk of imminent death, generally are eligible to receive family visitation anywhere in the world. If a service member is not seriously injured or ill, but has a combat related injury or illness, is hospitalized in CONUS and is expected to be hospitalized for more than three months, he or she is also eligible for family visitation. In addition, the following categories of service members are eligible for a family visitation:

- > **Reserve Component service members entitled to disability pay and allowances**, who are physically disabled as the result of an injury, illness, or disease, or in a situation of imminent death, and who are hospitalized in a medical facility anywhere in the world if the illness, injury or disease occurred:
 - >> while performing inactive duty training (other than work or study in connection with a correspondence course of the military service or attendance in an inactive status at an educational institution under the sponsorship of the Public Health Service), or
 - >> while traveling directly to or from such training.
- > **Service members retired from military service due to illness or injury**, or as a result of a declaration of imminent death, and who are hospitalized in a medical facility anywhere in the world.

What travel benefits are provided?

The nature and extent of travel benefits depend on whether the family member is a service member, a government civilian employee or a civilian. If the family member is a:

- > **Uniformed service member:** He or she may be eligible for Temporary Duty Orders (TDY), with travel and transportation allowances.
- > **Government civilian employee:** He or she may receive allowances provided in regulations issued by the employee's agency or department for TDY.
- > **Other civilians:** He or she may receive transportation, per diem and reimbursable expenses.

What are the rules regarding transportation expenses?

If an ITO is issued, tickets for commercial or government transportation, reimbursement for the cost of commercial transportation paid for by the family member, and/or reimbursement at the government automobile mileage rate for the official distance traveled by privately owned conveyance (POC) may be provided between the family member's home and the medical facility location where the service member is hospitalized.

"Reserve Components" is the collective term used to refer to seven individual reserve components of the armed forces:

- > *the Air Force Reserve*
- > *the Air National Guard*
- > *the Army National Guard*
- > *the Army Reserve*
- > *the Coast Guard Reserve*
- > *the Marine Corps Reserve*
- > *the Navy Reserve.*



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What are the rules regarding per diem?

Per diem often will be paid to family members traveling under ITOs and while visiting a service member at the treatment facility. Per diem, which means “per day,” is an allowance intended to compensate for certain costs away from home. It is a fixed, maximum amount of money that the government will reimburse for expenses such as lodging, meals and miscellaneous expenses. Individuals traveling under ITO orders should save all their receipts to ensure proper reimbursement. Receipts are required for expenses over \$75.

What is the per diem rate?

The standard CONUS per diem rate is \$99 per day. Per diem rates for non-Continental U.S. states, overseas and foreign locations are available at <https://secureapp2.hqda.pentagon.mil/perdiem/perdiemrates.html> (note that the “https” must be used). In May 2007, the maximum per diem rate for Landstuhl, Germany, was \$290 per day.

What types of expenses are reimbursable?

In addition to lodging and meals, reimbursable expenses may include the cost of traveler’s checks, money orders, or certified checks; transaction fees for ATM use; fees for passports and visas; cost of birth certificates; taxes on lodging; fees for currency conversion; and similar travel and transportation-related expenses. Only expenses incurred while under an ITO will be reimbursed. Some ITOs only cover limited expenses such as transportation, lodging and meals. Other incidental expenses, such as those listed above, may not be reimbursable. Families should carefully review their ITOs to determine what expenses are reimbursable.

Where can family members stay while visiting a service member?

When traveling pursuant to an ITO, the family members’ lodging will be arranged by the military prior to commencement of their travel. Families are typically housed in a local hotel, military installation guest quarters or a Fisher House, if one is available. See the discussion under the section titled “The Fisher House Foundation and the Hero Miles Program” below for more information regarding Fisher Houses.

Are there any restrictions on international travel under an ITO?

In general, ITOs for international travel are only issued to qualifying family members if a service member is seriously injured or ill or at risk of imminent death. Regardless of a service member’s medical condition, travel to a hostile fire zone is not permitted under an ITO. The service member must first be transferred to a medical treatment facility in a non-hostile fire zone before visitation by family members is permitted.

What class of transportation and lodging can be used when under an ITO?

Family members generally must use economy-class transportation and lodging unless otherwise authorized in advance of travel. However, premium-class lodging may be approved if necessitated by medical disability or special medical needs.

Generally, the military will provide family members with the cheapest transportation and lodging available. The ITO will include an actual subsistence expense allowance (AEA) amount for lodging. Family members may wish to spend more on lodging, but the AEA amount is the maximum amount that the military will reimburse.



The Fisher House Foundation and the Hero Miles Program

Where should family members of injured or ill service members seek assistance if their ITOs do not cover lodging or if they are ineligible for ITOs?

Family members whose ITOs don't cover lodging or who are ineligible for ITOs may be able to obtain lodging and transportation through the Fisher House Foundation and the Hero Miles Program.

The Fisher House Foundation is a not-for-profit organization that provides free or low-cost housing at Fisher Houses run by the organization for families of patients receiving medical care at many major military and Veterans Administration (VA) Medical Centers. Family members must meet certain requirements to be eligible to stay at a Fisher House. The eligibility requirements generally differ from those of an ITO and they are set by the local medical treatment facility and/or installation commander. The availability of space is not guaranteed.

Through its Hero Miles Program, the Fisher House Foundation makes airline tickets available to military personnel undergoing treatment at a military medical center or VA medical center incident to their service in Iraq, Afghanistan and the surrounding area. Qualifying servicemen and servicewomen may be given free round-trip tickets on a number of major airlines to enable their family or close friends to visit them while they are in treatment.

What are Fisher Houses?

A Fisher House is "a home away from home" for families of patients receiving medical care at many major military and VA medical centers. A Fisher House is a temporary residence for family members and is not a treatment facility, hospice or counseling center.

The homes are normally located within walking distance of the treatment facility or provide transportation alternatives to the treatment facility. There are 35 Fisher Houses located on 18 military installations and eight VA medical centers.

Typically, the houses are 5,000 to 16,000 square-foot homes donated by the Fisher family and Fisher House Foundation. Each house is designed to provide eight to 21 suites. All are professionally furnished and decorated in the tone and style of the local region. The houses can accommodate 16 to 42 family members. They feature a common kitchen, laundry facilities, spacious dining room and an inviting living room with library, and toys for children.

Who is eligible to stay at a Fisher House?

Local medical treatment facilities and/or installation commanders establish eligibility criteria for each Fisher House. For a referral, the service member's family should contact the service member's physician, nurse, social worker, chaplain, or other medical treatment facility staff worker. Depending on the turnover rate and waiting list, availability might be limited to families of inpatients with life-threatening illnesses. A family's income and distance from home might also be considered.

For more information about the Hero Miles Program, visit www.heromiles.org.

For more information about Fisher Houses and how to obtain the Hero Miles Program request forms, visit www.fisherhouse.org, or call (888) 294-8560 or write 1401 Rockville Pike, Suite 600, Rockville, MD 20852.



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How much does it cost to stay at a Fisher House?

Families of casualties from Operation Iraqi Freedom and Operation Enduring Freedom do not pay for lodging. Otherwise, the cost to stay at each Fisher House varies by location. However, the cost per family per day is typically nominal (approximately \$10), and many of the Fisher Houses are free of charge.

How can family members of injured or ill service members contact Fisher Houses?

CALIFORNIA

David Grant USAF Medical Center

(Travis AFB)
100 Bodin Circle
Travis AFB, CA 94535
(707) 423-7550 Fax (707) 423-7552
Manager: Charlene Hall
Email: charlene.hall@60dmg.travis.af.mil

Naval Medical Center, San Diego

34800 Bob Wilson Drive
Building 46
San Diego, CA 92134-5000
(619) 532-9055 Fax (619) 532-5216
Manager: Belle Esposito
Email: sdfisherhouse@sbcglobal.net

Palo Alto VA Health Care System

3801 Miranda Ave.
Palo Alto, CA 94304
(650) 493-5000, ext. 63967
Manager: Katherine Debus
Email: Katerine.debus@va.gov

COLORADO

Denver VA Medical Center

1055 Clermont St.
Denver, CO 80220-3873
(888) 336-8262 or (303) 364-4616
Fax (303) 393-4679
Manager: Jann Griffiths
Email: jann.griffiths@med.va.gov

DISTRICT OF COLUMBIA

Walter Reed Army Medical Center

I & II & III
6900 Georgia Ave., NW
Washington, DC 20307-5001
(202) 545-3218 Fax (202) 545-3202
Fisher House I: (301) 295-7374, ext. 10
Fisher House II: (202) 356-7564, ext. 10
Acting Manager: Peter Anderson
Email:
peter.anderson.2@na.amedd.army.mil

FLORIDA

Bay Pines VA Medical Center

10000 Bay Pines Blvd.
Bay Pines, FL 33744
(727) 319-1350 Fax (727) 319-1106
Manager: Richard Kippings
Email: BPFisherHouse@med.va.gov

West Palm Beach VA Medical Center

7305 N. Military Trail—Route 136
W. Palm Beach, FL 33410
(561) 442-5554 Fax (561) 422-8793
Acting Manager: Maureen Wallace
Email: maureen.wallace@med.va.gov

GEORGIA

***Dwight David Eisenhower
Army Medical Center***

(Fort Gordon)
Fisher House Road—Bldg. 280
Ft. Gordon, GA 30905
(706) 787-7100 Fax (706) 787-5106
Manager: Francisco Cruz
Email: francisco.cruz@amedd.army.mil



HAWAII

Tripler Army Medical Center I & II

315 Krukowski Road
Honolulu, HI 96819
(808) 433-1291 ext. 28
Fax (808) 433-3619
Acting Manager: Avila Porter
Email: fhtamc@aol.com

MARYLAND

Malcolm Grow Medical Center (Andrews AFB)

1076 West Perimeter Rd.
Andrews AFB, MD 20762
(301) 981-1243 Fax (301) 981-7629
Manager: Janet Grampp
Email: janet.grampp@andrews.af.mil

National Naval Medical Center I & II

(Bethesda Naval Hospital)
24 Stokes Road
Bethesda, MD 20814-5002
(301) 295-5078 Fax (301) 295-5632
Manager: Albert Harrison
Email: albertfish@mwrbethesda.com

MINNESOTA

Minneapolis VA Medical Center

One Veterans Drive
Minneapolis, MN 55417
(612) 467-2517 Fax (612) 970-5864
Manager: Maggie Swenson
Email: margaret.swenson@med.va.gov

MISSISSIPPI

Keesler Medical Center (Keesler AFB)

509 Fisher St.
Keesler AFB, MS 39534-2599
(228) 377-8264 Fax (228) 377-7691
Mobile: (228) 806-5878
Manager: Larry Vetter
Email: larry.vetter@keesler.af.mil

NEW YORK

Stratton VA Medical Center

113 Holland Ave.
Albany, NY 12208
(518) 626-6919 Fax (518) 626-5452
Manager: Jerry Jensen
Email: FisherNY@aol.com

NORTH CAROLINA

Womack Army Medical Center

(Fort Bragg)
12 Bassett St.
Ft. Bragg, NC 28307-5000
(910) 432-1486 Fax (910) 432-3825
Manager: Paula Gallero
Email: fnwamc@aol.com

Camp Lejeune

(In planning or design)

OHIO

Cincinnati VA Medical Center

3200 Vine St.
Cincinnati, OH 45220
(513) 475-6571 Fax (513) 487-6661
Manager: Karrie Hagan
Email: karrie.hagan@med.va.gov

Wright-Patterson Medical Center I & II

(Wright-Patterson AFB)
415 Schlatter Drive
Wright-Patterson AFB, OH 45433
(937) 257-0855 Fax (937) 656-2150
Manager: Karen Healea
Email: karen.healea@wpafb.af.mil

TEXAS

Brooke Army Medical Center I & II

(Fort Sam Houston)
3623 George C. Beach Rd.
Ft. Sam Houston, TX 78234
(210) 916-6000 ext. 101
Fax (210) 916-6488
Manager: Inge Godfrey
Email: fhbamc@aol.com

For more information on U.S. commercial airline programs for families of injured service members, visit www.dod.mil/mapcentral/airtickets.html or call the individual airlines at the numbers provided below.

American Trans Air
(800) 435-9282
(mention ATA's "Military Family Travel Assistance Program").

Continental Airlines
(800) 468-7022 or
(404) 773-0916
(request the Military/
Government Assist Desk).

Delta Airlines
(800) 221-1212
(refer agent to page 12147 in
their reservation system).

United Airlines
(800) 864-8331
(mention United's "Special
Care Fare").



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Air Charity Network:

For more information, visit
www.aircharitynetwork.org
or call (877) 621-7177 or
(877) 858-7788

Regional Offices
(short distance trips)

Airlift Hope: (800) 325-8908
www.airlifthope.org
Departing: NC and TN

Angel Flight Central:
(877) 621-7177,
(816) 421-2300;
www.angelflightcentral.org
Serving: IA, IL, IN, KS, MN, MO,
ND, NE, SD, WI

Angel Flight Mid Atlantic:
(800) 296-3797,
(757) 318-7149;
www.angelflightmidatlantic.org
Serving: DC, DE, KY, MD, MI,
OH, PA, VA, WV

Angel Flight Northeast:
(800) 549-9980,
(978) 794-6868;
www.angelflightne.org
Serving: CT, MA, ME, NH, NJ,
NY, PA, RI, VT

Angel Flight South Central:
(800) 989-2602,
(972) 458-0700;
www.angelflightsc.org
Serving: AR, LA, NM, OK, TX

Angel Flight Southeast:
(800) 352-4256;
(352) 326-0761;
www.angelflightse.org
Serving: FL



Darnall Army Community Hospital
(Fort Hood)
36000 Darnall Loop
Ft. Hood, TX 76544-4752
(254) 286-7927 Fax (254) 286-7929
Manager: Isaac Howard
Email: fhhood@aol.com

Michael E. DeBakey VA Medical Center
(Houston)
2002 Holcombe Blvd.
Houston, Texas 77030
(713) 794-8095 Fax (713) 794-7971
Manager: Frank Kelly
Email: frank.kelly@med.va.gov

Wilford Hall Medical Center I, II, & III
(Lackland AFB)
2580 Luke Blvd., Bldg. 3810
Lackland AFB, TX 78236
(210) 671-6037 Fax (210) 292-3031
Manager: Paula Lewis
Email: plewis-fisherhouse@satx.rr.com

EUROPE

Landstuhl Regional Medical Center I & II
CMR, Box 669
APO AE 09180
Civ.: 011-49-6371-61833-11
Fax: 011-49-6371-866679 DSN: 486-6630
Manager: Kathy Gregory
Asst. Mgr.: Susan Johnson
Email: Mary.Gregory@lnd.amedd.army.mil
Local German address:
Landstuhl Fisher House
US Hospital Landstuhl
66849 Landstuhl/Kirchberg Germany

William Beaumont Army Medical Center
5005 North Piedras St.
El Paso, TX 79920-5001
(915) 569-1860, Fax (915) 569-1862
Manager: Harry Hicks
Email: fhwbamc@aol.com

VIRGINIA

Naval Medical Center, Portsmouth
853 Fisher Dr., Bldg. 287
Portsmouth, VA 23708
(757) 953-6889 Fax (757) 953-7174
Manager: Loretta Loveless
Email: fishrhouse@msn.com

WASHINGTON

Madigan Army Medical Center (Fort Lewis)
9999 Wilson Ave.
Ft. Lewis, WA 98433
(253) 964-9283 Fax (253) 968-3619
Manager: Jodi L. Land
Email: jodi.land@nw.amedd.army.mil

Airline Special Assistance Programs for Families of Injured Service Members

Do major United States commercial airlines offer fare assistance to families of injured or ill service members?

Yes. Numerous airlines offer assistance to families of injured service members. Many airlines offer free fares to immediate family members and discounted fares to non-immediate family members of service members injured in Iraq (and possibly other

military operations) so that the families might visit the service member during recovery. The details of these programs vary considerably and are subject to change; however, they all require proof of the service member's military service and proof of an injury to the service member. Such proof may include an authorization letter from the service member's command, a Red Cross office or casualty assistance office.

Are there any noncommercial airline programs that help to provide transportation?

Air Charity Network (formerly Angel Flight America) is a charitable organization that operates a network of several independent member organizations coordinating free or discounted air transportation to patients and their families to and from distant medical care and treatment facilities in the United States.

Short distance trips: A network of volunteer pilots using their own light aircraft provide transportation for patients and their families traveling less than 1,000 miles. These trips are coordinated through 6 regional organizations.

Discount air ambulance: The "Air Compassion America" program (ACAM) assists in arranging air ambulance transportation, sometimes at a discount, for patients, and their families, requiring stretcher transportation with medical monitoring or other care en route services. ACAM does not provide transportation directly. For more information call (866) 270-9198, or visit the ACAM website at www.aircompassionamerica.org.

Commercial flights: Mercy Medical Airlift (MMA) provides access to a variety of charitable airline ticket programs for ambulatory outpatients traveling more than 1,000 miles. For more information call (800) 296-1217.

Additional Travel Resources

The Red Cross works with the military aid societies (Army Emergency Relief, Navy Marine Corps Relief Society, Air Force Aid Society and Coast Guard Mutual Assistance) to provide financial assistance for emergency travel. Local Red Cross chapters are listed in local telephone directories and online at www.redcross.org, under "Find Your Local Red Cross."

The various military relief or aid societies can provide interest-free loans, grants or a combination of loans and grants to cover emergency travel expenses for the families of injured or ill service members.

If a service member's family is not near an installation for the service member's service branch, the family may seek assistance at an installation of another service branch that is more convenient or at their local Red Cross office.

Angel Flight West: (888) 4-AN-ANGEL (888-426-2643); (310) 390-2958;

www.angelflight.org

Serving: AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY

Grace Flight: (888) 500-0433;

www.graceflight.org

Serving: MS, TN

Mercy Flight Southeast:

(888) 744-8263;

www.mercyflightse.org

Serving: AL, GA, MS, SC

Air Charity Network National

Headquarters: (877) 858-

7788; to request flights call

(877) 621-7177;

www.aircharitynetwork.org

Mercy Medical Airlift: (800)

296-1217;

www.mercymedical.org

Air Compassion America: (866)

270-9198; [www.aircompassion](http://www.aircompassionamerica.org)

america.org



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The following military relief or aid societies have offices or representatives at or in close proximity to every major military facility. Please visit their websites for additional information.

Air Force Aid Society
www.afas.org

Army Emergency Relief
www.aerhq.org

Coast Guard Mutual Assistance
www.cgmahq.org

Navy-Marine Corp Relief Society
www.nmcrs.org

A full list of injuries that are eligible for TSGLI payments may be found at

www.insurance.va.gov/sgliSite/TSGLI/TSGLI.htm.



Time Off from Work to Care for Family Members: The Family and Medical Leave Act (FMLA)

What is the FMLA?

The FMLA is a federal law that guarantees unpaid leave from work to individuals with serious health conditions and to certain family members who care for them. Under the FMLA, certain family members may be eligible for unpaid leave from their jobs to care for a wounded service member. For details on the FMLA, please see the section titled “Taking Leave for Medical Care: The Family and Medical Leave Act (FMLA)” in Chapter 9, *Legal Rights*.

Financial Assistance: Traumatic Injury Insurance under Service Members’ Group Life Insurance (TSGLI)

What is TSGLI?

Organized as part of the Servicemembers’ Group Life Insurance (SGLI), TSGLI provides insurance coverage for service members who sustain an injury. TSGLI is intended to provide immediate cash assistance to cover the expenses associated with the changes that accompany a traumatic injury, for example constructing a ramp for wheelchair access to a home or adapting an automobile with hand controls. TSGLI pays a lump-sum benefit that is based on the severity of the service member’s injury. TSGLI became effective on December 1, 2005, and retroactively covers certain injuries sustained by service members dating back to October 7, 2001.

Who is eligible?

Service members who are covered under SGLI are automatically eligible for TSGLI benefits following a “qualifying injury.” All service members are automatically provided coverage under SGLI unless they have specifically declined SGLI coverage. TSGLI coverage ends when the service member is separated or discharged from service. Service members who were injured while on duty in Afghanistan, Iraq, or other combat zones after October 7, 2001, are also eligible for retroactive payment (see more below).

What is a “qualifying injury”?

To qualify for a TSGLI payment, an injured service member must meet four requirements:

1. The injury must qualify as a “scheduled loss” and occur as a direct result of a “traumatic event.” Generally, a scheduled loss is any loss of a body part or an ability to function in daily activities. A “traumatic event” generally is any “line of duty” event that causes the traumatic injury.

Examples of scheduled losses include: loss of hearing, loss of eyesight, loss of limbs, loss of speech, coma, and loss of ability to perform routine daily activities of self-care.

Examples of traumatic events include: Military and civilian motor vehicle accidents, military and civilian aircraft accidents, and combat and training injuries.

2. The traumatic event must have occurred before midnight on the day the member is discharged/separated from military service.

3. The scheduled loss must occur within 365 days of the traumatic event. This means that TSGLI provides coverage even for injuries that are not identified immediately, but are identified within 365 days after the occurrence of the traumatic event. For example, an injury may not immediately cause a loss but complications from ongoing medical treatment could result in a loss that qualifies for TSGLI.

4. The member must survive at least 7 full days (168 hours) from the date of the traumatic event that caused the injury. This means that if a service member was qualified to receive TSGLI benefits but later dies before TSGLI payments are made, the service member's heirs will be entitled to the TSGLI payment. Even though a service member may not survive the required period following the traumatic event, the family of the service member will generally be entitled to other financial compensation such as the Death Gratuity and life insurance payments under SGLI.

What is the scope of coverage for TSGLI?

In general, service members are covered under TSGLI for the same period that they are covered under SGLI. If a service member has full-time SGLI, TSGLI provides full-time coverage for service members 365 days a year, **both on and off duty**. If the service member has part-time SGLI coverage which generally only applies to certain reservists, TSGLI is part-time as well, covering the service member only during the actual days of duty and while proceeding directly to and returning from their scheduled duty.

Generally, reservists who perform active duty or active duty training on orders lasting more than 31 days or who are members of reserve units that drill at least 12 times a year carry full-time coverage. Reservists on orders less than 31 days or who drill less than 12 times a year generally carry part-time coverage.

What is the benefit payment for a qualifying injury?

TSGLI provides a lump-sum payment for traumatic injuries in amounts up to \$100,000 depending on the severity of the injury as determined by the service member's physician. Coverage begins at \$25,000.

Will this affect the service member's VA or DoD disability compensation determinations?

TSGLI is not disability compensation and generally has no effect on the disability compensation benefits provided by the VA or DoD. However, TSGLI may affect the service member's entitlement to a need-based disability pension because the TSGLI payment counts as income in the year it is received.

While VA or DoD disability benefits are intended to provide ongoing financial support to compensate for the loss of future earnings potential as a result of injury, TSGLI provides a one-time lump-sum payment to cover immediate costs associated with a specific traumatic injury.

The TSGLI Certificate Form is available at the Department of Veterans Affairs Insurance website at

www.insurance.va.gov/sgliSite/forms/TSGLI.pdf.

Completed TSGLI Certificate Forms must be forwarded to the service member's particular branch of service:

Air Force (Active Duty):

- › Fax: (210) 565-2348
- › Email: afpc.casualty@randolph.af.mil
- › U.S. Mail: AFPC/DPFCS
550 C St. West, Suite 14
Randolph AFB, TX 78150-4716

Air Force Reserves:

- › Fax: (303) 676-6255
- › Email: ramon.rolدان@arpc.denver.af.mil
- › U.S. Mail:
HQ, ARPC/DPPE
6760 E Irvington Place,
#4000
Denver, CO 80280-4000

Air National Guard:

- › Fax: (703) 607-0033
- › Email: andrew.bair@ngb.ang.af.mil
- › U.S. Mail: NCOIC,
Customer Operations
Air National Guard Bureau
1411 Jefferson Davis Hwy
Suite 10718
Arlington, VA 22202



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Army:

- › Fax: (866) 275-0684
- › Email: TSGLI@hoffman.army.mil
- › U.S. Mail: Department of the Army
U.S. Army Physical Disability Agency (USAPDA)
Traumatic SGLI (TSGLI)
200 Stovall St.
Alexandria, VA 22332-0470

Coast Guard:

- › Fax: (202) 267-4823
- › Email: twalsh@comdt.uscg.mil
- › U.S. Mail: Commandant,
US Coast Guard
Attn: CG-12222
100 2nd St, NW
Washington, DC
20593-0001

Marine Corps:

- › Fax: (888) 858-2315
- › Email: t-sgli@usmc.mil
- › U.S. Mail: Headquarters,
U.S. Marine Corps
MI - TSGLI
3280 Russell Rd
Quantico, VA 22134

Navy:

- › Fax: (901) 874-2265
- › Email: MILL_TSGLI@navy.mil
- › U.S. Mail: Navy Personnel
Command
Attn: PERS 62
5720 Integrity Drive
Millington, TN 38055-6200



How long does the coverage last after separation or discharge from military service?

TSGLI coverage terminates immediately on the date the member separates from service. However, as discussed above under “What is a ‘qualifying injury?’”, TSGLI will cover a scheduled loss that occurs after separation or discharge as long as the traumatic event occurred before termination of the TSGLI coverage.

This is different from general SGLI coverage, which extends for a minimum additional 120-day period after discharge.

How does the service member receive TSGLI benefits?

Service members must complete Form GL.2005.261, *Traumatic Injury Protection Certificate Form* (the “TSGLI Certificate Form”), to receive benefits.

There are three parts to the form. Part A must be completed by the service member or his or her appointed guardian or attorney-in-fact. Part B must be completed by the service member’s attending medical professional. Part C is completed by the service member’s particular branch of service.

When Parts A and B are completed, the form should be sent to the service member’s particular branch of service for completion of Part C. The branch of service will then forward the application along to the Office of Servicemembers’ Group Life Insurance (OSGLI) for final processing.

How does one claim retroactive benefits?

Service members or veterans who suffered a qualifying injury between October 7, 2001, and November 30, 2005 while either (1) deployed outside the United States as a part of Operation Enduring Freedom or Operation Iraqi Freedom or (2) serving in a location that qualified the member for the Combat Zone Exclusion (see the section titled “Exclusions – The Combat Zone Exclusion” in *Chapter 8, Federal Tax Issues*, for more information) are eligible for retroactive application of TSGLI. To claim benefits under TSGLI retroactively, a service member or veteran must complete a TSGLI Certificate Form.

How long will it take to receive the TSGLI benefit payment?

Benefit payments take approximately 3 weeks. The DoD takes an average of 2 weeks to process the service member’s application. Once the application has been approved, processing the payment takes an additional week. Payment will be made by direct deposit to the service member’s bank account, by check, or through a Prudential Alliance Account, which is an interest-bearing account set up automatically in the service member’s name upon election of this option when completing the TSGLI Certificate Form, or upon default. Payment by check is only available if the service member’s guardian or attorney-in-fact completes the application.

What is a Prudential Alliance Account?

A Prudential Alliance Account is a personal interest-bearing checking account set up automatically in the service member’s name when this option is selected on the TSGLI Certificate Form, or upon default if no option or an improper selection is made, to receive the TSGLI benefits. Service members may withdraw money from the account by

writing checks, with a minimum withdrawal of \$250, up to the full amount in the account. These accounts earn interest so long as any balance is maintained in the account, and the accounts are guaranteed by Prudential Insurance Company of America.

If a service member was injured in two separate traumatic events, is the service member eligible for multiple payments under TSGLI?

It depends on how soon after the first traumatic event the second traumatic event occurred.

Multiple traumatic events that occur within 7 days (168 hours) of one another, are treated as a single event. The maximum recovery of \$100,000 will apply even for separate, unrelated scheduled losses resulting from separate, unrelated traumatic events that occur within that time period. However, traumatic events that occur more than 7 full days apart are treated as distinct events, and the qualifying injuries sustained as a result of each event will be evaluated separately. As each event will be given its own maximum coverage limit, the service member's total TSGLI payments may potentially exceed \$100,000 depending on the severity of his or her injuries.

Are service members' families eligible for coverage under TSGLI?

No. Only service members are eligible for coverage. Survivors of a deceased service member will be eligible to receive the benefit payment only if the service member survived longer than 7 days (168 hours) after the traumatic event occurred.

If a service member is incapable of submitting the TSGLI Certificate Form because of his or her medical condition, how can an application be submitted?

A service member's appointed guardian or attorney-in-fact can complete and submit the TSGLI Certificate Form on behalf of a service member that is incapacitated because of a medical condition.

Salary

Do injured service members continue to draw their regular monthly salary while awaiting a disability determination?

Yes. The military will continue to pay 100% of a service member's pre-injury salary for line-of-duty injuries until the service member is (1) found fit to return to service, (2) placed on a temporary disabled list or (3) released from service through separation or retirement. Generally, deployed active duty service members return to their unit in a backup capacity when they are ill or injured and thus continue to draw their regular pay. However, reservist service members have no similar unit to return to and thus must take additional steps to continue receiving their active duty salary (see more below).

DoD guidelines call for an MEB disability determination to occur within a year. However, there is no time limit for how long the service member may continue to draw his or her salary if the medical evaluation process takes longer than a year.

NOAA Corps:

- › Fax: (301) 713-4140
- › Email: gregory.raymond@noaa.gov
- › U.S. Mail:
Silver Spring Metro Plaza
Director, Commissioned
Personnel Center
8403 Colesville Rd, 5th Floor
Silver Spring MD 20910

Public Health Service:

- › Fax: (301) 594-2973 or
(800) 733-1303
- › Email:
CompensationBranch@psc.hhs.gov
- › U.S. Mail:
PHS Compensation Branch
Parklawn Building
5600 Fishers Lane, Rm. 4-50
Rockville, MD 20857

For further information regarding TSGLI, please see the following:

Traumatic Insurance Protection under SGLI Coverage (TSGLI): A Procedural Guide, available at www.insurance.va.gov/sgliSite/TSGLI/TSGLIGuide/TSGLIGuide.pdf.

Army FAQs about TSGLI:

www.hrc.army.mil/site/crcs/tsqli/TSGLI_FAQ_Page.pdf.



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In order to remain on active duty while undergoing the Disability Evaluation System (DES) process, a reserve component service member generally must apply for either the Active Duty Medical Extension program or the Medical Retention Processing program.

What are the extra steps that Reserve Component service members must take to continue receiving their salary?

Injured reservists who wish to continue receiving their regular service salary and benefits must apply for either the Medical Retention Processing (MRP) program or the Active Duty Medical Extension (ADME) program. The MRP program applies specifically to Reserve Component service members mobilized in support of Global War on Terrorism (GWOT) contingency operations and who are wounded, incur an injury, or aggravate a previous illness or disease in the line of duty. To remain on active duty pending evaluation of an injury, all other Reserve Component service members (i.e., those not mobilized in support of GWOT contingency operations) must apply through the Active Duty Medical Extension (ADME) program, described below.

Under the MRP program, an injured reservist who is not expected to return to duty within 60 days of being injured must consent to reassignment to a Medical Retention Processing Unit (MRPU) in order to continue to receive his or her regular service salary and benefits. The injured reservist will remain on active duty with the MRPU until he or she is determined to be fit to return to duty or the medical evaluation is completed through his or her branch's disability evaluation system. The reassignment orders last 179 days. Injured reservists may request extensions in order to remain on active duty for medical treatment.

Those reservists injured not in connection with GWOT contingency operations must apply through the ADME program to remain on active duty while continuing to receive medical treatment for their injuries. Like the MRP program, ADME is a voluntary program: the service member must consent to participation by applying through his or her branch of service.

Members of the Reserve Components must apply for the MRP and ADME programs by submitting an MRP or ADME packet to their respective branch of service.



CHAPTER 2: THE DISABILITY EVALUATION SYSTEM

Introduction

Each year many thousands of service members are injured while on duty. Following an injury, the military's first priority is to provide medical treatment to the service member, with the goal of returning him or her to duty as soon as possible. Some service members, however, suffer from injuries or illnesses that may render them unfit for continued service. It is at this point that these service members encounter the Disability Evaluation System (DES). The DES system was created by the Department of Defense (DoD) to provide a uniform procedure for the evaluation of a service member's medical condition and the member's ability to continue his or her military service.

The DES has two stages: the Medical Evaluation Board (the MEB) and the Physical Evaluation Board (the PEB). In the first stage, the MEB evaluates the service member's injury and ongoing treatment in order to determine whether he or she can continue service in his or her military occupational specialty (MOS) following medical treatment. In the second stage, the PEB evaluates a service member's physical ability to continue in the military service and provides the service member with a DoD disability rating if the PEB results in separation from the military.

Depending on the nature of the service member's injuries, the MEB may place the service member on temporary limited duty (TLD) or refer the individual to a PEB, which evaluates the service member's ability to continue his or her military service. If the PEB determines that the severity of an injury or illness requires separation, the PEB will order the medical retirement of the service member and assign a disability rating. The disability rating often determines the availability and type of benefits that may be available after separation. In addition, if the PEB believes that the service member may recover from his or her disability over time, the PEB may recommend placing the service member on the Temporary Disability Retirement List (TDRL) until he or she is fit to return to active duty or found unfit and separated from service with appropriate benefits.

The following provides additional information on the MEB, the PEB and other aspects of the DES process.

The Medical Evaluation Board

What is a Medical Evaluation Board?

A Medical Evaluation Board (MEB) is the first step in the military's disability evaluation process for determining whether an injured service member is fit to return to active duty. A MEB typically includes two or three physicians, one of whom is the service member's

Note: The term "MOS" is specific to the Army and the Marine Corps; the Air Force, Navy and Coast Guard use different terms for occupational specialties. The Air Force uses the term "Air Force Specialty Code" or "AFSC," while the Navy uses the Navy Enlisted Classification (NEC) system and a system of ratings and designations. The Coast Guard uses a system similar to the Navy's. However, for the sake of clarity and ease of use, this handbook refers to every specialty, regardless of branch of service, as an "MOS," and, unless otherwise stated, the term "MOS" should be understood to refer to the job specialty designation of the individual member's branch of service.



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Disabled American Veterans, a charitable organization not affiliated with the military, provides numerous advocacy, counseling and outreach services to disabled veterans and service members undergoing the DES process. For more information, visit www.dav.org.

The Department of the Army recently opened the Wounded Soldier and Family Hotline, which can be reached at 1-800-984-8523. The purpose of the hotline is to offer wounded service members and their family members a way to share concerns on the quality of patient care and to allow service members to voice their concerns without retribution.



treating physician. The purpose of an MEB is to determine whether the service member has an injury or illness that is severe enough to compromise his or her ability to return to full duty based on his or her MOS.

The MEB is not a formal hearing, and the service member should not expect to appear before a panel at this stage of the process. Rather, the service member will be evaluated through a series of examinations, and the board will base its findings on a review of the service member's case file. The service member will have the opportunity to review the MEB's report and either agree with or oppose the findings.

Often the MEB review begins when the service member's treating physician concludes that he or she will not be able to return to full duty within a reasonable period of time. The physician refers the service member to an MEB, and the injury or illness is then evaluated with respect to the service member's MOS. If the service member's condition improves such that the service member can fully function in his or her MOS, or if it appears likely that, given treatment, the service member will soon fully function in his or her MOS, the service member will not continue through the MEB process.

The MEB evaluates the service member in terms of how his or her condition will affect performance in the military environment. According to the Army's *Disability Counseling Guide for PEB Liaison Officers*, "Combat, combat support, combat service support assignment to remote locations, and other demanding situations that the evaluatee could reasonably be expected to encounter are factors considered. Members must be able to perform military service in such a manner as to reasonably fulfill the purpose of their employment on active duty. With the exception of psychiatric defects, it is not the purpose of a medical board to relate the member's defects to the civilian environment, employability, or insurability." *Disability Counseling Guide for PEB Liaison Officers*, page 9, available at: www.westpoint.org/users/usma1991/48648/pebloguide.doc.

While the MEB can determine that a service member is fit for duty, it cannot make a final determination that the service member is unfit for duty, which is required before a service member can be separated because of an injury or medical condition. That determination is left solely to the Physical Evaluation Board (PEB), which is discussed in greater detail below.

Who may refer a service member to an MEB?

A service member cannot refer himself or herself to an MEB. Rather, his or her treating physician, unit commander or higher command must make the referral to an MEB.

Who can offer assistance to a service member facing an MEB evaluation?

The military assigns a Physical Evaluation Board Liaison Officer (PEBLO) to each service member undergoing the DES process. The PEBLO acts as a counselor and liaison for the service member throughout the disability evaluation process, but he or she does not serve as an advocate for the service member before the MEB or PEB. Beginning with an initial briefing before the service member's first physical examination for the MEB, the PEBLO's role is to inform the service member of what to expect at various stages of the process, the consequences of decisions or determinations made by the board and his or her rights. In addition, a PEBLO (along with other administrative professionals) may assist the service member in gathering relevant information and documentation (medical charts, X-rays, etc.). After the service member receives the decision of the MEB, the PEBLO will review the decision with the service member.

Service members may also seek outside assistance in preparing for the disability evaluation process. Disabled American Veterans, a charitable organization not affiliated with the military, provides numerous advocacy, counseling and outreach services to assist veterans in obtaining benefits and services earned as a result of their military service. Through its National Service Program, DAV employs National Service Officers (NSOs) who, upon request, counsel and advocate on behalf of service members.

Does the service member have a right to see all of the information used by the MEB in making its decision?

Yes. The service member has the right to see everything considered by the MEB.

What outcomes can a service member expect from an MEB?

If, upon examination, the service member meets retention standards, i.e., the service member's condition allows him or her to return to active duty, then the MEB will clear the service member for return to active duty.

If the MEB believes that the service member can return to active duty within a reasonable period of time, it may recommend placing the service member on Temporary Limited Duty (TLD). TLD is a specified period of limited duty. The TLD period is normally eight months and generally will not exceed a total of 16 cumulative months. The service member is expected to return to full duty after the specified TLD period.

If the MEB is unsure of the service member's ability to return to active duty within a reasonable period of time, or if the service member's condition prevents him or her from returning to full active duty even following a TLD period, the MEB refers the service member to the Physical Evaluation Board (PEB).

If the service member has sustained certain injuries or illnesses, as described in the retention standards for the service member's branch of the military, the MEB is required to refer the service member to the PEB.

What can a service member do if he or she is dissatisfied with the outcome of his or her MEB?

A service member who is dissatisfied or disagrees with the outcome of his or her MEB may appeal directly to the MEB, but this appeal can only be done in writing. There is no specific form for the letter, but it is important for the service member to be as specific as possible. Additionally, the appeal must be filed within three duty days of being informed of the outcome of an MEB. If, after reconsideration, the MEB accepts the service member's rebuttal, the changes suggested by the service member may be added to the MEB's findings.

The Physical Evaluation Board

What is a Physical Evaluation Board (PEB)?

A PEB is an administrative body possessing the authority to make determinations concerning a service member's fitness for duty. Following a finding that a service member will not be able to return to full duty within a reasonable period of time, if ever, the MEB will refer the service member to a PEB. Unlike an MEB, a PEB may declare a service member unfit for duty and separate him or her from military service. Importantly, the



PEB also determines the percentage of disability for ill or injured service members, which affects his or her entitlement to certain benefits following separation. (See *Chapter 3, Disability Rating System*, for information on how benefits are affected by disability ratings.) There are two types of PEB, informal and formal, both of which are discussed in more detail below.

What is an informal PEB?

An informal PEB is the first step in the PEB evaluation process. The informal PEB receives the report generated by the MEB and conducts an informal evaluation of a service member's case file and makes its own findings and recommendations. The informal PEB, much like the MEB, considers whether the service member's condition allows the fulfillment of duties in his or her MOS. The informal PEB consists of three voting members, including at least one physician and one nonmedical officer. The physician member evaluates the medical information produced by the MEB, while the nonmedical officer examines what impact the service member's condition will have on the service member's ability to perform his or her duties. The service member's PEBLO will go over the findings of the informal PEB with the service member.

If the service member is found fit to continue military service, the service member can either accept the finding of fitness for duty or he or she may apply by written request to the informal PEB for reconsideration. The written request must include any new medical information that was not previously available or considered. The written request must also indicate whether the service member does or does not desire a formal PEB hearing, should the finding of fitness remain unchanged. However, **if a finding of fitness is confirmed upon reconsideration, then the service member has no right to a subsequent hearing.**

If the service member is found unfit to continue military service, he or she has the right to accept the finding of unfitness or demand reconsideration at a formal PEB. The service member has the right to legal counsel at a formal PEB.

When an informal PEB finds a service member unfit, they **may** determine whether he or she is eligible for other special considerations, such as permanent limited duty. Such special consideration is considered an exception to policy.

What is a formal PEB?

A formal PEB is convened to reexamine a service member's potential fitness for duty. A formal PEB consists of three voting members, including at least one physician and one nonmedical officer. Instead of merely reviewing the prior findings, a formal PEB is a de novo hearing, meaning all factual questions are addressed as if for the first time. Although a formal PEB is not adversarial in nature, it is generally audiotaped to create a record, and it allows the service member to make a personal appearance, present evidence, present testimony (sworn or unsworn) and supplement his or her record with additional documents. Additionally, the service member is generally represented by an attorney at the hearing and the service member should have an opportunity to confer with his or her attorney before the formal PEB is held.

Service members usually request a formal PEB in order to get a higher disability rating than that assigned by the informal PEB, which will increase their entitlement to Disability Retirement Pay (see the following section on Disability Compensation for



more information). Some service members request a formal PEB to argue that they should be found fit for duty based on an uninterrupted and undiminished duty performance record.

A formal PEB can find a service member fit for duty, unfit with or without severance pay, or unfit with retirement pay. And because a formal PEB is a *de novo* review of the service member's file, the formal PEB can even result in a lower disability rating than that assigned by the informal PEB.

Does a service member have a right to a formal PEB?

According to federal law, “[n]o member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he or she demands it.” 10 U.S.C. § 1214. Therefore, any service member who has been found unfit by an informal PEB has a right to a formal PEB upon request.

Service members who are found fit for duty at an informal PEB have no right to a formal PEB, but they may request one.

Who can offer assistance to a service member facing a PEB hearing?

A PEBLO is available to provide counseling and certain support services to each service member facing a PEB hearing, whether formal or informal. **A PEBLO is a field representative of the PEB and does not function as an advocate or take the place of an attorney at a formal PEB.**

If a service member receives a formal PEB hearing, he or she has the right to an attorney. The service member may be represented by appointed military counsel free of charge, generally a JAG officer, or the service member may decide to be represented by civilian counsel of his or her own choosing and at the service member's expense.

For guidance on finding and selecting an attorney, see the section titled “Engaging a Lawyer” in *Chapter 10, Legal Assistance.* Also, certain organizations accredited by the VA, such as the DAV, can help service members find free or low cost legal assistance, including nonattorney counselors.

Can a service member appear personally before a PEB?

A service member has no right to appear personally before an informal PEB.

A service member does have the right to appear personally before a formal PEB. Upon appearing before the formal PEB, the service member may present testimony under oath. If the service member presents testimony under oath, the members of the formal PEB may question the service member. However, the service member is not required to present testimony under oath and, even if under oath, may refuse to answer certain questions (i.e., remain silent) regarding the origins of his or her injury, among other things, which will not be held against the service member. If the service member chooses to make unsworn statements (i.e., not under oath), the service member will not be subject to questioning. Service members appearing before a formal PEB should bear in mind that sworn testimony is generally given greater weight than unsworn testimony. Service members should consult their attorneys or nonattorney counselors regarding the appropriate course of action.

The Disabled American Veterans (DAV) may be reached through its website, www.dav.org, or by calling one of its regional offices located nearest the service member's PEB site.

*DAV DC Regional Office
(202) 530-9260*

*DAV San Antonio Office
(210) 699-2359*

*DAV Seattle Office
(206) 220-6225*



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Can a service member call witnesses to appear before a PEB?

A service member has no right to call witnesses to appear before an informal PEB.

A service member may call witnesses to appear before a formal PEB. Witnesses who present sworn testimony may be subject to questioning by members of the PEB.

Does a service member have the right to review documents used by the PEB?

Yes. The service member may review all documents used by the *formal* PEB in making its determinations. The service member's entire file is available for review before, during, and after the formal PEB hearing. Because the file is of great importance in the decision-making process of the PEB, it is very important for the service member and his or her counsel, if one has been appointed or hired, to review the file for accuracy and completeness.

What outcomes can a service member expect from a PEB?

A PEB may declare the service member "fit for duty," in which case he or she returns to duty.

A PEB may declare a service member "unfit for duty," which may lead to separation from the service. Service members who are to be separated from service are assigned a percentage of disability, also known as a disability rating, which affects their entitlement to benefits. Service members with a disability rating of less than 30% and less than 20 years of active service receive severance pay but not disability compensation.

A PEB may recommend that the service member be retained on the Temporary Disability Retirement List (TDRL) if the PEB determines that the service member shows the possibility of sufficient recovery over time to return to duty.

A service member is "fit for duty" if he or she can reasonably perform the duties of his or her MOS. A service member who cannot reasonably perform the duties of his or her MOS may be found "unfit for duty." In making this decision, the PEB determines the requirements of the service member's position, as delineated in the regulations of the service member's branch of the military, and assesses whether the service member can perform these functions given his or her present physical and mental state.

If a service member is assigned a percentage of disability, the service member will not receive a rating for any disability that preexisted entry into military service unless the PEB finds that the condition has been permanently aggravated by military service. Service aggravation requires a permanent aggravation of the service member's condition beyond what would have occurred as a result of "natural progression." See the discussion under "*Will a medical condition that existed prior to military service affect a service member's disability rating?*" below.

Under certain circumstances, a PEB may apply the "presumption of fitness" rule. A service member is presumed fit whenever his or her service is terminated for reasons other than the soldier's diagnosed physical impairment. For example, a presumption of fitness applies when a service member begins the disability evaluation process after having applied for length of service retirement, or within 12 months of an enlisted soldier's retention control point (RCP) when he or she will become eligible to retire. A ruling that the presumption of fitness applies does not necessarily mean that the service member is fit for duty, but rather only that his or her impairment is not the cause for



separation, and therefore he or she should not receive disability retirement pay. A service member can overcome the presumption and remain eligible for DoD disability retirement pay by showing medical evidence that his or her service was interrupted by physical impairment. A service member who fails to overcome the presumption of fitness may still be eligible for VA disability benefits.

How does a PEB decide the percentage of disability?

Upon finding a service member unfit for duty and eligible for disability benefits, the PEB looks to the percentage of disability guidelines set forth in the Veterans Administration Schedule for Rating Disabilities (VASRD), as supplemented by the regulations of the service member's branch of the military, to assign a percentage of disability to the service member. These guidelines list various conditions and degrees of severity used to rate service members from 0% to 100% disabled.

If a service member is declared unfit and assigned a disability rating by a PEB, what outcomes may he or she expect?

Depending on a service member's number of years in the military, a determination of unfitness along with a percentage of disability rating can lead to the following outcomes:

- > **Separation with severance pay**
 - » Disability permanent, **and**
 - » Disability rating of less than 30% **and**
 - » Less than 20 years on active duty.
- > **Permanent retirement**
 - » Disability permanent, **and**
 - » Disability rating of 30% or higher, **or**
 - » 20 or more years of active service.
- > **Retention on the Temporary Disability Retirement List**
 - » Disability unstable, with potential for recovery, **and**
 - » Disability rating of at least 30%.

What is the Temporary Disability Retirement List?

The Temporary Disability Retirement List (TDRL) is for service members with an initial disability rating of 30% or more who show the possibility of recovering sufficiently, over an extended period of time, to be returned to duty. While on the TDRL, a service member's medical condition is subject to periodic reevaluation as often as is medically necessary for his or her condition, but no less than once every 18 months. The service member may remain on the TDRL for a maximum of five years. At the 5-year point, if not sooner because of a reevaluation, the service member will be removed from the TDRL and either found fit, permanently separated from the service with severance pay or permanently retired. While on the TDRL, a service member will be paid the same as if he or she were permanently retired, provided that no service member will receive less than 50% of his or her basic pay. For more information on the TDRL, see section titled "Severance Pay and Disability Retirement Pay" in *Chapter 4, DoD and VA Disability Compensation*.



Can a service member request assignment to a new MOS?

Perhaps, but a PEB cannot reclassify an injured service member to a new MOS. Service members who want assignment to a new MOS generally appear before a MOS Medical Retention Board (MMRB).

Service members should note that the rules and procedures for assignment to a new MOS differ between branches of the military. The following is a general discussion only. Service members should seek additional information from a knowledgeable authority in the personnel department of their branch of service.

The MMRB is an administrative board composed of three members, including one E-9 and one medical officer. The service member is entitled to a hearing where he or she has certain rights to present evidence and to call witnesses, but there is no right to legal counsel. The service member may also waive his or her right to personal appearance. If the MMRB does not reclassify the service member and if the service member has not yet appeared before an MEB, the MMRB may refer the service member to an MEB.

In reviewing a request for MOS reassignment, the MMRB will consider whether a recommendation of reclassification is appropriate. The MMRB will consider various factors, including the service member's ability to perform in another MOS, comments from the service member's commanding officer, worldwide deployability, past job performance, prior military training, civilian training and experience and physical fitness, among other factors.

Are there any other options for a service member following a declaration that he or she is unfit for full duty?

Certain service members who are declared unfit may still be eligible to remain on active duty through the Continuation of Active Duty (COAD) program.

To be considered for COAD, the service member must be physically capable of performing useful service in an MOS for which he or she is currently qualified or potentially trainable. In addition, the service member must be capable of performing his or her duty without (1) risking adverse health effects to the service member or others and (2) the need for medical treatment that would take significant time away from the service member's duties. Finally, the service member must meet one of three eligibility criteria to be eligible for COAD: (1) at least 15 but less than 20 years of military service, (2) qualified in a critical skill or shortage MOS or (3) has a disability that is the result of combat.

How does a service member make a COAD request?

The PEBLO assigned to a service member is charged with assisting and counseling the service member with the COAD application process. The service member may submit letters from supervisors or commanders supporting the COAD request. The specifics of the application process vary according to the service member's branch of service. However, the application generally must include either the PEB findings or the service member's response to the findings and be submitted before the service member's deadline for responding to the finding of unfitness has passed. If the request is approved, the service member will stay on active duty.



Historically, only a small percentage of COAD requests have received approval. If the request is denied, the service member can expect to receive retirement or separation orders. If the service member has not yet received a formal PEB hearing, he or she may request one at this point. Thus, a service member who wishes to remain on active duty, but is declared unfit by an informal PEB, may want to postpone making a request for a formal hearing until his or her COAD request is processed and determined. If it is denied, the service member then can assert his or her right to a formal PEB.

What options for further review (appeal) does a service member have if he or she is dissatisfied with the outcome of a formal PEB hearing?

If a service member does not agree with the conclusions of a formal PEB and registers his or her disagreement within ten days of the PEB decision, the PEB will reconsider the service member's case. The PEB's reevaluation of the case occurs outside of the presence of the service member and his or her attorney. Once the PEB has reconsidered its findings, it will send its recommendations along with the service member's case to a higher, appellate level review agency that is responsible for overseeing the DES process within the service member's branch of the service. The U.S. Army Physical Disability Agency (USAPDA) and the Secretary of Air Force Personnel Council review the cases of members of the Army and Air Force, respectively. The cases of Marines and Navy service men and women are reviewed by the Secretary of the Navy Council of Review Boards. These agencies consider only documentary evidence on appellate review and do not permit appearances by the service member or in-person testimony. After this review, should the service member still be dissatisfied with the resolution of the case, he or she may appeal to the appropriate Board of Correction of Records for his or her branch of service. If the service member seeks further review, he or she may ultimately appeal to the Court of Federal Claims.

Where are the PEBs located for the various service branches?

- > **U.S. Air Force**
 - » Lackland Air Force Base
San Antonio, TX
www.lackland.af.mil
- > **U.S. Army**
 - » Fort Lewis
Tacoma, WA
www.lewis.army.mil/index.asp
 - » Fort Sam Houston
San Antonio, TX
www.samhouston.army.mil/sites/local
 - » Walter Reed Army Medical Center
Washington, DC
www.wramc.amedd.army.mil
- > **U.S. Navy and U.S. Marine Corps**
 - » National Naval Medical Center
Bethesda, MD
www.bethesda.med.navy.mil



How many times may a service member go through the DES process?

While on active duty, there is no limit to the number of times a service member may go through the DES process. For example, a service member who was declared fit by an informal PEB and returned to duty only to find his or her condition has worsened, may begin the process anew.

Does a service member separated from active duty because of an injury or illness always receive compensation for his or her injuries?

No, not always. For example, injuries or illnesses received or contracted while absent without leave or incurred while engaging in an act of misconduct or willful negligence may preclude compensation.

Why can a determination of unfitness by an MEB be changed by a PEB to fit for duty?

The MEB and PEB are separate boards with separate goals and purposes. The MEB determines whether the service member has an injury and whether that injury causes the service member to fall below retention standards. *A failure to meet retention standards does not necessarily mean that a service member is unfit for duty.* Only the PEB can assess the service member's fitness for duty.

Is it important for a service member to receive a physical exam prior to discharge from the military?

It is **extremely** important that a service member receive a discharge physical before leaving active service, and that the service member receive the appropriate documentation provided upon completion of the physical. This is necessary to establish the medical benefits, if any, the service member is entitled to from the VA. The military's DES and any resulting disability rating are not binding on the VA, which considers the cumulative effect of the service member's military service on his or her physical condition and not just the condition that prompted the separation from the military. Without a discharge physical, the VA cannot determine what injuries or disabilities resulted from military service, as opposed to those which resulted from activities prior to or outside of military service. This may lead to a service member's inability to receive the maximum benefits he or she is entitled to from the VA.

Links to Additional Information

- > **Department of Defense**
 - » DoD Directive 1332.18, November 1996, updated December 2003, *Separation or Retirement for Physical Disability*
www.dtic.mil/whs/directives/corres/html/133218.htm
 - » DoD Instruction 1332.38, November 1996, *Physical Disability Evaluation*
www.dtic.mil/whs/directives/corres/html/133238.htm
 - » DoD Instruction 1332.39, November 1996, *Application of the VASRD*
www.dtic.mil/whs/directives/corres/pdf/i133239_111496/i133239p.pdf



- > **U.S. Air Force**
 - » Air Force Instruction (AFI) 36-3212,
Physical Evaluation for Retention, Retirement, and Separation
www.epublishing.af.mil/pubfiles/af/36/afi36-3212/afi36-3212.pdf
 - » Air Force Instruction (AFI) 48-123,
Medical Examinations and Standards
www.e-publishing.af.mil/pubfiles/af/48/afi48/123v1/afi48-123v1.pdf
- > **U.S. Army**
 - » Army Regulation (AR) 635-40,
Physical Evaluation for Retention, Retirement, or Separation
www.usapa.army.mil/pdffiles/r635_40.pdf
 - » Army Regulation (AR) 40-501,
Standards of Medical Fitness
www.usapa.army.mil/pdffiles/r40_501.pdf
 - » Dept. of the Army Pamphlet (DA Pam.) 360-506,
Disability Separation
www.army.mil/usapa/epubs/pdf/p360_506.pdf
- > **U.S. Coast Guard**
 - » Commandant Instruction (COMDTINST) M1850.2D,
Coast Guard Physical Disability Evaluation System
www.uscg.mil/ccs/cit/cim/directives/CIM/CIM_1850_2D.pdf
- > **U.S. Navy/Marine Corps**
 - » Secretary of the Navy Instruction (SECNAVINST) 1850.4E, April 2002,
Dept. of the Navy Disability Evaluation Manual
<http://doni.daps.dla.mil/Directives/01000%20Personnel%20Support/01800%20Military%20Retirement%20Services%20and%20Support/1850.4E.pdf> (must use “http”)

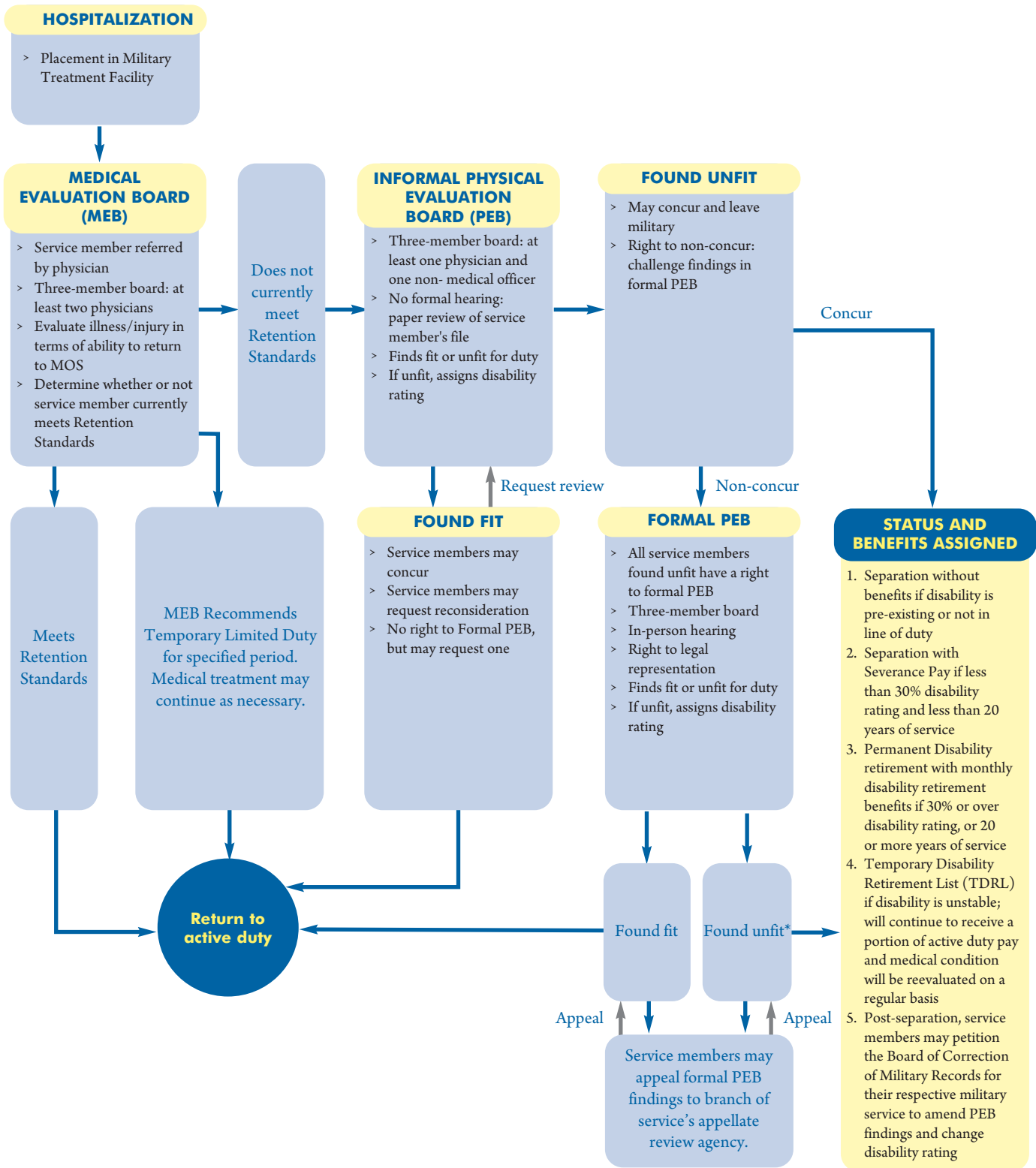
Additional Sources

- > Major Thomas F. Dougall, *Maximizing Survivor Benefits for Family Members*, 1990 Army Lawyer 12 (1990).
- > James R. Julian, *What You Absolutely, Positively Need to Know About the Physical Evaluation Board*, 1996 Army Lawyer 31 (1996).
- > Thaddeus A. Hoffmeister, *A Practitioner’s Note on Physical Evaluation Boards*, 2001 Army Lawyer 49 (2001).
- > Robert E. Webb & David C. White, *Physical Disability Separation*, at www.louisvillelaw.com/federal/physical_disability_sep_1.htm.



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The Disability Evaluation Process



*Service members found unfit may request special consideration to remain on active duty through Permanent Limited Duty, reclassification to a new MOS by their MOS Medical Retention Board (MMRB) or application for COAD.

CHAPTER 3: DISABILITY RATING SYSTEM

Introduction

As was discussed in *Chapter 2, Disability Evaluation System*, the DES process will result in a disability rating based on the service member's injuries. If a service member is unfit and separated from the military, this "military disability rating" will determine whether or not the service member is eligible for DoD disability retirement pay. Service members must have an aggregate disability rating of 30% or higher to qualify for disability retirement pay from the military. Service members with military disability ratings less than the 30% necessary for the military's disability retirement pay will receive severance pay upon discharge from the military and may still be eligible for disability benefits from the Department of Veterans Affairs (VA). See *Chapter 4, DoD and VA Disability Compensation*, for more information on VA and DoD disability benefits.

In addition to the military disability rating, a service member who is separated from the military will also receive a disability rating from the VA. The VA disability rating is used to determine eligibility for VA benefits. In evaluating the service member's medical condition and generating the VA disability rating, the VA considers the totality of the changes in the service member's medical condition that occurred during military service. Because the VA considers all of a service member's medical conditions, the VA disability rating may be higher than the military disability rating.

Both the military and the VA use the Veterans Administration Schedule for Rating Disabilities (VASRD) to evaluate service members' disabilities. The following is a basic discussion of the VASRD and how it is applied by both the military and the VA to assign disability ratings.

The Veterans Administration Schedule for Rating Disabilities

What is the Veterans Administration Schedule for Rating Disabilities?

The VA established the VASRD, often referred to as the "disability rating schedule," to aid in the evaluation of disabilities resulting from disease or injury incurred during or incidental to military service. It contains a list of codes that correlates injuries or illnesses to percentage ratings that estimate the reduction in earning capacity resulting from the disability.

What does the VASRD require of a service member?

A service member must undergo a comprehensive medical examination in connection with his or her separation from the military. The application of the VASRD when assigning a VA disability rating requires a high level of completeness and accuracy in these medical

The VASRD is published in the *Federal Register* at 38 C.F.R. 4 (2003) and is available online at

www.access.gpo.gov/nara/cfr/waisidx_03/38cfr4_03.html and the VA website at www.vba.va.gov/bln/21/Reference/index.htm



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examinations. Subsequent changes in the law, medical knowledge or the service member's medical condition may require that the service member undergo additional medical examinations and seek revised ratings.

Service members should be aware that the assignment of a disability rating will not automatically result in benefits. Rather, the service member must submit an application for the benefits they are seeking. For more information on VA disability benefits, see the section titled "VA Disability Benefits" in *Chapter 4, DoD and VA Disability Compensation*.

Differences Between Military and VA Disability Ratings

Do the military and the VA disability rating processes differ?

The VASRD is the standard used by both the VA and the military to quantify a service member's disability. PEBs use the VASRD to assign a disability rating when the PEB finds a service member unfit. As described in Chapter 2, the military's disability rating is used to determine eligibility for certain military benefits such as separation pay and medical retirement. The VA uses the VASRD to assign a disability rating when determining a veteran's eligibility for VA benefits.

Not all general policy provisions in the VASRD are applicable to the military departments, and, consequently, a service member may receive a disability rating from the VA that differs from the rating assigned by the military. More specifically, the military will only consider the service member's physical conditions that make him or her unfit for continued service. In contrast, the VA will consider all service-connected disabilities when assigning a disability rating. In addition, the VA process permits reevaluation of service-connected disabilities if a condition worsens over time, if medical science permits an improved evaluation or if there is a change in the law governing the assignment of disability ratings. As a consequence, a VA disability rating generally is expected to be equal if not higher than the military disability rating, and it may increase after the service member's separation from the military.

PEB Disability Rating Assignment

How is a disability rating assigned?

Once it has been determined that a service member is unfit, the PEB must assign a disability rating to the service member's conditions. Using the VASRD and the codes the VASRD assigns to specific medical conditions, the PEB evaluates the conditions and assigns a disability rating percentage based on the severity of the disability. Disability ratings can range from 0% to 100%, rising in increments of 10%. Total disability, or a 100% disability rating, is deemed to apply when the service member's condition is severe enough to make gainful civilian employment impossible for an average person suffering from the same condition.

What if there is no VASRD code corresponding to the service member's diagnosed condition?

When a service member has a condition that is not listed in the VASRD, the PEB may assign a disability rating by analogy to a closely related disease or injury.



Will a disability rating increase if a service member has multiple, related conditions?

When a service member has multiple, related conditions, the conditions generally are merged into one single VASRD code that covers all the conditions. However, in certain cases, multiple ratings for the same body part may be permitted if the symptoms from the separate conditions do not overlap.

How will an overall disability rating be determined if a service member has multiple, compensable disabilities?

When a service member has multiple, compensable disabilities, generally his or her overall disability rating is based not on adding the multiple disability percentages, but rather on the combination of the percentages. This means that if a service member has one disability rated at 40% and another rated at 30%, the overall disability rating generally is not added to give an overall disability rating of 70%. Instead, the first disability is considered to reduce the service member's total fitness from 100% (i.e., a whole person without any disability) to 60% ($100\% - 40\% = 60\%$). The second condition is considered to reduce that remaining 60% total fitness by 30%, or a reduction of 18% ($60\% \times 30\% = 18\%$), yielding a combined total fitness of 42% and a combined overall disability rating of 60% (the mathematical combined disability rating is 58%, or $100\% - 42\%$, however, final disability ratings are always rounded to the nearest 10%, i.e., a 58% disability rating is rounded up to a 60% disability rating).

This combination process, which applies whenever a service member has more than one compensable disability, is carried out in order of the most serious disability to the least serious, ensuring that the service member receives the highest possible disability rating for the combined conditions.

Will a medical condition that existed prior to military service affect a service member's disability rating?

A medical condition that existed prior to military service will not be given a disability rating unless the medical condition is permanently aggravated through service. Permanent service aggravation is considered to exist when military service permanently worsens a preexisting medical condition beyond that condition's natural progression. Where permanent service aggravation to a preexisting condition occurs, a disability rating will be assigned, but the rating generally will only reflect the increase of the degree of disability over that which existed at the time the service member joined the military.



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CHAPTER 4: DOD AND VA DISABILITY COMPENSATION

Introduction

Both the Department of Defense (DoD) and the Department of Veterans Affairs (VA) have disability compensation programs that provide payments to service members who were injured, or whose medical conditions were aggravated, as a result of their military service. The programs include the DoD's severance pay and disability retirement pay and the VA's disability compensation and disability pension. Whether or not a service member receives payments under these compensation programs and how much he or she receives generally depend on his or her disability rating (either the rating conferred by the PEB or the VA, depending on the compensation program), years of service and, in some instances, his or her base pay. Disabled service members generally will receive disability compensation from the VA, but some may be eligible to receive payments from the DoD as well.

This chapter outlines only the DoD and VA disability compensation programs that may be available to a disabled service member. Other financial assistance programs that may be available to service members are discussed in *Chapter 1, Immediate Concerns* and *Chapter 7, Miscellaneous Federal Benefits*. In all cases, service members are encouraged to contact DoD and VA representatives in order to obtain in-depth and more personalized information regarding each program.

This chapter should be read in conjunction with *Chapter 10, Legal Assistance*, which addresses the process for obtaining assistance for claiming VA benefits and the appeals process when a veteran desires to request the reconsideration of a VA benefits determination. In addition, chapter 10 provides information on organizations that can help educate service members and veterans on benefits and, under certain circumstances, may be permitted to represent an individual in front of the VA.

Reserve component service members must apply for the MRP and ADME programs by submitting an MRP or ADME packet to their respective branch of service.

Severance Pay and Disability Retirement Pay

When is a service member eligible for DoD disability compensation?

As a preliminary matter, a service member will be eligible for DoD disability compensation – severance pay or disability retirement pay – only following a determination that the service member is unfit for duty and assigned a disability rating by a PEB. On occasion, a service member may have a scheduled separation date (e.g., end-of-service contract, administrative separation, voluntary retirement) that occurs prior to a fitness-



for-duty determination by a PEB. (Service members generally will not be separated while awaiting an MEB/PEB.) In such a situation, the service member's separation will be subject to a "presumption of fitness," which means that the separation is presumed to occur not as a result of a medical condition, even though the service member may actually be separated after an "unfit for duty" determination by a PEB. This presumption of fitness is not the same as a finding of fitness, but it does mean that the service member would not be entitled to DoD disability compensation unless the service member can show that that military service was in fact interrupted because of the medical condition.

What types of DoD disability compensation are generally available?

Disabled service members separated from the military as a result of their disability are entitled to either severance pay or disability retirement pay, depending on factors such as the disability rating assigned by the PEB and the number of years of qualifying military service the individual has as of the date of separation.

What is severance pay and when will a service member be entitled to receive it?

Severance pay is a lump-sum, one-time payment that is calculated on the basis of the service member's base pay and number of years of service. A service member who is found unfit to continue in the military, but who has a disability rating of less than 30% and less than 20 years of military service, is entitled to severance pay (but no disability retirement pay).

How is severance pay calculated?

Severance pay is calculated as follows:

Monthly base pay x 2 x years of service (up to a maximum of 12 years).

In applying this formula, six months or more of service is rounded up to the next whole year. When determining severance pay, the service member's disability rating is not relevant – there is no difference between a 0%, a 10%, or a 20% disability rating.

For example, suppose a service member has served for 7.5 years before being separated from the military. If the service member is entitled to severance pay, and his or her monthly base pay was \$3,000, the payment would be equal to \$48,000 (\$3,000 x 2 x 8 years (rounded up because of six months)).

What is disability retirement pay, and when is a service member entitled to receive it?

Disability retirement pay is the monthly compensation paid under certain circumstances by the DoD to a service member following separation. A service member will be entitled to disability retirement pay when he or she is separated from military service and placed on either the Permanent Disability Retirement List (PDRL) or Temporary Disability Retirement List (TDRL). Whether a service member is placed on the PDRL or TDRL will determine the amount of disability retirement pay he or she receives. Service members placed on the PDRL will receive disability retirement pay for life. However, there are no spouse or survivor benefits upon the service member's death **unless** the service member elects to participate in the Survivor Benefit Plan.



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When will a service member be placed on the PDRL? When will a service member be placed on the TDRL?

A service member will be placed on the PDRL if the service member is found unfit by a PEB and either receives a disability rating of 30% or more or the service member has at least 20 years of military service on the date of separation. If the service member has less than 20 years of military service, the disability must have occurred in the line of duty or the service member must have at least eight years of service to be placed on the PDRL.

If the service member is found unfit, but the medical condition is unstable such that any disability rating assignment may be premature (because the disability may improve or worsen over time), the service member will be assigned to the TDRL for up to five years. A service member who is placed on the TDRL must undergo periodic medical reexaminations (at least once every 18 months) to determine whether the disability has stabilized. If the disability stabilizes or the disability does not stabilize within five years, the service member will go before a PEB and be found either fit and thus provided the opportunity to return to duty or unfit and separated from the military. If the disability is rated at least 30% at that time and the service member otherwise qualifies, he or she will be placed on the PDRL. **If the service member is found fit but does not consent to return to duty, the service member will be separated without pay.**

How is disability retirement pay calculated for a service member placed on the PDRL?

A service member placed on the PDRL will receive disability retirement pay in the amount of the service member's retired base pay multiplied by the greater of either:

Disability Rating Percentage

or

2.5% x number of years of service

For example, suppose a service member's retired base pay is \$20,000. In one case, the service member has a disability rating of 40% and has served five years. His disability retirement pay will be \$8,000 ($\$20,000 \times 0.40$), where the disability rating (40%) is used because it is greater than 12.5% ($2.5\% \times 5$ years). In another case, the service member has a disability rating of 40%, but he has served 18 years. Now, 45% ($2.5\% \times 18$ years) is greater than the disability rating of 40%, and it will be used in calculating disability retirement pay. His disability retirement pay will be \$9,000 ($\$20,000 \times 0.45$).

Generally, the service member's retired base pay is his or her highest basic pay received at the time of separation. For service members entering the military prior to September 8, 1980, retired base pay is the average of the highest 36 months of the service member's basic pay.

The National Defense Authorization Act (NDAA) provided, however, that members with a disability rating of 50% or more and 20 or more years of service will receive disability compensation over and above their retirement payments. The increased disability compensation is phased-in over a 10-year period. The phase-in is known as Concurrent Retirement and Disability Pay (CRDP) and is discussed in greater detail in the section titled "Concurrent Receipt Payments" below.



How is disability retirement pay calculated for a service member placed on the TDRL?

Disability retirement pay for service members on the TDRL is calculated in the same manner as for service members on the PDRL. However, a service member on the TDRL will receive no less than 50% of his or her retired base pay.

Do the years spent on the TDRL count toward establishing nondisability retirement eligibility?

No. Years of service on the TDRL are not credited toward nondisability retirement. However, any years spent on the TDRL **are** credited for computing basic pay levels.

Is a service member's eligibility for other benefits affected by being placed on the TDRL?

Yes. During temporary disability retirement, a service member is treated the same as a regular military retiree. As such, the service member is no longer eligible for certain types of benefits available to active duty service members such as housing allowances and similar benefits.

Are there circumstances under which a disabled service member can be separated from service without severance pay?

Yes. If a disability is determined to be the result of intentional misconduct or willful neglect or incurred during a period of unauthorized absence, the service member is not eligible to receive a severance payment.

VA Disability Benefits

The VA pays disability compensation to veterans who become disabled while serving in the armed forces or whose preservice ailments are made worse by such service. As is often the case, the same disability that entitles the service member to monthly disability retirement payments or a lump-sum severance payment from the DoD also entitles service members to monthly VA disability compensation.

VA's disability compensation is paid monthly and is calculated on the basis of the service member's VA disability rating – rank and years of service do not factor into the VA disability compensation calculation. VA disability payments do vary, however, based on the degree of a service member's disability and the number of dependents he or she has.

The VA's disability rating is entirely separate from the DoD's. While the PEB and MEB make a determination on the service member's medical condition and ability to continue to serve based on a service member's particular injury, the VA disability rating takes into account all the service member's disabilities and medical conditions to arrive at a combined disability rating.

Service members with at least a 10% combined disability rating are eligible to receive VA disability compensation payments.

The VA also provides a needs-based disability pension if the service member is a wartime veteran with limited income, who is no longer able to work and is aged 65 or older.

To apply for VA benefit programs online, go to www.vabenefits.vba.va.gov/vonapp/main.asp. Printed versions of all forms may be found at www.vba.va.gov/vaforms/. In addition, VA Regional Office representatives are available to assist over the phone at (800) 827-1000; additional information is available at <http://www.vba.va.gov/bln/21/Benefits/>.



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Veterans may access their military records online by going to www.archives.gov/veterans/evetrecs/index.htm.

For more detailed information about this and other VA benefit programs go to www.vba.va.gov/benefit_facts/index.htm. To speak with a VA representative about VA benefit programs call (800) 827-1000.



How does a disabled service member qualify for VA disability compensation benefits?

In order to be eligible for VA benefits generally, and VA disability compensation specifically, a claimant must be a veteran, defined by the VA as “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.” The VA uses a claimant’s military service records to determine a claimant’s “veteran” status. Generally, the VA requires documentation of the service member’s length, time and character of service, such as a Form DD-214, *Certificate of Release*, or *Discharge from Active Duty*.

For a Reserve Component service member the requirement of service “in the active military, naval or air service” is met if he or she was disabled from an injury that occurred in the line of duty during a period of active duty or training.

Having met the service and discharge requirements, to receive VA disability compensation the veteran must demonstrate three elements: (1) a medical diagnosis of the current disability; (2) medical evidence, or in some cases lay evidence, of an in-service injury; and (3) a link between the in-service injury (or aggravation of a preexisting condition) and the current disability.

What is the difference between VA disability compensation and a VA disability pension?

Disability compensation provides a monthly benefit to the service member if he or she has a combined disability rating of at least 10% as a result of his or her military service. The amount of the benefit varies based on the severity of the disability.

A disability pension, on the other hand, is a needs-based program that is only available to wartime veterans meeting certain income requirements who are 65 years old or older or considered to be permanently disabled from a disability that is not service-related. The amount paid under the VA disability pension program varies based on level of need.

A veteran cannot receive both disability compensation and disability pension simultaneously.

Are there differences between DoD disability payments and VA disability payments?

Yes. Disability payments from the DoD and the VA differ for a number of reasons. However, three important reasons are worth highlighting. First, although both programs use the VASRD to determine disability percentages for specific conditions, the programs calculate a service member’s assigned disability rating differently: the DoD considers only the conditions that occur from the illness or injury that brings the service member before the PEB, while the VA considers the totality of all of a service member’s medical conditions incurred or aggravated by military service. Second, the DoD disability payments are contingent on a service member’s rank and length of service. The VA disability payments are dependent only upon the severity of the service member’s disabilities. Finally, the DoD assigns a permanent disability rating at the time of separation and assignment to the PDRL. This permanent disability rating from the DoD does not change and determines the DoD disability payments that the service member will receive. The VA disability rating, however, is not a permanent rating and it can be adjusted as the service member’s condition, medical science or the law changes.

Are disabled service members who served less than two years still eligible for VA disability benefits?

Yes. Individuals enlisting on or after September 7, 1980 become eligible for most VA benefits only after serving a minimum of two years. However, if the disability was service connected, the service member would become eligible to receive VA disability compensation no matter how long he or she served.

In addition to the basic VA disability compensation, are there any additional payments a service member may be eligible to receive?

Yes. Depending on the severity of a service member's injury and number of dependents, he or she may be entitled to Special Monthly Compensation, additional compensation for dependents and payments to overcome a lack of employability.

Special Monthly Compensation (SMC): Service members who sustain particularly severe injuries, such as amputations, blindness, and other severe traumas, are eligible to receive additional monthly payments above and beyond the basic VA disability compensation. SMC rates take into account attendant care or other special needs resulting from severe injuries. Additional payment amounts range from \$2,678 to \$7,198 per month depending on the disability and the disability rating assigned by the VA.

Dependents: Veterans receiving VA disability compensation and assigned a disability rating of at least 30% are eligible for adjustments to their VA disability payments according to the number and, in the case of children, the ages of their dependents. Depending upon the disability rating of the service member, monthly VA disability payment adjustments for a spouse range from \$40 to \$135 and for a dependent child range from \$27 to \$91. Additional adjustments are made for each additional child and certain further adjustments are made for children who enrolled in school after age 18.

Individual Unemployability (IU): The VA provides additional benefits to veteran service members who are unemployable because of their service-connected disabilities. Under the program, the VA can grant total disability compensation (as if the service member had a 100% disability rating) to service members with disabilities rated 60% or higher and who cannot work. In certain cases, service members with disabilities rated less than 60% may be given Individual Unemployability benefits. Thus, under certain circumstances, a service member who is not employable due to his or her disability can still receive total disability compensation, despite not being rated 100% disabled by the VA.

If the veteran receives both DoD disability retirement and VA disability compensation payments, does he or she receive the full amount of each?

Unless the veteran qualifies for one or two special DoD programs that provides extra payments (described below), the DoD retirement benefit is offset dollar-for-dollar by the amount of the VA compensation benefit. Thus, the veteran will not receive more than he or she would get from either payment, whichever is larger.

For details on VA disability compensation rates, visit www.vba.va.gov/bln/21/Rates/comp01.htm.



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Applications for CRSC must be submitted to:

Air Force
United States Air Force
Personnel Center
Disability Division (CRSC)
550 C St. West, Suite 6
Randolph AFB TX 78150-4708
Phone: (800) 616-3775

Army
U.S. Army Physical Disability
Agency (CRSC)
200 Stovall St.
Alexandria, VA 22332-0470
Phone: (866) 281-3254

Coast Guard
Commanding Officer (RAS)
U.S. Coast Guard Personnel
Service Center
444 SE Quincy St.
Topeka, KS 66683-3591
Phone: (800) 772-8724

Navy and Marine Corps
Department of the Navy
Naval Council of Personnel
Boards
Combat-Related Special
Compensation Branch
720 Kennon St. S.E., Suite 309
Washington Navy Yard, DC
20374-5023
Phone: (877) 366-2772



Concurrent Receipt Payments

What DoD programs provide additional benefits to compensate for the offset of VA disability compensation?

The Combat-Related Special Compensation (CRSC) programs and Concurrent Retirement & Disability Payments (CRDP) programs are DoD programs that provide extra payments to qualifying veterans whose DoD disability retirement benefit payments are offset by VA disability compensation.

Veterans who are eligible for both programs may only receive one benefit at a time, either the CRSC or the CRDP, but they may switch programs on a yearly basis. Please see the discussion below under “How can a veteran switch between the CRSC and CRDP programs?” for details on making a benefits program selection.

Who is eligible for the CRSC?

Veterans with at least 20 years of service and a qualifying injury who are assigned a disability rating of at least 10% by the VA are eligible for CRSC. Qualifying injuries include (1) injuries as a direct result of combat; (2) injuries sustained during hazardous duty (e.g., parachute duty); (3) injuries incurred during simulated combat conditions (e.g., field training); and (4) injuries sustained through an instrumentality of war (e.g., combat vehicles or weapons). To receive CRSC payments, veterans who believe they are eligible for the program must apply to their particular branch of service. CRSC payments generally restore the full amount of the VA disability compensation offset **for the qualifying injury or injuries.**

Who is eligible for the CRDP?

Veterans whose disability rating is 50% or higher and have at least 20 years of service are eligible for the CRDP. The program does not involve distinct payments, as with the CRSC, rather the CRDP provides, over a period of ten years, a gradual reduction of the offset a veteran must take on his or her DoD pay when he or she is also receiving VA disability payments. After the 10-year period has elapsed, the veteran will be entitled to his or her full retirement pay in addition to any VA payments.

How does a veteran apply for the CRDP?

Qualifying veterans are automatically enrolled in the CRDP; no separate application is necessary to enroll in the CRDP.

Why might a veteran choose one program over the other?

Veterans should consider the differences between the CRSC and CRDP programs before choosing one program over the other. To begin with, CRSC payments are not taxable. CRDP payments, on the other hand, are subject to tax. The taxability of the benefits payments alone, however, is not the only consideration; the CRDP payments may be higher than the CRSC payments. Under the rules of the CRSC, the program eliminates the offset only for liabilities that are “qualifying injuries” (as discussed above under “Who is eligible for the CRSC?”). Consequently, the elimination of the offset under the CRSC may be less than that under the CRDP, which will eliminate the offset for all qualified recipients of VA rated disabilities. For example, a veteran who is eligible for both programs might prefer the CRDP if only 10% of his or her 50% VA disability rating qualifies for the CRSC.

How can a veteran switch between the CRSC and CRDP programs?

Veterans who are enrolled in one of the programs and are eligible for both will be sent an Open Season election form in the mail every year. If the veteran wishes to change programs, he or she must fill out the form and send it to the Defense Finance & Accounting Service at the address below. If the veteran does not wish to change programs, he or she can simply ignore the mailing.

Defense Finance & Accounting Service
U.S. Military Retirement Service
P.O. Box 7130
London, KY 40742-7130

More information about choosing between the CRSC and CRDP programs can be found at www.military.com/benefits/military/pay/retired/pay/comparing/crsc/crdp.

VA Disability Pension

The VA Disability Pension is a monthly pension paid to wartime veterans who have limited income and who are either permanently or totally disabled or over age 65.

Who is eligible to receive VA Disability Pension payments?

A retired service member may apply to receive a VA Disability Pension if he or she:

- (1) was discharged from service under other than dishonorable conditions;
- (2) is totally or permanently disabled, or is aged;
- (3) (a) served on active duty for 90 days, with at least one day during a period of wartime; or (b) enlisted after 1980, and generally served at least 24 months or for the full period for which called or ordered to active duty; and
- (4) has a yearly family income below a minimum set by law.

What is the benefit payment under the VA Disability Pension Program?

The VA Disability Pension will pay the difference between the veteran's yearly family income and certain minimum amounts based on the veteran's medical condition and the number of dependents the veteran has.

How does a veteran apply for benefits?

A veteran must submit a VA Form 21-526, *Veteran's Application for Compensation and/or Pension*, available at www.vba.va.gov/pubs/forms/21-526.pdf to the VA along with available proof of eligibility. Details concerning the program, how to apply and the eligibility documentation are available at www.vba.va.gov/benefit_Facts/index.htm under the heading "Veterans with Limited Income."

How does someone request a redetermination of VA benefits?

For a discussion of the process for requesting a redetermination of VA benefits and information on where to obtain assistance with making claims for benefits and redeterminations with the VA, please see *Chapter 10, Legal Assistance*.

Online applications for all VA benefits are available at www.vabenefits.vba.va.gov/vonapp.

For additional information, contact the VA toll free at (800) 827-1000.

For specific information about VA Disability Pension rates go to www.vba.va.gov/bln/21/Rate/pen01.htm.



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CHAPTER 5: HEALTH CARE: MEDICAL, PSYCHOLOGICAL AND DENTAL CARE COVERAGE

TRICARE has a number of plans available to service members and their dependents:

TRICARE Prime – Free of charge to all active duty service members (who are required to enroll) and their dependents, and has the lowest out-of-pocket expenses (i.e., co-payments and deductibles). Enrollment is not automatic; beneficiaries must complete the proper forms to receive coverage. Medical care is provided mostly at military treatment facilities (MTFs), and referrals are required for specialty care.

TRICARE Standard – Default coverage plan, no enrollment is required for coverage of dependents. Beneficiaries may choose among wider range TRICARE-certified/authorized providers. Out-of-pocket expenses (co-payments and deductibles) are higher than TRICARE Prime.



Introduction

Obtaining health care, whether medical, psychological or dental care, is important for any individual or family, but it is especially important for injured service members and their loved ones. Fortunately, the federal government provides a range of health care options for both service members and their families while the service member remains on active duty and during the service member's transition out of the military. Similarly, the VA provides a number of health care options for service members and disabled service members following separation from the military.

In general, an active duty service member's health care, and the health care of his or her dependents, are provided through one of the TRICARE programs until the service member leaves active duty. Similarly, a reservist and his or her family can receive health care coverage through TRICARE Reserve Select (TRS) until discharge. However, an injured reservist must apply for either the Medical Retention Processing (MRP) Program or the Active Duty Medical Extension (ADME) Program in order to continue to receive salary and regular service benefits, including continued TRS coverage for dependents. For more information about the MRP and ADME programs, see *Chapter 1, Immediate Concerns*.

Can service members seek treatment at a private medical care facility or a doctor outside of the military medical care system?

Yes, service members can receive medical treatment or care outside of the military care system. However, service members should follow certain procedures to minimize the potential for out-of-pocket costs for such treatment or care.

Service members covered by TRICARE have primary medical care providers assigned to them. If a service member's primary medical care provider provides a referral to a private, civilian medical care facility or doctor, TRICARE will generally cover the cost of private care. Alternatively, service members may seek treatment from private, civilian medical care providers without a referral, but service members should consider the potential for out-of-pocket costs before doing so.

Private civilian medical care providers fall into two categories: those that are "TRICARE-participating providers" and those that are "non-TRICARE-participating providers." In order to participate in TRICARE, providers agree not to bill more than a predetermined allowable charge for given treatments. Non-TRICARE-participating providers are not limited in the amount that they can charge.

TRICARE members who obtain medical care from a TRICARE-participating provider but who do not have a referral may have to pay a predetermined share of the cost of treatment. TRICARE members who seek care from non-TRICARE-participating providers without a referral may have to pay even more. In the event that a TRICARE member seeks care from such a non-TRICARE participating provider without a referral to that provider, the member will have to pay any difference between the actual cost of treatment and TRICARE's maximum allowable charge for the same care. Because these non-TRICARE-participating providers do not participate in TRICARE, they have not agreed to any maximum allowable charge, and these providers may and often do charge more than TRICARE participants.

After separation, a service member can seek temporary health care through the Transitional Assistance Management Program (TAMP) and the Continued Health Care Benefit Program (CHCBP), both from the VA. The VA also provides many different kinds of health care to veterans and discharged service members free of charge. Included among these services is mental health care aimed at helping service members transition back into civilian life.

The next part of this chapter describes various health care benefits available to retired service members and their families and how to apply for them. The first part addresses the VA programs that provide medical, dental and mental health care services for former service members, and the second part focuses on benefits for families of those former service members. Finally, the last part of this chapter provides some basic information regarding the federal government's Medicare and Medicaid programs as well as other federal benefits. Taken together, these programs can go a long way to ensuring the health and well-being of an injured service member and his or her loved ones.

Programs for Service Members

Health Care Coverage

Are discharged service members eligible to receive health care coverage?

The VA provides medical care for service members who are discharged from the military (including discharged reservists and members of the National Guard who were activated for federal service) and meet certain eligibility requirements.

For example, discharged service members who served in combat are entitled to free VA medical care for certain medical conditions during a 2-year period following separation from the military. The VA generally determines eligibility on the basis of any disabilities, whether such disabilities were incurred in the line of duty and the financial resources of the individual.

Generally, all discharged service members who were disabled by an injury or disease that was incurred or aggravated in the line of duty during active military service are eligible for VA medical care, including care for illnesses or injuries unrelated to the military service. Discharged service members whose disabilities originated outside of active duty may also apply for VA medical benefits. They may be eligible for VA health care if they have been discharged under other than dishonorable conditions, and either have 24 months of continuous active duty, or started active duty as an enlisted person before

TRICARE Extra – Option allows TRICARE Standard beneficiaries to save on out-of-pocket expenses by using a TRICARE Prime network provider. TRICARE Extra requires no enrollment or additional fees; it automatically applies when a beneficiary makes an appointment to see a Tricare Prime network provider.

TRICARE Reserve Select (TRS) – Reservists can obtain coverage for themselves and their families. TRS has three tiers.

› **Tier 1** – Available for purchase by reservists who have served at least 90 days of active duty (or whose service was interrupted by service-connected injury, illness, or disease). Enrollment requires execution of a TRS Service Agreement while serving on active duty or within 90 days of release from active duty.

› **Tier 2** – Available for purchase by reservists eligible to receive unemployment benefits and who are not otherwise eligible for health care coverage through an employer, or who are primarily self-employed. Coverage is effective for one year at a



time. Enrollees must requalify annually and purchase each year's coverage before December 31 of the preceding year.

- › **Tier 3** – Available for purchase by reservists who do not qualify for Tier 1 or 2. Coverage is effective for one year at a time and has the same application deadline as Tier 2.

The TRICARE Handbook offers a comprehensive overview of plans and benefits: www.tricare.mil/TricareHandbook/default.cfm.

Tools to compare TRICARE plans and select plans are found at www.hnfs.net/benefits/tricareOptions/Reasons+to+Choose.htm and www.tricare.mil/reserve/reserveselect/TRS-CompareTable06.cfm.

Information about eligibility for VA care is available at www.va.gov/healtheligibility/eligibility/DetermineEligibility.asp.

For specific questions about eligibility for VA health care call the toll free central VA benefits line at (800) 827-1000, or find your nearest VA center at www1.va.gov/directory/guide/home.asp?isFlash=1.



September 8, 1980 or as an officer before October 17, 1981. Discharged service members who do not meet these active duty standards may still be eligible for care if they were reservists or National Guard members who were activated and completed the term for which they were called. VA health care may also be extended to discharged service members who do not fit the criteria above.

Discharged service members with no VA rated disabilities or other special eligibility factor will be required to submit financial information to determine their eligibility for free or low-cost medical care. Under many circumstances, a discharged service member who does not have a VA rated disability will be required to pay a small portion of the cost of the medical care (a co-pay).

As mentioned above, discharged service members who served in a combat theater after the Gulf War or in combat during a period of “hostilities” after November 11, 1998, are entitled to free VA medical care for conditions possibly related to military service for a 2-year period following separation. For purposes of eligibility for this VA medical care, the VA defines “hostilities” as a conflict with dangers comparable to a period of war and accepts combat service medals, proof of receipt of hostile fire or imminent danger pay and proof of tax benefits as proof of combat service.

To receive any VA medical benefits, including the free medical care for discharged service members who served in combat, a discharged service member must apply by submitting VA Form 10-10EZ, *Application for Health Benefits*. Details concerning the application process and the procedures are available at www.va.gov/1010EZ.htm.

The discharged service member, or the individual to whom he or she has delegated power of attorney, must sign and date the form. If the discharged service member is unable to sign his or her name, two witnesses whom the discharged service member knows are required to sign the form and print their names.

What supporting documentation should be submitted with the application form?

A discharged service member can reduce his or her application's processing time by also submitting a copy of his or her discharge papers from the military (Form DD 214, *Report of Separation*) and, if applicable, military service records indicating the receipt of a Purple Heart or other evidence of service in a combat zone or in an area of hostilities. Evidence of combat service can include combat service medals, proof of receipt of hostile fire or imminent danger pay and proof of tax benefits for combat service.

How can a discharged service member get help in completing the application for VA medical benefits?

For help completing the application form, a discharged service member may contact the following:

- › The enrollment coordinator at the discharged serviceman's local VA Medical Facility or clinic;
- › The VA's Health Benefits Service Center at (877) 222-VETS (8387);
- › A state or county veterans service officer; or

- > A service officer with a veterans service organization, such as the Wounded Warrior Project, American Legion or Veterans of Foreign Wars. For a listing of veteran service organizations, visit www1.va.gov/vso/.

A listing of local VA Medical Facilities and clinics is available at www.va.gov/directory.

How does the VA prioritize applicants for its medical services?

Even though the VA will provide medical care for free or at reduced cost, resources are limited. As a consequence, the VA prioritizes all applicants for medical care enrollment according to a number of factors, such as disability rating, the receipt of a Purple Heart award, and, in certain circumstances, financial resources of the applicant. After the VA verifies a discharged service member's eligibility for enrollment for medical care, the VA places him or her in a priority group. The priority groups range from 1 to 8 with 1 being the highest priority for enrollment. For example, under current rules, priority 1 is given to discharged service members with VA disability ratings of 50% or more and to those discharged service members determined by the VA to be unemployable because of service-connected conditions.

The VA will enroll veterans to the extent that congressional appropriations allow. Changes in available resources may reduce the number of priority groups the VA is able to enroll. If this occurs, the VA will publicize any changes and notify affected enrollees.

What benefits are discharged service members eligible to receive?

The following services are available to all discharged service members who are enrolled for VA health care:

- > Preventative care services, including immunizations, physical examinations, health care assessments, screening tests, and health education programs;
- > Ambulatory (outpatient) diagnostic and treatment services, including medical, surgical, mental health, and substance abuse care;
- > Hospital (inpatient) diagnostic and treatment services, including medical, surgical, chiropractic, mental health, and substance abuse care; and
- > Medications and supplies including prescription medications, over-the-counter medications, and medical and surgical supplies. Generally, these must be prescribed by a VA provider and be available under VA's national formulary.

The VA may also provide additional services in limited circumstances.

Is there any advocate within the VA system whom veterans or their family members can contact with questions concerning his or her ongoing treatment?

Yes. Every VA medical center has at least one patient advocate who is responsible for addressing patients' questions and concerns and for acting as a liaison between patients and family and medical care providers.

VA Form 10-10EZ, Application for Health Benefits, can be obtained in the following ways:

> Downloading VA Form 10-10EZ from the VA website at <https://www.1010ez.med.va.gov/sec/vha/1010ez/> and submitting it online or delivering in person (or by fax), to any local VA medical center or clinic;

> Visiting, calling or writing any VA health care facility or Veterans Benefits Office; or

> Calling the VA's Health Benefits Service Center, toll free at (877) 222-VETS (8387), Monday through Friday between 7:00 a.m. and 8:00 p.m. Eastern Time.

A listing of VA medical facilities and clinics is available at www.va.gov/directory.

For more information on priority groups, please visit www.va.gov/healtheligibility/library/pubs/EPG.



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For more information on VA health care benefits please visit the nearest VA regional office, which can be located at www.va.gov/directory, or call the VA toll free at (877) 222-VETS (8387).

For more information on VA long-term care benefits, please visit www.va.gov/health/eligibility/coveredservices/SpecialBenefits.htm.



Are there restrictions on getting care in private facilities?

Yes. Care in private facilities at VA expense is provided only in very limited circumstances. Discharged service members can determine if they are eligible for private care at VA expense by contacting their local VA medical facility.

What is the coverage for emergency services?

The VA provides only limited emergency care at VA facilities, and in most circumstances the VA will not pay for emergency care treatment in private facilities. However, the VA will pay for private emergency care if the care is for a service-connected condition. The VA will also pay for private emergency care if all of the following apply:

- > The discharged service member is enrolled for VA health care and has received care from a VA facility in the last 24 months;
- > The emergency treatment was given in a hospital emergency department or similar emergency facility;
- > It was not possible for the discharged service member to get treatment at a VA facility;
- > A reasonable person would think that any delay in medical attention would seriously endanger the discharged service member's health or life; and
- > The discharged service member has no other VA coverage, insurance coverage, Medicaid, or public insurance coverage and no other person is responsible for paying.

If all of the above are true, the service member does **not** need to get VA approval before going to the emergency room. However, the service member, service member's representative, or the treating facility should contact the VA within 48 hours to arrange a transfer to VA care if hospitalization is required. As soon as the service member's condition stabilizes, the VA will arrange to transport the service member to a VA, or VA-designated, facility.

Does the VA provide long-term care benefits to discharged service members?

The VA provides the following long-term care services to discharged service members who qualify for VA health care:

- > Geriatric evaluation;
- > Adult day health care;
- > Respite care;
- > Home care; and
- > Hospice/palliative care.

The VA provides institutional long-term care to some discharged service members through VA nursing homes, community nursing homes, state veterans homes and residential care homes. Discharged service members automatically qualify for nursing home care if one of the following applies: they have a disability rating of at least 70%;

they have a disability rating of at least 60% and are unemployable; or if the VA determines they require nursing home care for a service-connected condition. Other discharged service members may be eligible for nursing home care if space and resources are available.

Discharged service members who do not require all the services provided by a nursing home may qualify for nursing home or domiciliary care, some of which may be provided in state-run veterans homes. Domiciliary care is provided for veterans who are not in need of hospitalization or nursing care services, but who are suffering from ailments that prevent them from earning a living. Domiciliary care provides food, shelter, medical care and special rehabilitative programs to eligible veterans.

What does VA health care cost?

Treatment for service-connected conditions is free. Some discharged service members have co-pays for treatment of their non-service-connected conditions. For more information please contact a local VA health care facility.

Should a discharged service member cancel his or her private health insurance?

The existence of private health insurance will not affect a discharged service member's eligibility for VA health care. However, the VA encourages all discharged service members to retain any health care coverage they may already have because family members generally do not qualify for VA health care and the VA cannot guarantee that the discharged service members will remain eligible for health care coverage in the future. In addition, private health insurance may cover certain medical treatments that are not covered by VA health care.

Are there any health care programs that cover the transition period between discharge from the military and the start of VA health care coverage or private health insurance?

Yes. Discharged service members (both active duty service members and reservists who separate after being called to active duty for more than 30 days) and their dependents are eligible for the Transitional Assistance Management Program (TAMP). TAMP provides transitional TRICARE coverage for 180 days. Eligibility for TAMP is dependent on the accuracy of the beneficiary's information in the Defense Enrollment Eligibility System (DEERS). If the service member was formerly enrolled in TRICARE Prime, they must re-enroll in the plan. For details on enrolling in TRICARE Prime and DEERS information, please refer to "Health Care Coverage" under "Programs for Spouses and Dependents" below.

Discharged service members and their families who have lost their TRICARE eligibility, including expiration of TAMP eligibility, are also eligible for temporary coverage in the Continued Health Care Benefit Program (CHCBP). CHCBP is a congressionally mandated, government-sponsored, premium-based health plan that provides temporary continuation of military health system benefits. CHCBP is administered by Humana Military Health Care Services. CHCBP is not part of TRICARE but uses existing TRICARE providers and operates under most of the rules and procedures of TRICARE Standard.

For a listing of VA health care benefits, please visit www1.va.gov/directory/guide/home.asp?isFlash=1.

For more information on the Transitional Assistance Management Program, visit www.tricare.osd.mil/TricareHandbook/results.cfm?fn=1&cn=17.

For more information on the Continued Health Care Benefit Program, visit www.humana-military.com/chcbp/main.htm.

The CHCBP Handbook, which contains details on the CHCBP program, can be found at www.humana-military.com/chcbp/pdf/handbook.pdf.



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The website mentalhealthscreening.org provides online fact sheets on the following conditions:

Alcohol Abuse:

www.mentalhealthscreening.org/downloads/sites/docs/military/MP2006_FAQ_Alcohol.pdf

Anxiety Disorders:

www.mentalhealthscreening.org/downloads/sites/docs/military/MP2006_FAQ_Anxiety_Disorders.pdf

Bipolar Disorder:

www.mentalhealthscreening.org/downloads/sites/docs/military/MP2006_FAQ_BIPOLAR_DISORDERS.pdf

Depression:

www.mentalhealthscreening.org/downloads/sites/docs/military/MP2006_FAQ_Depression.pdf

PTSD:

www.mentalhealthscreening.org/downloads/sites/docs/military/MP2006_FAQ_PTSD.pdf

Suicide Questionnaire:

www.mentalhealthscreening.org/downloads/Sites/Docs/Military/SRQforMilitaryHomepage.pdf



What is the enrollment process for CHCBP?

To obtain coverage, the service member must enroll in the CHCBP within 60 days of separation from active duty or loss of eligibility for military health care. To enroll, send a completed DD Form 2837, *Continued Health Care Benefit Program (CHCBP) Application*, which can be found at www.humana-military.com/chcbp/pdf/dd2837.pdf, along with a check for the premium payment (the cost of premium is listed on the application form) for the first 90 days of coverage to Humana Military Health Care Services, Inc., Attn: CHCBP, P.O. Box 740072, Louisville, KY 40201.

How long does coverage under CHCBP last?

CHCBP coverage is limited to 18 months from the day after the loss of military benefits or the end of TAMP coverage.

Mental Health Care Coverage

Are mental health services available under the standard VA medical benefits package?

Yes. The standard VA medical benefits package covers mental health care services, including in-patient and out-patient diagnosis and treatment. The standard package also covers certain specialty services such as treatment for post-traumatic stress disorder, depression, bipolar disorder, anxiety disorder and substance abuse. In addition, the VA provides readjustment counseling to assist combat veterans in their transition to civilian life.

Where can veterans and their families find more information on mental health care services?

The Veterans Health Administration (VHA) website contains information on health benefits for veterans and links to many useful resources: www1.va.gov/health/.

My Health_eVet (MHV), VHA's e-health portal website, contains links to VA and other federal health benefits as well as information on many health conditions affecting veterans: www.myhealth.va.gov. The website also offers free anonymous screens for veterans who think they might be experiencing symptoms of depression, PTSD or alcohol abuse. The screens are available by clicking the "Go to My Health_eVet" link, then clicking on the "Research Health" tab and choosing the "Mental Health" tab that appears. Screens are confidential – no information is retained in a veteran's MHV account, but veterans may print out their results to show to a physician or mental health professional. A screen is not a substitute for a professional evaluation, but it can help veterans determine if their symptoms might indicate the need for further evaluation or treatment.

The Mental Health Self-Assessment Program offers free anonymous mental health evaluations for veterans at www.militarymentalhealth.org. Self-assessment surveys are available for depression, bipolar disorder, anxiety disorders, PTSD and alcohol abuse. These surveys are completely anonymous; they do not ask for a name, email address or any other identifying information.

The National Center for PTSD website contains a wealth of information on PTSD, including guides for self assessment and resources for veterans seeking help: www.ncptsd.va.gov/ncmain/index.jsp.

Military OneSource has a website with a “Healthy Habits” section containing a variety of useful information on mental health. Visit www.militaryonesource.com and choose “Healthy Habits” from the “Browse by Category” menu on the left-hand side of the page.

State Departments of Mental Health may offer resources for veterans and their families. See the State Benefits Section of this handbook for more information.

Where should a veteran go when seeking mental health services covered under the VA Medical Benefits Package?

Veterans seeking mental health care should contact their local VA medical center. An online directory is available at www1.va.gov/directory/guide/home.asp?isFlash=1.

Who is eligible for the mental health services offered under the standard VA Medical Benefits Package?

Any discharged service member who is eligible for VA medical treatment can also apply for mental health services.

What is the application process for the mental health services offered under the standard VA Medical Benefits Package?

A discharged service member who has not previously enrolled or applied for VA health benefits can apply by completing VA Form 10-10EZ, *Application for Health Benefits*. Veterans should visit www.1010ez.med.va.gov/sec/vha/1010ez/ for more information. This website allows veterans to view or print a blank copy of the form or fill out a form online. Veterans who have previously applied for VA mental health care services and wish to update their information should fill out VA Form 10-10EZR, *Health Benefits Renewal Form*, by visiting www.1010ez.med.va.gov/sec/vha/1010ez/1010ezr.asp. Please refer to the above subsection titled “Health Care Coverage” for more information concerning VA Form 10-10EZR.

Readjustment Counseling

What is readjustment counseling?

Readjustment counseling assists combat veterans in their transition from military to civilian life. Readjustment counseling includes the following services:

- > Individual counseling;
- > Group counseling;
- > Marital and family counseling;
- > Bereavement counseling;
- > Medical referrals;
- > Assistance in applying for VA benefits;
- > Employment counseling;
- > Substance abuse assessment and referral; and
- > Military sexual trauma counseling.

For information on the VA Medical Benefits Package, visit www.va.gov/healtheligibility/coveredservices/standardbenefits.asp.

VA Form 10-10EZ, Application for Health Benefits, can be obtained in the following ways:

- > *Accessing the VA’s website, www.va.gov/1010EZ.htm;*
- > *Visiting, calling or writing any VA health care facility or Veterans Benefits Office; or*
- > *Calling the VA’s Health Benefits Service Center, toll free at (877) 222-VETS (8387), Monday through Friday between 7:00 a.m. and 8:00 p.m. Eastern Time.*

To find the address of the nearest Vet Center, visit www.va.gov/rcs/VetCenterDirectory.htm. Vet Center staff are also available toll free during normal business hours at (800) 905-4675 (Eastern Time) and (866) 496-8838 (Pacific Time).

For more information on Readjustment Counseling, visit www.va.gov/rcs/.



The CHCBP Handbook can be found at www.humana-military.com/CHCBP/handbooktoc.htm.

Information about TAMP can be found at www.tricare.osd.mil/TricareHandbook/results.cfm?tn=1&cn=17.



Readjustment counseling is provided at community Vet Centers in all 50 states and most U.S. territories and possessions.

Who is eligible for readjustment counseling?

A discharged service member who served in any combat zone and received a military campaign ribbon is eligible for readjustment counseling. Family members of combat veterans are also eligible for readjustment counseling for military-related issues.

What does readjustment counseling cost?

Readjustment counseling is free for all eligible veterans and their families.

Dental Care Coverage

Are discharged service members eligible to receive dental care coverage from the VA?

Eligibility for VA dental care is more limited than eligibility for VA health care. A discharged service member is eligible for dental benefits if his or her dental care needs arise from:

- > a compensable service connected dental condition;
- > a non-compensable-service connected dental condition resulting from combat wounds or service injuries; or
- > a non-service-connected dental condition determined to be aggravating a medical problem under VA treatment.

Discharged service members who are former prisoners of war, homeless veterans enrolled in certain programs, participants in a VA vocational rehabilitation program, or veterans with a service-connected condition rated 100% disabling, regardless of the cause of their dental needs, may also receive dental care.

In addition, a recently discharged service member who served on active duty 90 days or more and who applied for VA dental care within 90 days of separation from active duty may receive a one-time dental treatment if his or her certificate of discharge does not indicate that he or she received necessary dental care within a 90-day period prior to discharge.

How does a discharged service member apply for VA dental benefits?

A discharged service member can apply for VA dental care by completing VA Form 10-10EZ, *Application for Health Benefits*. Please refer to the section titled “Health Care Coverage” above for more information.

Programs for Spouses and Dependents

Health Care Coverage

Are family members of discharged service members eligible to receive health care coverage from the military?

The families of discharged service members are eligible for a transitional TRICARE program called TAMP, or the Transitional Assistance Management Program, for a period of 180 days following the service member’s separation. Eligibility for TAMP is

dependent on the accuracy of the beneficiary's information in the Defense Enrollment Eligibility Reporting System (DEERS), a computerized database of those people who are eligible for TRICARE benefits.

Where TRICARE eligibility has been lost or TAMP has expired, the families of discharged service members may apply for health care coverage in the Continued Health Care Benefit Program (CHCBP). The CHCBP is a congressionally mandated, government-sponsored, premium-based health plan that provides a temporary continuation of military health system benefits. The program is similar to TRICARE standard, but administered by Humana Military Health Care Services. In most cases, CHCBP benefits last no more than 18 months, and application must be made within 60 days of separation or loss of eligibility for military health care services.

Is the family of a discharged service member eligible for VA medical care?

The family of a discharged service member who has been rated permanently and totally disabled for a service-connected disability by a VA regional office may be eligible to receive health care under the Civilian Health and Medical program of the Department of Veteran Affairs (CHAMPVA). CHAMPVA is administered by the VA Health Administration Center. CHAMPVA eligibility can be affected by changes such as marriage, divorce from the sponsor, or eligibility for Medicare or TRICARE.

What health care benefits are available under CHAMPVA?

CHAMPVA will cover most health care services and supplies that are medically necessary. CHAMPVA covers services from most health care providers, but will not cover services from acupuncturists, chiropractors, or naturopaths. CHAMPVA does not maintain a provider listing; however, most Medicare and TRICARE providers will also accept CHAMPVA. If a family member sees a provider who does not accept CHAMPVA, he or she will have to pay the entire bill and then submit a claim for a reimbursement of the allowable amount to the VA Health Administration Center, CHAMPVA's administrator.

What is the enrollment process for CHAMPVA?

Family members must submit VA Form 10-10d, *Application for CHAMPVA Benefits*, to the Department of Veterans Affairs Health Administration Center before any medical bills are submitted for CHAMPVA coverage. To obtain an application form, call (800) 733-8387 or visit www.va.gov/hac/forms/10-10d.pdf.

Mental Health Care Coverage

Are mental health services available for family members of a discharged service member?

TAMP, CHCBP and CHAMPVA provide coverage for certain mental health care services. In addition, families of discharged service members are eligible to receive VA readjustment counseling for military-related issues at local VA Vet Centers around the country. The VA also sponsors caregiver support groups for families of discharged service members with disabilities and chronic illnesses. Under CHAMPVA, preauthorization is required for most mental health care services.

For further information about CHAMPVA benefits and eligibility, refer to the CHAMPVA handbook, located at www.va.gov/hac/forbeneficiaries/CHAMPVA/handbook/chandbook.pdf.

CHAMPVA representatives are available to answer questions at (800) 733-8387 (between 8:05 a.m. and 7:30 p.m. Eastern Time). An automated menu is available at (800) 733-8387 24 hours a day, seven days a week, to request applications, claim forms and other CHAMPVA material.

Reimbursement forms must be submitted to the VA Health Administration Center, CHAMPVA, PO Box 65023, Denver, CO 80206-9023.

For more details about mental health care benefits under CHAMPVA, please refer to the CHAMPVA Handbook, located at www.va.gov/hac/forbeneficiaries/CHAMPVA/handbook/chandbook.pdf or contact CHAMPVA's mental health care contractor, Magellan Behavioral Health, toll free by calling (800) 424-4018.



More information on the limited dental coverage provided under CHAMPVA is available in the CHAMPVA handbook, located at www.va.gov/hac/forbeneficiaries/CHAMPVA/handbook/chandbook.pdf.

Find out more about Medicare at its website www.medicare.gov. In particular, for a helpful publication on Medicare, see www.medicare.gov/publications/pubs/pdf/10116.pdf.



Dental Care Coverage

Are family members of discharged service members eligible for dental care coverage?

With very few exceptions, family members of discharged service members are not eligible for dental care coverage. In certain limited circumstances, family members who are eligible to receive health care benefits from CHAMPVA may receive dental treatment if such treatment is related to other CHAMPVA-covered medical treatment. In the cases where dental care is covered, preauthorization is required. Routine examinations, dental fillings and root canals are among the treatments that are not covered.

How can preauthorization be obtained under CHAMPVA?

Requests for preauthorization must include a physician statement explaining why the requested dental treatment is required and how it is related to the CHAMPVA-covered medical treatment. Requests must also include a dentist's statement specifying what treatment is required, why the treatment is required, how it is related to the CHAMPVA-covered medical condition, and the estimated cost. Preauthorization can be requested by phone at (800) 733-8387 or fax at (303) 331-7807.

Medicare and Medicaid

What is Medicare?

Medicare provides health care coverage to persons over 65 years of age, some younger disabled persons, and in limited cases, to other persons under 65.

Medicare (Part A) provides coverage for care in hospitals as an inpatient, critical access hospitals (which are small facilities that give limited outpatient and inpatient services to people in rural areas), skilled nursing facilities, hospice care and some home health care. Persons eligible for Medicare (Part A) do not have to pay any monthly premiums for Medicare (Part A) coverage.

Medicare (Part B) provides coverage for doctors' services, outpatient hospital care, and some other medical services that Medicare (Part A) does not cover, such as the services of physical and occupational therapists, and some home health care. Medicare (Part B) helps pay for these covered services and supplies when they are medically necessary. Enrollees pay a monthly premium for Medicare (Part B).

Medicare (Part C), also called Medicare Advantage Plans, provides Medicare beneficiaries the option to receive their Medicare benefits through private health insurance plans. Part C is available only to those individuals who qualify for both Part A and Part B and live in certain coverage areas.

Medicare (Part D) provides prescription drugs for Medicare Part A or Part B beneficiaries. The beneficiaries must affirmatively enroll in Part D. Enrollees will pay the full cost of their prescriptions until they meet the annual deductible and then they will pay a percentage of the remaining costs.

For more information on Medicare, please visit www.medicare.gov.

Generally, individuals over the age of 65 are usually eligible for Part A. Individuals below the age of 65 and receiving Social Security disability benefits for 24 months are eligible for Part B.

What is Medicaid?

Medicaid provides health care coverage to some individuals and families with low incomes and resources. Although the federal government establishes general guidelines for the program, the Medicaid eligibility requirements are established by each state. Therefore, whether or not a person is eligible for Medicaid depends on the state where he or she lives.

Medicaid benefits vary by state, but all states must cover certain services including medical and surgical dental care, hospital care and physicians' services.

*Find out more about Medicaid
at its website www.cms.hhs.gov/default.asp.*



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CHAPTER 6: EDUCATION AND EMPLOYMENT BENEFITS

Introduction

This chapter describes various education and employment benefits that service members and their families may be eligible to receive from the federal and state governments and organizations. This discussion contains important information about a variety of topics, which can be divided into three main sections:

GI Bill and REAP: Chapter 6's first section covers education benefits available to service members under the Montgomery GI Bill (GI Bill), a federal program that provides monthly educational assistance to military veterans, including reservists and members of the National Guard. This section also describes the new Reserve Educational Assistance Program (REAP), which provides educational assistance to reservists and National Guard members who were called up for at least 90 days of active duty since September 11, 2001. Finally, this section provides certain information regarding state education benefits for former military service members.

DEA: The second section describes education benefits for service members' families. The primary focus of this section is the Survivors' and Dependents' Educational Assistance Program (DEA), a federal program administered by the VA. The section also includes a brief summary of various scholarship programs that the families of service members may be eligible to receive.

Employment Benefits: The third section describes employment benefits available to veterans and their families, including the Department of Labor's Transition Assistance Program (TAP) and the VA's Vocational Rehabilitation & Employment Services (VR&E). In addition, this section describes the federal government's veterans' preference hiring program, which gives disabled veterans an advantage when applying for federal jobs. This is followed by brief descriptions of certain legal rights that veterans have when returning to work or seeking new jobs after the completion of military service. Finally, the section ends with a list of employment resources for veterans and their families. Much of the information in this section overlaps with topics covered in *Chapter 9, Legal Rights*, and *Chapter 11, State Resources*. Readers are encouraged to consult those chapters as well.



Montgomery GI Bill (GI Bill)

What is the GI Bill?

The Montgomery GI Bill provides cash payments to eligible veterans enrolled in qualified education programs or career training programs. Eligible veterans enrolled in a qualifying education or training program can receive benefits in the form of monthly payments for up to 36 months. Monthly benefits vary based on type of service (active duty or reserve), education or training program and enrollment (full-time or part-time).

There are two main programs under the GI Bill, the Active Duty program (GI Bill-AD, sometimes referred to as Chapter 30) and the Selected Reserve program (GI Bill-SR, sometimes referred to as Chapter 1606). These programs have different qualification requirements and provide different levels of benefits. Depending on the nature of their service, reservists and National Guard members may be eligible for the Active Duty program. In addition, they may also qualify for benefits under the Reserve Educational Assistance Program (REAP) described later in this subsection.

Who is eligible for GI Bill-AD benefits?

In order to be eligible for GI Bill-AD benefits, an individual must have enrolled when he or she entered the military. Enlisted active duty personnel are automatically enrolled in the program and remain enrolled by contributing \$100 per month from their military pay for 12 months (i.e., \$1,200). In order to cancel enrollment, a service member must have filled out a DD Form 2366, *Montgomery GI Bill Act of 1984 Basic Enrollment*. The decision to disenroll is irrevocable. Those who did not enroll in the Program during active duty will not be eligible to receive benefits upon separation. In addition, with very limited exceptions, officers who were commissioned through a service academy or the ROTC program are not eligible for GI Bill benefits.

Service members enrolled in the GI Bill-AD Program are generally eligible to receive education benefits if they served for at least two years, contributed the full \$1,200 while on active duty, received an honorable discharge and hold a high school diploma or GED (or in some cases 12 hours of college credits). Veterans who do not meet these requirements still may be entitled to GI Bill-AD benefits under very limited circumstances. For more information, please visit the VA's GI Bill website, www.gibill.va.gov.

Reserve Component service members may be eligible for GI Bill-AD benefits if they are called up under federal authority for two years or more of active duty (not training), and they do not decline GI Bill enrollment in writing. A 2-year call-up for full-time National Guard duty under state authority will not qualify for GI Bill-AD unless it is for purposes of organizing, administering, recruiting, instructing or training the National Guard.

In all cases, the VA makes the final determination of eligibility for GI Bill-AD benefits.

In addition, in order to qualify for the full 36 months of benefits, a veteran must meet one of three additional requirements:

- > 3 years of continuous active service;
- > 2 years of active service, if that was the length of his or her original enlistment; or

For further information on the GI Bill and other VA education programs, please visit the following websites:

VA, GI Bill website:
www.gibill.va.gov

Military.com's GI Bill Guide:
www.education.military.com/money-for-school/gi-bill/learn-to-use-your-gi-bill

GI Bill.com: www.gibill.com/

For an overview of GI Bill-AD benefits, see the VA Montgomery GI Bill Active Duty Factsheet, available at www.vba.va.gov/benefit_fact/Education_and_Training/English/Ch30eg_0406.doc and the VA GI Bill-AD Pamphlet available at www.gibill.va.gov/pamphlets/CH30/CH30_Pamphlet.pdf.



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For an overview of GI Bill-SR benefits, see the VA Montgomery GI Bill-Selected Reserve Factsheet, available at www.vba.va.gov/benefit_facts/Education_and_Training/English/Ch1606eg_0406.doc.

For more detailed information, see the VA GI Bill-SR Pamphlet available at www.gibill.va.gov/pamphlets/CH1606/CH1606_Pamphlet.pdf.

A complete, up-to-date list of Education Benefit Payment Rates for all GI Bill Programs is available on the VA GI Bill website at www.gibill.va.gov/GI_Bill_Info/rates.htm.



- > 2 years of active service with an obligation to serve four additional years in the Selected Reserve, which he or she began to fulfill within a year of leaving active duty (the “2 by 4” program).

Are service members who could not complete the GI Bill qualification requirements because of a service-related disability still eligible for GI Bill-AD benefits?

Yes. Veterans who separate early for certain reasons (medical condition, disability, hardship, reduction in force) may be eligible for GI Bill-AD benefits, but generally they are only entitled to one month of benefits for every month served.

Who is eligible for Montgomery GI Bill-Selected Reserve (GI Bill-SR) benefits?

The GI Bill-SR Program is for members of the Reserve Components. In order to be eligible for GI Bill-SR benefits, a Reserve Component service member must have: a 6-year obligation to the Reserve Component, completed his or her “Initial Active Duty for Training” (IADT), successfully maintained qualified status with the Reserve Component and completed high school or earned a GED before applying for benefits. Decisions regarding eligibility for GI Bill-SR benefits are made by the Reserve Component service member’s unit. The unit will give the reservist a DD Form 2384-1, *Notice of Basic Eligibility* (NOBE), when he or she becomes eligible for benefits. The program provides up to 36 months of benefits for qualifying education and job training.

What education and training benefits are available under the GI Bill?

The GI Bill provides a monthly cash benefit to eligible veterans who are enrolled in a qualifying program. The cash benefits can be applied toward tuition for college, technical or vocational courses, correspondence courses, apprenticeship/job training, flight training, licensing and certification tests, entrepreneurship training, and certain entrance examinations. Recipients may also apply benefits to remedial deficiency or refresher training to review material from previous schooling, update knowledge or skills and receive training in technological advancements that occurred in a particular field after a service member began active duty. The rates of educational assistance provided under the GI Bill vary according to the training program selected, type of enrollment (full-time or part-time) and, in the case of GI Bill-AD benefits, the duration of active duty. The rates are adjusted annually and increase every October 1.

Service members may use GI Bill-AD benefits to attend school while on active duty, but special rules apply. For more information about using GI Bill-AD while on active duty, visit www.education.military.com/money-for-school/active-duty/gi-bill/active-duty-gi-bill-users-guide. In addition, active duty service members may be eligible for Tuition Assistance (TA) from their respective branches of services or the Defense Activity for Non-Traditional Education Support (DANTES). See www.dantes.doded.mil for more information.

How are GI Bill benefits received?

Veterans typically receive a check from the VA after each month of school for the completed month’s entitlement. Veterans training half time or more may request advance payment for the first month (or partial month) and second month. The VA requires a written request for advanced payment signed by the student and enrollment

certification from the school at least 30 days before classes begin. Advance payment is only available to those attending schools that have agreed to receive and process advance payment checks for their students. Advance payment checks are made out to recipients and sent to their schools for delivery to students at registration.

Is there any way for veterans to increase the amount of educational benefits they receive under the GI Bill?

Both GI Bill-AD and GI Bill-SR may award special allowances of up to \$100 per month, under current program benefits, for individual tutoring to veterans who are enrolled in school at least half time. Recipients must have their school certify the need for tutoring, the tutor's qualifications and the hours of tutoring received. To apply for tutorial assistance, veterans must complete a VA Form 22-1990t, *Application and Enrollment Certification for Individual Tutorial Assistance*, available at www.vba.va.gov/pubs/forms/22-1990t.pdf, and have it certified by the proper school official as well and the tutor.

In addition, certain veterans may have been awarded participation in the "College Fund" program if they joined a critical occupational specialty upon joining the military. The College Fund provides bonus money to regular GI Bill benefits. If a veteran is unsure whether he or she was awarded a College Fund upon entering active duty, he or she should contact an education counselor at his or her local VA office.

Must a veteran claim his or her GI Bill benefits right away? How long can he or she wait?

In general, veterans have ten years from their date of separation from active duty to use their GI Bill-AD benefits. Veterans can receive extensions if a disability prevented them from enrolling in a qualifying program, if their eligibility expired in the middle of a school term, or if they were called up for active duty for a period of more than 90 days.

Veterans eligible for GI Bill-SR benefits who became eligible after October 1, 1992, are eligible for 14 years from the date of eligibility, so long as they remain in the Selected Reserve. GI Bill-SR participants may receive extensions because of a disability caused by Selected Reserve service, expiration of eligibility in the middle of a school term, or they were called up for duty under federal authority. The extension for call-ups is the period of active duty plus four months.

Can a service member transfer his or her benefits to a dependent?

Transfer of GI Bill benefits to service members' children is not permitted. The Army allows transfer of up to 18 months of unused GI Bill benefits to a service member's spouse in limited circumstances, but the other service branches do not permit a transfer of GI Bill benefits.

To participate in the Army's GI Bill benefits transfer program, a soldier must have (1) enrolled in GI Bill upon initial entry into active duty, (2) paid the \$1,200 for enrollment, (3) been eligible for the Selective Reenlistment Bonus (SRB) Program, (4) have completed at least six years of active duty, (5) reenlisted for an additional four years of active duty and completed a DD Form 2366-2, *Montgomery GI Act of 1984 Transferability Program*, upon reenlistment. The Air Force program allowing transfer of GI Bill benefits to spouses and children is no longer available.



Most VA education forms are available online at: www.gibill.va.gov/GI_Bill_Inf/education_forms.htm.



How does a veteran claim GI Bill benefits?

In order to claim GI Bill benefits, a veteran must:

- > **Enroll in a qualifying educational or training program.** A school's financial aid or training facility employment office can typically provide confirmation of the program's qualification.
- > **Apply for benefits with the VA.** Application can be accomplished by either completing VA Form 22-1990, *Application for VA Education Benefits*, and submitting the form to the VA regional office for the area where the school or training facility is located or by completing the form electronically through the Veterans On-Line Application (VONAPP) website at www.vabenefits.vba.va.gov/vonapp/main.asp. A copy of VA Form 22-1990 is available at www.vba.va.gov/pubs/forms/22-1990.pdf or by calling (888) GI-BILL-1.
- > **Obtain certification of enrollment from the school or training program.** The school or program must complete VA Form 22-1999, *Enrollment Certification*. The school's certifying official most likely will be found in one of the following departments: financial aid, veterans affairs, registrar, admissions or academic counseling.
- > **Verify attendance to the VA.** Veterans attending school courses must verify attendance each month by calling (877) 823-2378 or by visiting www.gibill.va.gov/, selecting "Information for Benefit Recipients" and choosing "Certify Your Attendance (WAVE)." Veterans attending on-the-job training, apprenticeships and flight training programs will generally need to have the program or school submit forms to the VA regional office each month verifying attendance. Veterans enrolled in correspondence courses must have the school verify the number of lessons completed each quarter.
- > **Reimbursement for Licensing or Certification Tests.** Veterans seeking reimbursement for the costs of tests covered by the GI Bill must send a copy of the test results to the VA along with a note or a VA Form 21-4138, *Statement in Support of Claim*, requesting reimbursement. The note or form should list the name of the test, the date it was taken, the cost of the test and the name and address of the organization issuing the license or certification. In addition, the note or form must include the signed statement: "I authorize release of my test information to the VA."

How can a veteran verify eligibility for benefits before enrolling in an educational or training program?

Veterans who want to verify eligibility for GI Bill benefits may submit a Form 22-1990 to the VA Regional Office for the region in which they reside. The VA will send a Certificate of Eligibility listing how many months of benefits a veteran is eligible to receive and when the veteran's eligibility period expires.

Chapter 1607 Benefits – The Reserve Educational Assistance Program (REAP)

What is REAP?

In October 2004, Congress passed into law a new education benefit designed to provide eligible Reservists and National Guard members with benefits similar to those provided under the GI Bill. Titled the Reserve Educational Assistant Program (REAP), and sometimes referred to as Chapter 1607, REAP provides assistance for education and job training to Reservists and National Guard members who are called to active duty under federal authority after September 11, 2001; serve at least 90 consecutive days on active duty in a contingency operation (including current operations in Iraq and Afghanistan); and continue to remain in the reserves following their service in the contingency operation.

What benefits are available through REAP?

REAP provides eligible Reservists and National Guard members with up to 36 months of education benefits, which vary based on type of education or training, type of enrollment (full-time or part-time) and length of service. It is not necessary for the reservist to have enrolled in or contributed to the GI Bill program to receive REAP benefits. Although the REAP program has benefits similar to those provided under the GI Bill, the benefits available under REAP are generally less than those available under GI Bill-AD.

It is important to note that service members are not permitted to receive simultaneous benefits under REAP and the GI Bill-SR. A choice between the two benefits must be made at the time of application. However, service members who received GI Bill-SR benefits before REAP became effective in 2005 may apply for REAP benefits to finance further education or training. In addition, service members may be entitled to retroactively increase any payments they received under GI Bill-SR since December 9, 2001, to the amount they would have been entitled had REAP been in effect. In such cases the VA will pay the service members the difference between the benefit entitlements under the two programs. Service members who elect to retroactively apply for REAP benefits will be limited to the same total of 36 months of REAP education benefits as other participants in the program. The rules governing these types of cases are intricate and complex, and service members should contact their local VA office if they believe they are eligible to receive a retroactive increase in benefits. For more information about REAP, see the REAP Questions and Answers portion of the GI Bill website www.gibill.va.gov/pamphlets/CH1607/REAP_FAQ.htm, or call (888) GI-BILL-1.

How long do qualified service members have before their REAP benefits expire?

In general, there is no time limit for using the REAP benefits as long as the reservist remains in his or her component of the Reserves or National Guard. Once a service member leaves his or her component or is discharged, he or she becomes ineligible for REAP benefits and, if payments have begun, payments will stop. Reservists who are discharged for a disability that was not the result of their own misconduct will not lose benefits immediately, but they must use their entitlement within ten years from the time of eligibility.

For more information on the Reserve Educational Assistant Program (REAP), please see the VA website at www.gibill.va.gov/pamphlets/CH1607/REAP_FAQ.htm.



How do service members claim REAP benefits?

The procedure for claiming REAP benefits is almost the same as the procedure used to claim benefits under the GI Bill. Eligible reservists and guard members must enroll in a qualifying educational or training program, apply for benefits using a VA Form 22-1990, *Application for VA Education Benefits*, obtain certification of enrollment from the school or training program and periodically verify their attendance to the VA. See the previous portion of this section on GI Bill benefits for a more detailed description of the process. Service members who are eligible for both REAP and GI Bill-SR benefits must elect either REAP benefits or GI Bill-SR benefits on their VA Form 22-1990, *Application for VA Education Benefits*. Service members who were already receiving benefits under GI Bill-SR before the enactment of REAP who wish to switch to REAP do not need to file a new Form 22-1990. Instead, they should submit a VA Form 22-1995, *Request for Change of Program or Place of Training*, along with any available documents that may serve as evidence of qualifying service (e.g., DD Form 214, *Certificate of Release or Discharge from Active Duty*.)

Multiple Benefits

Can a veteran be eligible for multiple education benefits? If so, can he or she receive benefits under more than one program at a time?

A veteran may be eligible for educational benefits under multiple programs, but he or she may only receive benefits from one program at a time. The VA usually will pay a veteran at the highest rate for which he or she is eligible, unless otherwise requested. Also, a veteran may only receive a total of 48 months of benefits from any combination of programs. For example, a veteran who received 36 months of GI Bill-AD benefits may only receive an additional 12 months of GI Bill-SR benefits if eligible.

An individual who is eligible for both REAP and GI Bill-SR must choose one or the other and the decision is irrevocable.

Veterans who believe they may be eligible for multiple benefits should contact their local VA office for assistance in choosing which benefits program, or combination of successive benefits programs, is right for them.

Are veterans eligible for any additional assistance while enrolled in school?

Yes. An exception to the VA's "one program at a time" rule is the Student Work-Study Allowance Program. Veterans enrolled at least 3/4 time in a degree, professional or vocational program and receiving VA education benefits still may be eligible for the VA Work Study Allowance Program.

Program participants receive an hourly wage from the VA for VA-related work, such as processing VA paperwork at a school veterans' office, or working at a VA office, VA medical facility or approved state employment office. Schools may pay those working on campus additional wages equal to the difference between the VA wage and the amount normally paid to other work-study students performing the same job.

Qualified applicants are not guaranteed a VA Work-Study Allowance. The number of positions awarded will depend on the availability of VA-related work at a particular school and in the surrounding area. The VA gives the highest priority to applicants with a service-connected disability rated 30% or more by the VA. Other factors the VA

For more information about the VA work-study program, visit the VA website at www.gibill.va.gov/pamphlets/wkstud.htm.



considers in choosing between applicants include the student's ability to complete the work-study contract before the end of his or her eligibility for education benefits, and the employment opportunities within normal commuting distance of the student.

Further information regarding the Student Work-Study Allowance program is available at www.gibill.va.gov/pamphlets/wkstud.htm.

State Educational Benefits

Are there any state educational benefits available?

Yes, many states offer free or subsidized tuition to state-sponsored institutions of higher learning (such as state universities) to eligible applicants.

Veterans and service members should contact their state's veterans' affairs office, which will often oversee military service-related education benefits for the state. However, some states administer their education benefits through a higher education agency instead of the state veterans' affairs office.

Educational Programs for Service Members' Families

Are the family members of veterans with service-connected disabilities eligible for special VA education benefits?

Generally, only spouses and dependents of deceased veterans are eligible for VA education benefits. However, spouses and children of permanently disabled veterans may also be eligible for up to 45 months of education benefits under the Survivors' and Dependents' Educational Assistance Program (DEA). The DEA provides a monthly cash benefit to eligible recipients, which may be used for a high school diploma or GED, college, graduate school, business, technical or vocational courses, certificate programs, apprenticeships and on-the-job training.

The amount of the DEA benefit varies depending on the type of program and the type of enrollment (part-time or full-time). Under certain circumstances, tutoring assistance and work-study allowances may also be available.

Who is eligible for DEA benefits?

The child (including stepchild or adopted child), spouse or surviving spouse (who has not remarried) of the following is eligible to receive DEA benefits:

- (1) A veteran who died or is permanently and totally disabled as the result of a service-related injury;
- (2) A veteran who died from any cause while rated permanently and totally disabled from a service-related disability;
- (3) A service member listed as missing in action for more than 90 days or captured in the line of duty by a hostile force; or
- (4) A service member listed as forcibly detained for more than 90 days or interned in the line of duty by a foreign government or power.

For information about the state benefits offered by each state, visit www.education.military.com/money-for-school/state-veteran-benefits, or see Chapter 11, State Resources. Not every state currently has an education benefits program.

For a listing of state veterans affairs offices, please visit www.va.gov/Partners/stateoffice/.

The Application for DEA benefits, VA Form 22-5490, can be obtained by visiting www.vba.va.gov/pubs/forms/22-5490.pdf or by calling (888) GI-BILL-1.

For a list of DEA benefits and amounts, please visit www.gibill.va.gov/GI_Bill_Info/rates/CH35/ch35rates100106.htm.



For more information on DEA benefits and eligibility, visit:

- › **VA DEA Webpage:**
www.gibill.va.gov/GI_Bill_Info/benefits.htm#DEA
- › **VA DEA Factsheet:**
www.vba.va.gov/bln/21/Milsvc/Docs/Ch35eg.doc
- › **VA DEA Pamphlet:**
www.gibill.va.gov/pamphlets/CH35/CH35_Pamphlet.pdf
- › **Military.com:**
www.education.military.com/moneyforschool/spouse-family/dependents-educational-assistance-dea
- › **GI Bill.com:**
www.gibill.com/dea.cfm



Generally, qualifying sons and daughters may receive DEA benefits between the ages of 18 and 26. Under certain circumstances an extension is available for active duty military service, whereby DEA benefits may be used up to eight years from the date of release from active duty, or until age 31 (whichever is earlier).

Qualifying spouses generally may claim DEA benefits for ten years from the first date of eligibility, as long as he or she remains married to the veteran. Surviving spouses have ten years to claim DEA benefits based on the deceased spouse's disability, or 20 years if the service member died while on active duty. Generally, remarriage ends eligibility for surviving spouses under age 57.

How do eligible family members claim DEA benefits?

The process for claiming DEA benefits is similar to the procedure used to claim benefits under the GI Bill or REAP. Eligible family members must enroll in a qualifying educational or training program, apply to the VA for DEA benefits, obtain certification of enrollment from the school or training program and periodically verify their attendance to the VA. Applicants may apply to the VA DEA benefits by submitting a VA Form 22-5490, *Application for Survivors' and Dependents' Education Assistance*, to the VA regional office for the area where the school or training facility is located. Applicants may either complete the form electronically through the Veterans On-Line Application (VONAPP) website at www.vabenefits.vba.va.gov/vonapp/main.asp, or obtain a hard copy of the form visiting www.vba.va.gov/pubs/forms/22-5490.pdf or calling (888) GI-BILL-1. See the previous portion of this section on GI Bill benefits for a more detailed description of the processes for certifying enrollment, verifying attendance and requesting reimbursement for licensing and certification tests.

Applicants who have not chosen a training program or who want to determine their eligibility for DEA benefits may submit a Form 22-5490 to the VA Regional Office for the region in which they reside. The VA will send a Certificate of Eligibility listing how many months of benefits the applicant is eligible to receive and the length of his or her eligibility period.

Are there any scholarships available for the dependents of disabled veterans?

Yes, there are many scholarships available for dependents of disabled veterans. Each scholarship has its own set of criteria to determine eligibility.

Although it is not practical to provide a list of all of the scholarships that are available to the dependents of disabled veterans, a few select scholarships can be found in the list below. In addition, the list contains information on certain military related organizations that maintain web-based listings with general and military specific scholarship information.

Air Force Aid Society

The Air Force Aid Society provides need-based grants of up to \$1,500 to selected sons and daughters of current, former, and deceased Air Force personnel. The Air Force Aid Society website provides information on and applications for the education grants that are offered by the Society.

(800) 429-9475 or (703) 607-3072

www.afas.org/body_grant.htm

Army Emergency Relief

In addition to providing information on and applications for scholarships provided by the Army Emergency Relief to the spouses and children of deceased Army personnel, the Army Emergency Relief also maintains a listing of general financial aid links and scholarship search engines.

(866) 878-6378 or (703) 428-0000

www.aerhq.org/education.asp

Marine Corps Scholarship Foundation

The Marine Corps Scholarship Foundation provides scholarships to the children of current or former United States Marines, and to the children of current or former United States Navy Corpsmen who have served with the United States Marine Corps. The MCSF distinguishes itself among military scholarship programs as it gives particular attention to children of parents killed or wounded in action.

(800) 292-7777 (NJ Office); (703) 549-0060 (VA Office)

www.marine-scholars.org

Military.com

Military.com is a commercial, service-related organization and maintains a website that provides a scholarship search function for dependents of service members, as well as state-by-state education benefits listings.

www.military.com/education-home

Navy League of the United States

The Navy League of the United States provides scholarships to dependents or direct descendants of active, reserve, retired or honorably discharged members of the United States Navy, Coast Guard, Flag Merchant Marine, Marine Corps or Naval Sea Cadet Corps.

www.navyleague.org/scholarship/

Navy Marine Corps Relief Society

The Navy Marine Corps Relief Society maintains a website for information on and applications for educational grants that are offered and administered by the Navy Marine Corps Relief Society.

(703) 696-4960

www.nmcrs.org/education.html

Scholarships for Military Children

Scholarships for Military Children is a scholarship program that was created by the Defense Commissary Agency. Scholarships for Military Children maintains a website that provides information and applications for scholarships funded by manufacturers and suppliers whose products are sold at military commissaries around the world.

(888) 294-8560

www.MilitaryScholar.org

Society of the Daughters of the U.S. Army (DUSA)

Scholarships Award Program

DUSA awards scholarships to the daughters or granddaughters of current and former officers of the United States Army.

www.dodea.edu/students/dusa.htm



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Are there any information resources on educational benefits for spouses of disabled veterans?

Yes. The following resources, which address educational opportunities for military spouses generally, may be helpful:

Service members Opportunities Colleges

“Service members Opportunities Colleges” is a consortium of more than 1,800 colleges and universities that provide educational opportunities for service members and their families. Addressing the problem of earning a degree while frequently relocating, colleges in the consortium agree to recognize each other’s credits in the case of transferring students.

(800) 368-5622

www.soc.aascu.org/

National Military Family Association:

Spouse Education Information and Resources

An informational portal to resources on education benefits for spouses of service members.

www.nmfa.org/site/PageServer?pagename=spouseeducation

Employment Benefits

Transition Assistance Program (TAP)

Where can veterans obtain information about postmilitary service employment and vocational training?

The Transition Assistance Program (TAP) helps veterans make the initial transition from military service to the civilian workplace by providing employment and training information within 12 months of separation and within 24 months of retirement. TAP programs are sponsored by the VA and DoD and are free.

TAP consists of 3- or 4-day workshops at selected military installations nationwide and covers a variety of employment related subjects, including job searches, career decision making, current occupational and labor market conditions, common barriers to success, résumé and cover letter drafting, interviewing techniques, and obtaining loans and assistance for starting a small business. TAP also provides attendees with an evaluation of their employability.

Are there any programs that provide transition support specifically for disabled veterans?

Yes. Disabled Transition Assistance Program (DTAP) provides information and assistance to veterans who believe they have a disability qualifying them for the VA’s Vocational Rehabilitation and Employment (VR&E) program. Please see the discussion below for more information on VR&E. DTAP includes a 3-day TAP workshop and additional hours of individual instruction to address the needs of disabled veterans. DTAP also assists veterans in filing the VR&E application.



How can a service member who is hospitalized or otherwise unable to attend TAP and DTAP sessions obtain this information?

A service member who is hospitalized or otherwise unable to attend a DTAP group session can have a VA Regional Office VR&E Officer coordinate DTAP sessions. Service members can call (800) 827-1000 in order to find the VA Regional Office closest to them.

Vocational Rehabilitation & Employment (VR&E) Service

What is the primary government resource for employment services and benefits for disabled veterans?

The Vocational Rehabilitation and Employment Service (VR&E, sometimes also referred to as VRES), a division of the VA, helps veterans with service-connected disabilities gain and maintain suitable employment. VR&E offers the following services:

- > comprehensive rehabilitation evaluation to determine abilities, skills, interests and needs;
- > vocational counseling and rehabilitation planning;
- > employment services, such as job-seeking skills and résumé development;
- > on the job training, apprenticeships and nonpaid work experiences;
- > post-secondary training at a college, vocational, technical or business school; and
- > supportive rehabilitation services, including case management, counseling and referral.

Who is eligible to receive assistance from VR&E?

Veterans who have received or will receive a discharge that is other than dishonorable and who have a service-connected disability rating of 10% or more may be eligible for assistance from VR&E. Those with a disability of 20% or higher are automatically eligible, provided they have an “employment handicap.” The VA will find an employment handicap where a veteran has as an impairment stemming from a service-connected disability affecting his or her ability to train for, find and retain suitable employment given his or her abilities, aptitudes and interests. Those with a 10% rating must show a “serious employment handicap,” or a significant impairment of his or her ability to train for, find and retain suitable employment given his or her abilities, aptitudes and interests, in order to receive assistance from VR&E.

When must veterans apply to receive assistance from VR&E?

Veterans have a 12-year eligibility period in which they may apply for assistance from VR&E. The window begins on the latter of two dates: the date of separation from active military service or the date the veteran was first notified of his or her status as having a service-connected disability. The eligibility period may be extended if a Vocational Rehabilitation Counselor (VRC) determines that a veteran has a serious employment handicap.

Information about TAP and DTAP is available at the following websites:

www.taonline.com/tappages/

www.dol.gov/vets/programs/tap/main.htm

www.acap.army.mil/transitioner/transition_assistance/disbl_veterans.cfm#

More information about VR&E is available at the following websites:

VA:

www.vba.va.gov/bln/vre/index.htm

VBR&E:

www.vetsuccess.gov

Military.com:

www.education.military.com/money-for-school/veteran/gi-bill/vocational-rehabilitation-and-employment-vre



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How does the application process work?

Applications require the following information:

- > Social security number or VA file number (if different);
- > Name of the VA office where the veteran's records are located;
- > Name and date of any previous rehabilitation programs in which the applicant was enrolled;
- > For all periods of active duty, applicants will need to provide their service number, branch of service, date of entry, date of exit and type of discharge;
- > If currently employed, the applicant will need to provide the name of the employer, a description of the job and disclose his or her salary or wages.
- > If currently hospitalized, the applicant will need to provide the name and address of the hospital.

Applicants must complete VA Form 28-1900, *Disabled Veterans Application for Vocational Rehabilitation*, available at www.va.gov/vaforms/VBA_28_1900.pdf. A copy of the application also may be obtained by mail by calling (800) 827-1000. Applicants who so choose may submit an online application using the VONAPP website at www.vabenefits.vba.va.gov/vonapp/main.asp.

Applications, if not submitted online using VONAPP, should be submitted to the nearest VA office. A VRC will then contact the applicant and perform a comprehensive evaluation to determine whether he or she meets the basic eligibility requirements described above.

What types of employment services are available?

Once a VRC determines that a veteran applicant is entitled to assistance from VR&E, the counselor will work with the applicant to identify possible employment options, determine what training requirements may be necessary to achieve his or her career goals and address any physical demands of a chosen profession.

After these issues are covered, the counselor will work with the veteran to develop an individualized vocational plan, which states the specific services that a veteran will receive over the course of up to four years. These services may include assistance in finding employment, job-seeking skills training – such as developing interviewing techniques and résumé preparation – and on-the-job training or apprenticeships.

Does VR&E offer education benefits?

Yes. Depending upon the individualized vocational plan chosen, the VRC and veteran may decide that additional education is appropriate for the achievement of the veteran's vocational goals. Veterans who are enrolled in a vocational school, a special rehabilitation facility, or a 2- or 4-year degree program at a college or university may be eligible for an education benefit to cover tuition, fees, books, tools or other necessary supplies. In addition, subsistence allowances vary based on the type of training undertaken, rate of attendance (full-time or part-time), and number of dependents. A veteran who receives VR&E benefits may also be eligible for a monthly subsistence allowance to cover living expenses.



Does the VR&E offer any benefits for disabled veterans not yet ready to reenter the workforce?

Yes. Disabled veterans whose service-connected disabilities render them unable to seek and maintain employment may be eligible for VR&E's Independent Living Program (ILP). ILP seeks to ensure that eligible veterans are able to live independently, participate in family and community life and, over time, return to work. ILP benefits may include assistive technology, independent living skills-training and collaboration with community-based support services.

To be eligible for ILP benefits, veterans must submit the same application as for other VR&E benefits. An individualized ILP is generally crafted through consultation with the disabled veteran, family members and medical personnel. A veteran may be eligible for ILP benefits for up to 24 months.

Veterans Preference Program

Do disabled veterans receive any preference for employment with the federal government?

Yes. The Department of Labor's Veterans Preference Program offers certain eligible veterans an advantage when seeking employment with the federal government. Generally, if a veteran is eligible for the preference, he or she will be entitled to a hiring preference over other applicants with similar qualifications when applying for federal government jobs, as well as higher retention standing in the event of layoffs. Preferences usually take the form of adding either 5 or 10 points to a **passing** score on the civil service exam. However, certain other hiring preferences exist for certain federal positions that do not require a civil service exam.

Who is eligible for the Veterans Preference Program?

The "10-point preference" is available to veterans with a present service-connected disability rating of 10% or more, veterans receiving compensation, disability retirement or pension benefits from the VA or DoD and veterans who are Purple Heart recipients. Under certain conditions, spouses, widows/widowers and mothers of deceased or totally disabled (disability rating of 100%) veterans may be eligible for "10-point derived preference."

The "5-point preference" may be available to veterans who are not disabled, but who served in certain campaigns (including Operation Iraqi Freedom), or who served more than 180 consecutive days (other than for training), any part of which occurred after September 11, 2001.

In addition to the above, federal agencies generally hire only preference eligible individuals for certain positions (custodian, guard, elevator operator and messenger), as long as there are enough of them to fill vacant positions.

NOTE: The 5-point and 10-point preferences only apply to **passing scores** on federal civil service exams. Points may **NOT** be added to scores that would otherwise not be passing. In addition, veterans preference does **NOT** guarantee recipients a federal job. Retirees at the rank of major, lieutenant commander or above are not eligible for the veterans preference unless they qualify as disabled.

For more information on the VR&E's Independent Living Program, visit www.vba.va.gov/bln/vre/ilp.htm.



The following resources contain information on the veterans preference and other federal hiring policies that favor veterans:

The Office of Personnel Management (OPM):
www.opm.gov/veterans/

The Department of Labor Veterans Preference Advisor:
www.dol.gov/elaws/vetspref.htm

Veterans Employment and Training Services (VETS):
www.dol.gov/vets/



How does a disabled veteran apply for the Veterans Preference Program?

When applying for a job with the federal government, an eligible veteran should claim preference on his or her application or résumé. In addition, an eligible veteran claiming the 10-point preference must complete Standard Form 15, *Application for 10-Point Veterans Preference*, and submit certain documentation as specified in the instructions to the application, which establish the individual's eligibility for the preference. Standard Form 15 is available online at www.opm.gov/forms/pdf_fill/SF15.pdf.

What other federal hiring policies favor veterans seeking federal jobs?

In addition to the veterans preference, certain rules and laws, commonly referred to as "special authorities," allow agencies to appoint veterans to positions without competition. Unlike the Veterans Preference Program, the use of special authorities to award "non-competitive appointments" is at the discretion of the individual agency; veterans are not automatically entitled to such benefits. Therefore, it is advisable for veterans seeking noncompetitive appointment under one of the special authorities below to take any required civil service exam and seek competitive appointment in addition to non-competitive appointment whenever possible.

- > **Veterans Recruitment Appointment (VRA):** Under this special authority, disabled veterans, recently separated veterans and veterans who received an Armed Forces Medal or campaign or expeditionary medal may be eligible to receive a noncompetitive temporary appointment to a job for which they would normally have to compete with other qualified candidates who are not veterans. After two years of satisfactory service the position may be converted to a permanent appointment. A veteran does not have to qualify for veterans preference to be eligible for a VRA position. Veterans may contact the personnel office of the specific federal agency where they are interested in working to find out if there are any VRA opportunities.
- > **30 Percent or More Disabled Veterans:** Pursuant to this special authority, a federal agency may offer a noncompetitive temporary appointment for a term of at least 60 days to a veteran with a disability rating of 30% or more who meets the normal qualifications for the position. At any time during the period of temporary appointment, the agency may change the temporary appointment into a permanent position. Veterans interested in obtaining a position using this special authority should contact the personnel office of the federal agency where they are interested in working.
- > **VA Training Programs:** Some federal agencies have agreements with the VA to allow disabled veterans enrolled in VA vocational rehabilitation training programs to train at an agency office in hopes of receiving a non-competitive appointment. At the end of the training period (during which the veteran is not yet considered a federal employee), the veteran receives a Certificate of Training. The certificate allows the agency to offer a Special Tenure Appointment, which may later be converted to a permanent position. See the previous section titled "Vocational Rehabilitation & Employment (VR&E) Service" for more information on VA vocational rehabilitation training programs.

- > **Veterans Employment Opportunities Act of 1998 (VEOA):** Veterans who are preference eligible or who substantially completed three years of active military service may compete for agency “merit promotions” open to candidates outside the agency’s current workforce. Normally, these permanent positions are only available to “status” candidates: those who already hold career-type competitive appointments within the federal civil service and are eligible for advancement. VEOA candidates do not receive veterans preference for merit promotion positions, instead the VEOA allows eligible veterans to be considered for such positions without having previously held a civil service position. Veterans who already hold competitive appointments with federal agencies are subject to their agency’s Merit Promotion Plan and may not use the VEOA to be considered for promotion ahead of schedule. Veterans interested in VEOA appointments should look for agency merit promotion announcements open to candidates outside the agency.
- > **Jobs for Veterans Act of 2002:** Although this law does not create a points-based preference system, the Jobs for Veterans Act of 2002 establishes a “priority of service” for qualified veterans (and in certain circumstances veterans’ spouses) in all employment and training programs that are funded in whole or in part by the Department of Labor. With this priority, veterans and disabled veterans receive Department of Labor funded employment and training before nonveterans.

Does the Department of Labor sponsor any programs to aid veterans seeking jobs?

The Department of Labor’s Veterans’ Employment Training Service (VETS) oversees numerous programs designed to assist job-seeking veterans. VETS provides non-competitive grants to states to fund Disabled Veterans Outreach Program (DVOP) specialists and Local Veterans Employment Representatives (LVERs) who assist disabled veterans in finding employment. DVOP specialists and LVERs can often be found at VR&E program offices and local One Stop Career Centers (see below). In addition, DVOP specialists are often found at VA medical centers, military installations and other locations known to have large numbers of veterans and transitioning service members.

Recovery and Employment Assistance Lifelines (REALifelines): This Department of Labor initiative provides injured and wounded service members and their families with access to a free career assistance network through One Stop Career Centers. Advisors at One Stop Career Centers throughout the country offer personal assistance with a variety of employment services including: job search, résumé writing, job placement, interviewing skills, career counseling, electronic job bank/computer access and more. To find the nearest One Stop Career Center, call (877) US2-JOBS (872-5627) or search the online directory at www.servicelocator.org/.

The Department of Labor’s Hire Vets First comprehensive career website contains a number of resources for veterans seeking employment, including actual job listings. Visit www.hirevetsfirst.gov/ for more information.

The VETS website, www.dol.gov/vets, contains information on a variety of federal laws and programs that benefit job-seeking veterans.

For more information on REALifelines, visit www.dol.gov/vets/REALifelines or hirevetsfirst.gov/reallifelines_vet.asp, or call (888) 774-1361 to speak with a representative.

*To find the nearest **One Stop Career Center**, call (877) US2-JOBS (872-5627) or search the online directory at www.servicelocator.org/.*



Who should a veteran contact if he or she believes that a preference for which he or she is entitled has not been granted?

A veteran who believes that he or she has not been given a preference to which he or she is entitled may file a complaint with the U.S. Department of Labor's Veterans' Employment and Training Service (VETS). Information on how to file a complaint is available at: www.dol.gov/elaws/vets/vetpref/agency.htm.

Reemployment at Pre-Deployment Jobs

Are veterans entitled to return to the civilian jobs they held prior to their military service?

Veterans have the right to be reemployed at the civilian jobs they held prior to their military service if they meet certain criteria. Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), veterans who are eligible for reemployment at their pre-deployment job must be restored to that job or a comparable job and provided all of the same benefits and seniority as if they had not entered the military. For more detailed information on USERRA, see *Chapter 9, Legal Rights*.

What criteria must veterans satisfy in order to be reinstated to their civilian jobs?

To qualify for reemployment, veterans must have left their civilian job (either voluntarily or involuntarily) to perform military duties, given their employer advance written or oral notice of their military deployment, and not have returned with a dishonorable discharge. Also, the military duty must not have exceeded five years (although there are important exceptions to this 5-year limit, including periodic National Guard and reserve training duty and involuntary active duty extensions and recalls).

Lastly, veterans must return to work or apply for reemployment within 90 days of release from service. Veterans with deployments lasting between 31 and 180 days must return to work within 14 days of release. Those with deployments lasting fewer than 31 days must return to work at the beginning of their next regularly scheduled work period beginning eight hours after they return home. Veterans recovering from injuries received during service or training may have up to two years to return to their jobs.

Are employers required to make accommodations for disabled veterans?

Yes. The Americans with Disabilities Act (ADA) requires employers with more than 15 employees to make reasonable accommodations for employees with disabilities and prohibits discrimination against qualified individuals with disabilities when making hiring, promotion, compensation and training decisions. In addition, USERRA requires that employers use reasonable efforts (including training and retraining) to help veterans qualify for reemployment by refreshing or upgrading their skills. For more detailed information on the ADA and reasonable accommodations, see *Chapter 9, Legal Rights*.

For more information about USERRA, visit www.dol.gov/elaws/vets/reallifelines/reemployment.htm or call (866) 4-USA-DOL (487-2365).



Employment Resources for Families of Disabled Veterans

What employment resources are available for the spouses of disabled veterans?

The following resources contain employment information for the spouses of military personnel:

Military Spouses Career Network (MSCN)

MSCN provides information on both government programs and service-independent programs that assist military spouses in the advancement of their educational, employment and career development objectives.

www.mscn.org/

Military Spouse Resource Center for Education, Training, and Employment (Milspouse.org)

Milspouse.org offers a resource library for military spouse employment, education and relocation information.

www.milspouse.org/

Other Veteran Resources

Compensated Work Therapy (CWT) Program

CWT provides jobs and extended residential treatment programs for veterans that are recovering from severe substance abuse disorders or mental illnesses.

(757) 722-9961

www1.va.gov/Vetind/

Department of the Navy Disabled Veterans Assistance Phone Line

Navy Disabled Veterans Assistance provides employment and referrals for returning disabled service members.

(800) 378-4559

E-Vets Resource Advisor

E-Vets assist veterans preparing to enter the job market by providing information on job search tools and tips, employment openings, career assessment, education and training, and benefits and special services available to veterans.

www.dol.gov/elaws/vets/evets/evets.asp

Hire Vets First

Hire Vets First provides employment and small business ownership information for veterans.

www.hirevetsfirst.gov/



Transition Assistance Online (TAOnline)

TAOnline provides transition assistance information and tools for those separating from the military. The website allows veterans to post résumés, view job advertisements, and explore business and educational opportunities.

www.taonline.com/

Transition Bulletin Board (TBB)

The TBB, which was developed by the DoD, posts a website containing business opportunities, a calendar of transition seminars, job fairs, information on veterans associations, transition services, and training and education opportunities.

www.dmdc.osd.mil/ot/

General Online Job Databases

America's Career InfoNet

www.acinet.org

Career Builder

www.careerbuilder.com

Career One Stop

www.careeronestop.org

Department of Defense Job Search

www.dod.jobsearch.org

Department of Labor America's Job Bank

www.americasjobbank.com

Job Bank USA

www.jobbankusa.com

Military.com Job Fairs

www.military.com/Careers/

Monster

www.monster.com

Riley Guide

www.rileyguide.com

Small Business Administration

www.sba.gov/

U.S. Army Civilian Personnel Online

www.acpol.army.mil/employment

U.S. Office of Personnel Management

www.usajobs.opm.gov

Wall Street Journal Career Journal

www.careerjournal.com



CHAPTER 7: MISCELLANEOUS FEDERAL BENEFITS

Introduction

The federal government, generally through the Social Security Administration and the VA, offers various special benefits for which service members and their families may be eligible. Some of these benefits are specifically for disabled individuals, while others are available regardless of disability status. Additionally, some of these benefits are specifically for service members or veterans, while others are available regardless of military status. This chapter offers a brief overview of some of the most significant benefits: social security disability benefits, grants for purchasing equipment or making modifications to homes and automobiles, hardship withdrawals from Thrift Savings Plans (TSPs), Service-Disabled Veterans Life Insurance and certain home loan benefits and housing grants. Other aspects of these benefits, including their tax consequences, are discussed in *Chapter 8, Federal Tax Issues*.

Social Security Disability Benefits

What social security benefits are available for disabled veterans?

The Social Security Administration (SSA) offers two kinds of benefits for disabled individuals: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). SSDI functions as an insurance program that makes payments to those who become unable to work due to a disability. SSDI payments vary based on an individual's previous income and the amount of social security (or FICA) taxes he or she paid in the past. SSI is a federal program that provides monthly assistance to the elderly, blind and disabled who have low income and limited resources. SSI payments vary based on income. Disabled service members may qualify for one or both of these sources of assistance, depending on their individual situation.

Who is eligible for Social Security Disability Insurance (SSDI)?

To qualify for SSDI, an individual must (1) have worked for several years in jobs covered by social security (i.e., had social security taxes withheld from his or her pay), and (2) be disabled. The amount of time an individual needs to have worked in order to receive SSDI varies with the age at which he or she becomes disabled. SSDI benefits are only available to those who are totally disabled (i.e., unable to work); no benefits are payable for partial disabilities or for short-term disabilities.

For more information on social security disability benefits visit the following websites, or call the SSA: (800) 772-1213 (TTY: (800) 325-0778).

The SSA Disability Programs:
www.ssa.gov/disability/

The Social Security Red Book:
www.ssa.gov/redbook/

The Adult Disability Starter Kit:
www.ssa.gov/disability/disability_starter_kits_adult_eng.htm

Understanding Supplemental Security Income:
www.ssa.gov/notices/supplemental-security-income/ussi-2006.pdf



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What does “disabled” mean for social security purposes?

To qualify as disabled, an individual must have a medical condition that is expected to prevent him or her from engaging in “substantial gainful activity” (SGA) for at least one year, or to result in death. SGA means working and earning above a certain amount of income per month. The threshold for SGA is higher for individuals suffering from blindness than it is for individuals with other disabilities. For current SGA amounts, visit www.ssa.gov/OACT/COLA/SGA.html. For more information on what constitutes disability, see the Social Security Red Book, available at www.ssa.gov/redbook.

How are disability determinations made?

Disability status for social security benefits is determined separately from an individual’s DoD and VA disability ratings. Once SSA determines that an individual meets the basic requirements for benefits, they forward the individual’s application to his or her state’s disability determination services (DDS) office. The DDS office will determine if his or her medical condition qualifies as a disability for purposes of social security. SSA maintains a list of medical conditions severe enough to automatically qualify. This list is available at www.socialsecurity.gov/disability/professionals/bluebook/listing-impairments.htm. If the applicant’s condition is not on the list, then the DDS office will determine, based on his or her medical records, whether he or she is capable of returning to a previous job or of doing another type of work. In some cases, the DDS office asks an individual to undergo further physical examination in order to obtain further information.

How much assistance can an individual receive through SSDI?

SSDI payments are determined based on an individual’s lifetime average earnings covered by social security (i.e., how much social security tax he or she paid over his or her lifetime). SSDI payments may be reduced if an individual receives worker’s compensation payments or other government disability benefits, such as DoD or VA disability compensation. Benefit calculators that provide an estimate of an individual’s SSDI payments are available on the SSA website at www.ssa.gov/planners/calculators.htm.

In addition to monthly payments, SSDI recipients will usually become eligible for Medicare coverage after 24 months. See the section titled “Medicare and Medicaid” in *Chapter 5, Health Care*, for more information about Medicare benefits.

When can an individual begin receiving SSDI benefits?

Individuals who qualify for SSDI become eligible to receive benefits beginning the sixth full month after the date their disability began. Since each month’s benefits are paid the following month, recipients will not receive payment until the seventh month. For example, an individual who becomes disabled in January will be eligible for benefits beginning in July. He or she will receive a check for July benefits in August.

How long can an individual continue receiving benefits?

Benefits last a minimum of 24 months and usually continue until it is determined that an individual is no longer totally disabled, either because of medical improvement or a return to work. DDS periodically reviews disability cases to see if an individual’s condition has improved. Once an individual’s disability ceases he or she will receive



SSDI benefits for a 3-month grace period: the month in which the determination was made plus two months afterwards. Under certain circumstances, an individual may continue to receive SSDI payments beyond the grace period if he or she is enrolled in an approved program for vocational rehabilitation, employment services or other support services. See the Social Security Red Book at www.ssa.gov/redbook for more information on employment support services to help SSDI recipients reenter the workforce.

What is the application process for SSDI benefits?

In order to receive SSDI benefits, an individual must complete an Application for Social Security Benefits and a Disability Report, which contains information about his or her disabling condition and its effects on his or her ability to work. Individuals may either complete these forms online at www.socialsecurity.gov/applyfordisability/ or through an interview with a claims representative. Interviews may be conducted in person or over the phone. Individuals may contact an SSA claims representative at (800) 772-1213 (TTY: (800) 325-0778) to schedule an interview.

Applicants for SSDI should be prepared to submit proof of identity and evidence of disability, including:

- > social security number;
- > birth certificate (or other proof of age);
- > contact information for doctors and medical facilities where they received treatment;
- > names and prescribed dosages of medications they are taking;
- > medical records and test results;
- > a work history for the past 16 years, including contact information for previous employers and the type of work done;
- > copies of W-2 forms (or federal tax returns for self-employed individuals);
- > bank account numbers;
- > emergency contact information: name, address and phone number of a designated emergency contact person; and
- > original or certified copies of military discharge papers (Form DD 214) for all periods of active duty.

For a complete checklist of items to prepare, visit www.ssa.gov/disability/Adult_Starterkit_checklist.pdf.

Individuals have the right to be represented by an attorney or other qualified representative throughout the application and appeals process. Represented applicants must submit a Form SSA-1696-U4, *Appointment of Representative*, available at www.ssa.gov/online/ssa-1696.pdf. See www.ssa.gov/pubs/10075.pdf for more information on the right to representation.



What is the process for appealing an SSA determination?

An individual who disagrees with an SSA determination regarding disability benefits can appeal a decision by filing a Request for Appeal and an Appeal Disability Report with SSA within 65 days of the date on his or her notice of decision from SSA. For more information on appeals, visit www.s044a90.ssa.gov/apps6z/i3441/ee001gen.jsp, or call the toll-free number listed above.

Who is eligible for Supplemental Security Income (SSI)?

An individual may qualify for supplemental security income if he or she (1) is over age 65, blind or disabled; (2) is a low-income earner; and (3) owns assets worth less than \$2,000 (or \$3,000 for a couple). The disability determination process and the standard for finding a disability are the same as those discussed above for SSDI. In determining whether an individual is a low-income earner, the SSA considers earned income, unearned income and government benefits such as VA and DoD disability compensation and other social security benefits (e.g., SSDI). When determining whether an individual has assets in excess of the maximum threshold amount, SSA generally does not include an individual's home and the land it is on, a car, life insurance policies worth \$1,500 or less, burial plots and up to \$1,500 each in burial funds for a recipient and his or her spouse. However, other assets such as cash, stock, retirement accounts and similar items are considered.

How much assistance can an individual receive from SSI?

SSI payments are determined based on the amount of "countable income" an applicant receives and his or her living arrangement/family status. An eligible applicant will receive the basic monthly payment known as the Federal Benefit Rate (FBR) minus any countable income. Countable income includes earned income, unearned income and government benefits.

Most states provide an additional monthly payment or "state supplement" to SSI. States each set their own qualifications and amounts for state supplements.

SSI recipients may be eligible to receive Medicaid. See *Chapter 5, Health Care: Medical, Psychological and Dental Care Coverage*, for more information about Medicaid benefits.

When can an individual begin receiving benefits? How long will he or she continue receiving benefits?

There is no waiting period to receive SSI benefits; payments start as soon as an applicant is eligible. SSI benefits continue as long as an individual remains both disabled and below the SSA's threshold levels of income and assets.

As with SSDI, an individual's disability will be periodically reviewed. Once an individual's disability ceases, he or she will receive payment for a 3-month grace period. Under certain circumstances, an individual may continue to receive SSI payments beyond this grace period if he or she is enrolled in an approved program for vocational rehabilitation, employment services or other support services.



What is the application process for SSI benefits?

Applicants for SSI must call SSA at (800) 772-1213 to speak with a claims representative and schedule an interview. In order to receive SSI benefits, an individual will have to complete and submit a Disability Report to SSA. Individuals may complete this form online at www.socialsecurity.gov/applyfordisability/.

In addition to the documents required for SSDI benefits (see above), applicants for SSI also may need:

- > information about their home: either mortgage information or a lease;
- > financial records: payroll slips, bank records, insurance policies, car registrations and other information about assets; and
- > proof of citizenship or noncitizen status: birth certificate, passport or immigration documents.

The appeals process for individuals who disagree with SSA's determination regarding SSI benefits is the same as for SSDI benefits.

How long does it normally take to receive notice of a decision regarding an application for SSDI or SSI?

It usually takes between three to five months to receive notice of a decision regarding an application for SSI or SSDI benefits. Individuals should file for benefits as soon as they believe they are eligible. In addition, being organized and prepared can help speed up the process. Applicants should consult the checklist and fill out the Medical and Job Worksheet found in the Disability Starter Kit prior to their interview with a claims representative. The Disability Starter Kit is available at www.ssa.gov/disability/disability_starter_kits_adult_eng.htm.

Automobile and Special Adaptive Equipment Grants

Can disabled veterans and disabled service members receive financial assistance to purchase an automobile designed for their special needs?

Yes. The VA provides grants to qualifying disabled veterans to purchase new or used automobiles or special adaptive equipment for currently owned vehicles. Eligible veterans do not receive money from the VA. Rather, the grant of up to \$11,000 is paid directly to the seller of the automobile. A grant for adaptive equipment may be used to purchase power steering, power brakes, power window lifts, power seats, and special equipment necessary to assist the eligible person into and out of the vehicle, among other things, and may be paid either to the claimant or the seller.

Claimants should consider applying for the grant prior to purchasing equipment in order to ensure receipt of the maximum benefit allowable.



For an automobile and/or special adaptive equipment grant, complete VA Form 21-4505, Application for Automobile or Other Conveyance and Adaptive Equipment; for just an adaptive equipment grant, complete VA Form 10-1394, Application for Adaptive Equipment – Motor Vehicle. Form 21-4502 and Form 10-1394 are available online, respectively, at www.vba.gov/pubs/forms/21-4502.pdf and www.usa-federal-forms.com/usa-fedforms-dod-va/dod-va/dod-va-10-1394-nonfillable.pdf. Forms may also be requested by mail by contacting the VA at (800) 827-1000.



Who is eligible?

Veterans and service members with disabilities resulting from an injury or disease incurred or aggravated during active military service are eligible for the automobile grant. Specifically, the veteran or service member must have one of the following types of disabilities to qualify: (1) loss, or permanent loss of use, of one or both feet; (2) loss, or permanent loss of use, of one or both hands; or (3) permanent loss of vision in both eyes, to a certain extent.

Additionally, veterans and service members with service-connected ankylosis (immobility of the joint) of one or both knees or hips qualify for adaptive equipment grants.

How does a veteran or service member apply?

Veterans and service members must complete an application and submit it to their local VA regional office (for automobile and/or special adaptive equipment) or local VA medical center (for special adaptive equipment only).

Thrift Savings Plan

What is the Thrift Savings Plan?

The Thrift Savings Plan (TSP) is a retirement savings plan with special tax advantages for federal government employees and service members. Participation is optional, and service members must join TSP while they are still serving in the military. TSP is similar to traditional 401(k) plans often sponsored by private employers; contributions to TSP accounts are not taxed at the time they are made, but distributions from the accounts generally are subject to income tax at the time the distributions are withdrawn. Veterans who did not sign up for TSP while in service cannot join the plan after leaving the military. Contributions to TSPs are subject to certain limitations. Detailed information about TSP is available at www.tsp.gov.

Can money in a TSP account be used for disability-related expenses?

There are three basic ways for service members to access funds in their TSP accounts: in-service withdrawals, TSP loans and post-separation withdrawals.

In-service withdrawals: During military service, TSP Participants may withdraw money from their accounts if either they are at least 59½ years old or they have a verifiable financial hardship. For instance, a disabled service member may face financial hardship in connection with his or her medical condition. In such a case, a financial hardship withdrawal may be permitted. However, unless the withdrawal is due to financial hardship, such as a permanent and total disability or certain medical expenses, or the service member is over 59½ years old, the withdrawal will be subject to both a 10% penalty tax and regular income tax when the money is withdrawn.

TSP Loans: During military service, service members participating in TSP are permitted to take loans from their TSP accounts under certain circumstances. The amount of money that can be withdrawn as a loan is subject to certain restrictions, and the loan is subject to a fee. In addition, the loan must be paid back with interest during a fixed period of time, usually five years.

Post-Separation Withdrawals: After separation from military service, TSP participants may access the money in their TSP accounts in a number of ways, including transferring the money into an IRA or a qualifying employer-sponsored retirement plan (like a 401(k) plan) and receiving the money directly in the form of a lump-sum payment or monthly payments or as an annuity. Each of these options has a different tax consequence, and payments received directly before the age of 59½ may still be subject to a 10% early withdrawal penalty in addition to income tax at the time the money is received. Service members should consult their TSP plan administrator and a tax advisor when contemplating a withdrawal from a TSP in order to determine which option is best suited for their financial needs and to assess the tax consequences of a withdrawal.

See *Chapter 8, Federal Tax Issues* for more information about the federal tax consequences of making withdrawals from TSP accounts.

How does an in-service withdrawal for financial hardship work?

As discussed above, a service member may be able to withdraw funds from a TSP account upon showing a financial hardship. The amount of the withdrawal is limited to the financial need, but the withdrawal must be at least \$1,000. A service member may not contribute to his or her TSP account for six months after a financial hardship withdrawal, and he or she must file a Form TSP-U-1, *Thrift Savings Plan Election Form*, in order to resume contributions. To be eligible for a financial hardship withdrawal, financial need must result from one of the following four conditions:

- > Negative monthly cash flow (net income is less than ordinary household expenses);
- > Medical expenses (including household improvements needed for medical care);
- > Personal casualty losses; or
- > Legal expenses for separation or divorce.

A claim of financial hardship may not be made more than once every six months. Funds withdrawn due to financial hardship may not be repaid to the TSP account.

As discussed above, under many circumstances, a withdrawal from a TSP account, including, in some circumstances, a hardship withdrawal, is subject to a 10% penalty for early withdrawal. In addition, a withdrawal from a TSP account generally will be subject to income tax when the money is withdrawn. Please see *Chapter 8, Federal Tax Issues* for more information concerning the tax consequences of a withdrawal from a TSP account.

Service-Disabled Veterans Life Insurance (S-DVI)

What is S-DVI?

S-DVI is a life insurance plan provided by the VA. Veterans who are granted a service-connected disability but are otherwise in good health may apply to the VA for up to \$10,000 in life insurance coverage at standard insurance rates within two years from the date the VA notifies the veteran that the disability has been rated as service-connected.

For more information on TSP, visit www.tsp.gov/uniserv/features/.

For details concerning TSP in-service withdrawals, including the procedure for making withdrawals and restarting contributions, see www.tsp.gov/forms/tspbk12.pdf.

For information about making withdrawals after separation from service, see www.tsp.gov/uniserv/forms/tspbk02.pdf.

For information about TSP loans, see www.tsp.gov/uniserv/forms/tspbk02.pdf.

TSP participants may call the 24-hour automated TSP ThriftLine to access the latest information about their TSP accounts:

- > Phone: 1-TSP-YOU-FRST (877-968-3778)
- > TTY: 1-TSP-THRIFT5 (877-847-4385)



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Information concerning S-DVI and other VA life insurance programs can be found in the VA publication "VA Life Insurance Programs for Veterans and Servicemembers Handbook." The handbook is available online at www.insurance.va.gov/inForceGliSite/GLIhandbook/glibooklet.htm. In addition, the VA's Government Life Insurance Office can answer general questions about VA insurance benefits. The Government Life Insurance Office can be reached toll-free at (800) 669-8477.



Veterans who are totally disabled may apply for a waiver of premiums. For those who are eligible for this waiver, an additional policy of up to \$20,000 is available. The premiums, however, cannot be waived on the additional insurance.

Who qualifies?

Service members can apply for up to \$10,000 in S-DVI if they meet all four of the following criteria:

1. They were released from active duty under other than dishonorable conditions, on or after April 25, 1951.
2. They were rated for a service-connected disability (even if they received a 0% rating).
3. They are in good health except for any service-connected conditions.
4. They apply within two years from the date the VA grants their new service-connected disability.

Concerning requirement number two, the VA disability ratings are rounded to the nearest 10%, a veteran with a 4% disability condition would have a VA rating of 0%. For more information, see *Chapter 2, The Disability Rating System*.

Additionally, service members can apply for the supplemental policy of up to \$20,000 if they meet all three of the following criteria:

1. They are eligible for a waiver of premiums (i.e., total disability). To qualify for a waiver of premiums, the insured must have a mental or physical disability which (1) prevents him or her from performing substantial gainful employment; (2) begins before the insured's 65th birthday, and continues for at least six consecutive months; and (3) does not begin prior to the effective date of the policy.
2. They apply for the coverage within one year from notice of the grant of waiver.
3. They are under age 65.

How do service members apply for S-DVI?

Veterans can apply for basic S-DVI online at www.insurance.va.gov/Autoform/index.asp, or by mailing VA Form 29-4364, *Application for Service-Disabled Insurance*, to the Department of Veterans Affairs Regional Office and Insurance Center (RH), P.O. Box 7208, Philadelphia, PA 19101.

Veterans seeking Supplemental S-DVI can apply by mailing in an application VA Form 29-0189, *Application for Supplemental Service – Disabled Veterans (RH) Life Insurance* to the office above.

The S-DVI forms can be downloaded from www.insurance.va.gov/inForceGliSite/buying/SDVI.htm or obtained by calling toll-free (800) 669-8477.

Housing Grants

Veterans with service-connected disabilities may be eligible to receive a VA grant to assist in building a new specially adapted home or modifying an existing home to meet their disability-related needs.

What benefits are available for veterans who need to adapt their homes to accommodate their disabilities?

The VA provides grants for veterans who need to build or renovate their homes to adapt to severe disabilities connected with their military service. There are two types of grants administered by the VA: the Specially Adapted Housing grant (up to \$50,000) and the Special Adaptations grant (up to \$10,000). Eligibility for one grant or the other depends on the veteran's type of disability.

What is the Specially Adapted Housing grant?

The VA offers grants of up to \$50,000 (or 50% of the cost of the home or repairs, whichever is less) to cover the cost of building or buying a specially adapted home or adapting an existing home. Alternatively, the grant may be applied against any unpaid balance of a mortgage on a specially adapted home already purchased.

Who is eligible to receive the Specially Adapted Housing grant?

Veterans are eligible to receive the Specially Adapted Housing grant if they are eligible to receive VA compensation for a permanent and total service disability due to one of the following:

- > loss or loss of use of both legs, such as to preclude movement without the aid of crutches, a wheelchair, or other assistive devices;
- > loss or loss of use of both upper arms at or above the elbow;
- > blindness in both eyes, having only light perception, plus loss or loss of use of one lower leg; or
- > loss or loss of use of one leg together with (a) residual effects of organic disease or injury, or (b) the loss or loss of use of one arm, which so affects the functions of balance or propulsion as to preclude movement without the aid of assistive devices.

Additionally, the house must meet all three of the following requirements:

1. It must be medically feasible for the veteran to reside in the house.
2. The house must be adapted to be suitable to the veteran's needs for living purposes, both now and in the future.
3. It must be financially feasible for the veteran to acquire the house or make the adaptations, with the assistance provided by the grant.

If the veteran is temporarily residing in a family member's home, may he or she still receive a grant?

The VA will provide assistance to a veteran temporarily residing in a family member's home to adapt the family member's home to meet his or her special needs. The grant is limited to a maximum of \$14,000.



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To apply for either the Specially Adapted Housing grant or the Special Home Adaptations grant, the veteran must complete VA Form 26-4555, Veterans' Supplemental Application for Assistance in Acquiring Specially Adapted Housing, and submit it to the regional VA office where his or her files are located. To obtain a form go to www.vba.va.gov/pubs/forms/264555.pdf or call (800) 827-1000. For further information on these grants, visit www.homeloans.va.gov/sah.htm.

Are active duty service members eligible to receive a Specially Adapted Housing grant while awaiting disability discharge?

Yes. The VA has the authority to grant Specially Adapted Housing grants to active duty service members awaiting disability discharge.

What is the Special Home Adaptations grant?

The Special Home Adaptations grant is a VA grant of up to \$10,000 to cover the costs of special housing adaptations to accommodate the needs of certain eligible veterans. This grant is available to veterans with a service-connected disability entitling them to compensation for permanent and total disability due to:

- > Blindness in both eyes with 5/200 visual acuity or less; or
- > The anatomical loss, or the loss of use of, both hands or arms below the elbow.

The veteran may apply the grant towards the purchase or adaptation of a home in which he or she resides or intends to reside, including the adaptation of a home owned by a member of the veteran's family.

Is the Special Housing Adaptations grant available to veterans residing temporarily in a family member's house?

Yes. The VA may approve a grant of up to \$2,000 to cover the costs of adapting a family member's home in which the veteran is temporarily residing.

May a veteran receive the Specially Adapted Housing grant and the Special Housing Adaptation grant more than once?

Yes. A veteran may receive the grants up to three times. However, the aggregate amount of the assistance cannot exceed the maximum amounts allowable for either grant.



CHAPTER 8: FEDERAL TAX ISSUES

Introduction

This chapter provides general information about certain U.S. federal income tax rules that may be relevant to military personnel and some information that will be of specific interest to disabled service members, their spouses and family members. In addition, this chapter discusses powers of attorney and steps that are necessary to allow someone to file a tax return on behalf of a disabled service member. It is not intended to provide specific tax advice or to take the place of a consultation with a tax professional, such as a certified public accountant or a tax attorney. **This chapter only discusses U.S. federal income tax rules and does not cover state or local tax rules, which may be different from the federal rules discussed in this chapter and may differ from state to state.**

Because this section is only a general summary, it omits many details about the federal income tax rules it describes. Many of these details, along with answers to questions veterans and their families may have, can be found in IRS Publication 3, *Armed Forces Tax Guide*, and Publication 907, *Tax Highlights for Persons with Disabilities*. These publications, along with other IRS forms and publications, may be obtained from the IRS website at www.irs.gov or by calling (800) 829-3676. Additional information addressing how to find answers to your tax questions, including the websites of state tax authorities, can be found in *Chapter 11, State Resources*. **Veterans and their families are also strongly encouraged to consult with a tax professional for advice about their particular circumstances and for answers to any questions they may have.** Under most circumstances, a certified public accountant should suffice.

Tax Basics

How do I pay taxes? Is that the same as filing a tax return?

In general, federal taxes must be paid on all income, including wages, interest earned on bank accounts, etc. Most individuals' income taxes are paid when their employers withhold wages from their paychecks. Taxpayers may recoup a portion of their withholdings by filing a tax return, which enables them to receive a tax refund.

What types of tax benefits may service members receive?

Certain tax benefits are particularly relevant to service members and their families. Some tax benefits may arise as a result of a service member serving in a combat zone, while other benefits may arise as a result of certain expenses incurred by the service member. Tax benefits most often take the forms of exclusions, deductions and credits.



- > **Exclusions** are sums of money received that are not taxed and do not have to be reported as “income” on tax returns. For instance, a service member may be eligible for the Combat Zone Exclusion, in which case the excluded wages are “tax-free.” See the section titled “Exclusions: The Combat Zone Exclusion” below.
- > **Deductions** reduce the amount of money on which taxes are due. For instance, expenses incurred in modifying a home to accommodate a disability are generally tax deductible if the modification does not increase the value of the home. For example, if a service member spends \$5,000 making her home wheelchair accessible, she may be allowed to deduct that expense if that improvement did not increase the value of her home. This does not mean that the service member pays the government \$5,000 less in taxes. Rather the service member **may be allowed to reduce her taxable income** by \$5,000 for the tax year. See the section titled “Deductions” below.
- > **Credits** directly offset the amount owed in tax. For instance, a service member who receives a \$1,000 Disabled Tax Credit will owe \$1,000 less in taxes, or will receive a refund of \$1,000 after filing his or her tax return. See the section titled “Tax Credit for the Disabled” below.

Income Tax Returns

When are tax returns due?

The regular due date for tax returns is April 15 of the year following the calendar year for which the return is filed. Most individual tax returns cover a calendar year, January through December. If April 15 falls on a Saturday, Sunday, or legal holiday, then the due date is the next business day.

Extensions are generally available upon a timely request. Certain military personnel are entitled to automatic extensions.

Who is entitled to an automatic extension to file a tax return?

The deadline for filing tax returns, paying any tax due and taking other actions with the IRS is automatically extended for those serving and those hospitalized as a result of injuries incurred while serving in the Armed Forces in a combat zone, in a qualified hazardous duty area or on deployment outside of the United States while participating in a contingency operation. Service members also receive automatic extensions if they are performing qualified service outside of a combat zone, meaning service that is in direct support of military operations in a combat zone **and** which qualifies for special military pay due to imminent danger or hostile fire. A combat zone is any area the President designates as an area in which the United States is engaging in combat.

The deadline for taking actions with the IRS is extended 180 days after the last day the service member is in a combat zone or other qualifying situation described above or the last day of any qualified hospitalization due to an injury from service in one of the qualifying situations described above, whichever is later.



What is the process for requesting an extension for filing a tax return if an automatic extension does not apply?

In order for a 6-month extension to apply, U.S. residents must file IRS Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Tax Return*, by the regular due date of the return (generally April 15, as discussed above). Since the extension to file is automatic, no notice of approval will be received. However, if the request is not filed by the regular due date, the request will be denied and notification of the denial will be issued by the IRS. An automatic extension may not be available to all taxpayers. See IRS Form 4868 for further details and instructions.

If a taxpayer requests and receives an extension for filing an income tax return, does he or she also receive an extension for the payment of any taxes owed?

No. An extension of time to file a tax return does not mean the taxpayer receives an extension to pay the amount of any taxes that are due. Generally, if a taxpayer requests an extension, he or she should estimate and pay the amount of tax due by the regular due date. Interest generally will be charged on any unpaid tax liability from the regular due date to the date the tax is finally paid. Also, penalties may be charged unless there is reasonable cause for late payment.

Filing Returns on Behalf of Disabled Veterans

What if the service member is unable to complete and file a tax return due to hospitalization or injury?

A power of attorney is necessary in order to file and sign a return on behalf of a service member. When using a power of attorney to file a tax return on behalf of the grantor, the attorney-in-fact must sign the tax return and attach the power of attorney.

There are several different kinds of powers of attorney. Powers of attorney can either be “general” or “limited.” Under a limited power of attorney, the attorney-in-fact may only act on the grantor’s behalf within certain limited circumstances. A power of attorney can also be durable or nondurable. Nondurable powers of attorney cease to be effective when the grantor becomes incapacitated, whereas durable powers of attorney persist through incapacitation. Taxpayers may use the IRS Form 2848, *Power of Attorney and Declaration of Representative*, as a limited power of attorney for tax matters. The IRS form may only be used in particular circumstances and only allows the grantor to assign powers to a limited class of people such as attorneys, accountants, employees and immediate family members. IRS Form 2848 is available online at www.irs.gov/pub/irs-pdf/f2848.pdf.

If a taxpayer uses the IRS Form 2848, it only allows the grantor to assign powers to a limited class of people such as attorneys, accountants, employees and immediate family members.

If a spouse is filing a joint return with a service member who cannot sign due to injury or disease, the spouse may sign on the service member’s behalf. The spouse should sign the service member’s name in the appropriate place followed by the word “by,” then the spouse’s name, followed by the word “husband” or “wife.” In addition, the spouse must



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attach a statement that the service member has agreed to the spouse signing on his or her behalf, which must include the form number of the return being filed (e.g., IRS Form 1040), the tax year and the reason the service member cannot sign the return. Legal guardians for service members may sign the return as guardian.

What if the service member has not signed a power of attorney, and is unable to do so because of injury or hospitalization?

If the service member has not signed a durable power of attorney and becomes incapacitated, only a court appointed representative may sign tax returns or other legal forms on his or her behalf. This is the case even if the service member previously signed a nondurable power of attorney. In the event of incapacitation without a durable power of attorney, the service member's family should seek legal advice on how to manage the service member's affairs.

As noted above, there is an automatic extension for filing a tax return of 180 days from the date of the service member's release from qualified hospitalization. No action is necessary to claim this extension.

Exclusions – The Combat Zone Exclusion

Are there any special U.S. federal income programs available to reduce the tax burden of service members?

Yes. Congress has created the Combat Zone Exclusion program to reduce the income taxes owed by service members who serve in combat zones. The Combat Zone Exclusion permits the exclusion of certain pay from income as the result of having served in a combat zone or other qualifying service. This means that the amounts that qualify for the exclusion do not have to be reported as income on any tax returns thereby making those amounts "tax-free." Under many circumstances, the military will automatically adjust withholding to account for the Combat Zone Exclusion so that whoever prepares the income tax return will not need to make a separate adjustment to receive the tax-free treatment of qualifying income. However, service members may wish to have a tax professional verify that this has been done correctly.

If a service member has served in a combat zone or performed other qualifying service during part of any month, all of the military pay received for that month is excluded from income, subject to certain limits for commissioned officers.

A service member generally will be eligible for the Combat Zone Exclusion during periods in which any of the following apply:

- > the service member was assigned on official temporary duty to a combat zone;
- > the service member qualified for hostile fire or imminent danger pay while in a combat zone or while performing other qualifying service;
- > the service member became a prisoner of war or was missing in action;
- > the service member was outside of a combat zone but served in direct support of military operations in a combat zone; or



- > the service member was hospitalized as a result of wounds, disease or injury incurred in a combat zone, except that the exclusion does not apply for any month more than two years after the termination of combat activities in the combat zone, as specified by the President.

Deductions and Credits

Medical Care

Are expenses related to medical care deductible?

Yes. A wide variety of medical expenses may be deducted, including artificial limbs, wheel chairs, psychiatric care and therapy, long-term care, and many other expenses. However, deductions related to medical expenses are only permitted to the extent the expenses exceed a certain percentage of an individual's income. For a complete listing of permissible deductions, as well as the rules for when medical expense deductions may be taken and instructions on how to figure and report medical expense deductions, consult IRS Publication 502, *Medical and Dental Expenses*.

Disability-Related Home Modifications

Can expenses incurred in modifying a home to accommodate a disability be deducted?

Generally, expenses incurred in modifying a home to accommodate a disability are considered medical expenses. Permanent improvements are deductible to the extent that they do not increase the value of a service member's home. In other words, the difference between the cost of the improvement and the amount that the value of the property increased is the deductible medical expense. For example, if a service member had an elevator installed in her home at a cost of \$8,000 and the elevator increased the value of the home by \$4,500, he or she would have a deductible medical expense of \$3,500.

However, many common disability related improvements do not generally increase the value of a property, and, in such a case, the full cost can be included as a medical expense. For a list of examples, see IRS Publication 502, *Medical and Dental Expenses*. Amounts spent to maintain disability-related home modifications also qualify as medical expenses. Expenses incurred in modifying a home are subject to the same limitations on deductions as other medical expenses.

Tax Credit for the Disabled

Is there a federal tax credit for the disabled?

Yes, depending on their income, those service members who (1) are U.S. citizens or residents, (2) have retired on permanent and total disability and (3) if under age 65, receive taxable disability benefits, may be eligible for a disability tax credit. It is important to note that because VA and DoD disability benefits are **not** taxable, these payments cannot make a service member eligible for a credit; he or she will need some other source of disability benefits.



For the purposes of the disability tax credit, permanent and total disability means that a service member cannot engage in substantial gainful activity. Substantial gainful activity involves the performance of significant duties over a reasonable period of time while working for pay or profit.

Taxable disability benefits must be paid under an employer's accident or health plan while a service member is away from work due to a disability. Taxable disability income that is not provided by an employer's accident or health plan, like SSDI, cannot make one eligible for the tax credit.

How does a service member claim the disability tax credit?

Individuals seeking to claim the disability tax credit must provide a physician's statement certifying that they are disabled with their tax return. Disabled service members can substitute VA Form 21-0172, *Certification of Total and Permanent Disability*, for the physician's statement. VA Form 21-0172 can be obtained from VA regional offices.

How is the amount of the credit determined?

Service members applying for the disability credit can either choose to calculate the amount of the credit themselves or have the IRS do so for them. Service members wishing to calculate the credit themselves must complete Schedule R (if filing Form 1040) or Schedule 3 (if filing Form 1040A) of their tax return form. Alternately, service members can return the above forms with "CFE" printed on the dotted line next to line 49 on Form 1040 or line 30 on Form 1040A and the IRS will figure their credit for them. For more information on this credit see IRS Publication 524, *Credit for the Elderly or the Disabled*.

Employer/Employee Tax Credits and Deductions

Disabled Access Credit

Do employers receive a tax credit for expenses related to accommodating a disability?

Employers with 15 or more employees are required to comply with the Americans with Disabilities Act of 1990 (ADA) by making reasonable accommodations for employees with disabilities (see *Chapter 9, Legal Rights*, for more details on the ADA). This may include physical modifications to make facilities wheelchair accessible or the purchase of special equipment. The Disabled Access Credit was created to allow small businesses to receive a tax credit for expenses incurred in making such accommodations in order to comply with the ADA. For examples of permissible expenses see the Instructions to IRS Form 8826, *Disabled Access Credit*.

Impairment-Related Work Expenses

Can expenses incurred in helping a disabled service member perform his or her job be deducted?

Generally, yes. Any service member with a physical or mental disability that limits his or her ability to be employed or substantially limits one or more major life activities can deduct impairment-related work expenses. Impairment-related work expenses are



expenses that are necessary for a service member to be able to work, such as attendant care services. Generally, to qualify as impairment-related, an expense must be (1) necessary for a disabled service member to perform their work satisfactorily, (2) not used for the service member's personal activities, and (3) not be specifically covered under any other tax provision. An example of a qualifying expense would be a reader for a blind service member who assists the service member in doing his or her work, where the service member pays for the reader's services. In this example, the service member is permitted to deduct the cost of the reader.

Service members wishing to deduct impairment-related work expenses must complete IRS Form 2106, *Employee Business Expenses*, or 2106-EZ, *Unreimbursed Employee Business Expenses*.

Financial Assistance Programs

Is disability pay received from the VA or the DoD taxable?

Generally, VA disability pay is not taxable. Under certain circumstances DoD disability pay is not taxable, including disability pay received by a service member as a result of combat related injury. This includes the Individual Unemployability (IU) Program and Combat-Related Special Compensation (CRSC). See *Chapter 4, DoD and VA Disability Compensation* for more information on these programs.

Are VA benefits (other than disability compensation) such as the Automobile and Special Adaptive Equipment grant, Specially Adapted Housing grant and Special Home Adaptations grant, taxable?

No. Benefits received from veterans' programs administered by the VA are not taxable. These benefits are described in greater detail in the section titled "VA Disability Benefits," which can be found in *Chapter 4, DoD and VA Disability Compensation*.

Are TSGLI benefits taxable?

No. Benefits received from the Traumatic injury protection under Service Members' Group Life Insurance (TSGLI) are not subject to tax. TSGLI is discussed in greater detail in *Chapter 1, Immediate Concerns and Family Travel*.

Are Social Security Disability Insurance benefits taxable?

Not unless the service member has additional income. In such cases, Social Security Disability Insurance benefits are only subject to taxation where the service member's additional income exceeds a certain threshold amount.

Education and Employment Benefits

Are benefits received under the GI Bill or other VA-administered programs taxable?

Generally, benefits received under the GI Bill are not taxable and should not be reported as income to the IRS. Benefits (whether monetary or services) received as a part of a VA administered program, including VA Work-Study programs, the Transition Assistance Program, and the Employment Readiness Program, likewise should not be reported as income to the IRS. However, there are certain limited exceptions. Please see IRS Publication 970, *Tax Benefits for Education*, for more information.



Paying for Disability-Related Expenses with Retirement Funds

Individual Retirement Accounts (IRAs) and 401(k) Plans

Can money be withdrawn from an IRA to pay for medical or disability-related expenses?

Generally, funds withdrawn from an Individual Retirement Account (IRA) before the age of 59½ are subject to a 10% penalty in addition to any applicable federal income tax. However, there are exceptions to this rule, including the use of IRA funds for otherwise deductible medical expenses or for use by an individual who has become disabled.

Medical Expenses: Distributions from IRAs for deductible medical expenses (i.e., medical expenses in excess of 7.5% of adjusted gross income) are not subject to the 10% penalty. For further information on what constitutes deductible medical expenses, consult IRS Publication 502, “Medical and Dental Expenses.”

Disability: Service members who become disabled before the age of 59½ and who are unable to engage in any substantial gainful activity because of the disability “incurred” are permitted to make withdrawals from an IRA without penalty. For these purposes, a service member must furnish proof, generally certification from a physician, that he or she cannot do any substantial gainful activity because of a disability.

Can money be withdrawn from a 401(k) account to pay for medical and disability-related expenses?

The rules governing withdrawals from 401(k) accounts are similar to those governing IRAs; funds that are withdrawn from a 401(k) plan before age 59½ generally are subject to a 10% early withdrawal penalty. However, as with IRAs, certain exceptions to the 10% early withdrawal penalty apply if the funds are used for otherwise deductible medical expenses or if the beneficiary of the account has become totally disabled.

Under the rules governing a specific 401(k) account, early withdrawals may be permitted in the case of financial hardship. These rules, however, will vary from plan to plan, and, depending on the circumstances, a financial hardship withdrawal may be subject to the 10% early withdrawal penalty.

Depending on the type of 401(k) account, any withdrawal from the account may be subject to income tax in the year of the withdrawal. Please see the discussion below for the U.S. federal income tax differences between traditional and Roth 401(k) accounts.

Because the rules and procedures governing withdrawals from a 401(k) account before the age of 59½ vary, a service member should speak with his or her plan administrator prior to making any 401(k) withdrawals.



What are the U.S. federal income tax consequences of withdrawals from traditional IRAs/401(k) accounts and withdrawals from Roth IRAs/401(k) accounts?

Contributions to traditional IRAs and 401(k) accounts are not taxed at the time of contribution. Instead, funds withdrawn from such accounts are subject to U.S. federal income tax at the time of withdrawal. In contrast, funds contributed to Roth IRAs and 401(k) accounts are taxed at the time of contribution. Consequently, withdrawals from Roth IRAs and 401(k) accounts are not subject to federal income tax. As a consequence, depending on the type of IRA or 401(k) account that a service member has, any withdrawal from the account may be subject to tax at the time the withdrawal is made.

Regardless of the type of IRA or 401(k) account that a service member has, the 10% penalty for early withdrawal may apply unless the withdrawal qualifies for an exception to the penalty, as discussed above with respect to IRA withdrawals under “*Can money be withdrawn from an IRA to pay for medical or disability-related expenses?*” and with respect to 401(k) withdrawals under “*Can money be withdrawn from a 401(k) account to pay for medical and disability-related expenses?*” or as discussed below with respect to special rules for reservists under “*What are qualified reservist distributions and qualified reservist repayments?*”

What are qualified reservist distributions and qualified reservist repayments?

Reservists and national guard members who were called to active duty between September 11, 2001 and December 31, 2007 for a period of more than 179 days may be eligible to withdraw funds from IRAs and 401(k) accounts without paying the 10% penalty. These withdrawals are known as “qualified reservist distributions.” This exemption from the 10% penalty only applies if the withdrawal was taken between the date of the call to active duty and the close of active duty. Qualified reservist distributions may be taken for any reason.

Reservists and guard members who received a qualified reservist distribution before 2006 and paid the 10% penalty may amend their previous tax returns to claim a refund of the penalty using an IRS Form 1040X.

In addition, reservists and guard members may be permitted to make “qualified reservist repayments” in excess of normal contribution limits equal to the amount of any qualified reservist withdrawals. Such repayments can be made for up to two years after the active duty period ends or until August 16, 2008.

Thrift Savings Plans (TSPs)

Can money be withdrawn from a Thrift Savings Plan (TSP) account to pay for medical or disability-related expenses?

There are two principal ways to withdraw money from a TSP account to cover medical expenses. The appropriate method for a particular service member will depend on his or her specific circumstances.

Most service members can borrow against the contributions and earnings made to his or her TSP account. These loans generally have no tax consequences. However, the loan must be paid back with interest. Payments usually take the form of payroll deductions. Therefore, service members who do not receive monthly pay (i.e., reservists with irregular training intervals) may not be eligible for TSP loans.



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Service members may also withdraw money from their TSP account under what is known as a financial hardship withdrawal. Financial hardship withdrawals are discussed under the section called “Thrift Savings Plan,” which can be found in *Chapter 7, Miscellaneous Federal Benefits*. Financial hardship withdrawals generally are subject to a 10% penalty tax, in addition to the income tax on the withdrawal. However, this 10% penalty generally does not apply if the withdrawal is made because of a permanent and total disability or if the money is used to pay for deductible medical expenses that exceed 7.5% of the service member’s adjusted gross income.

More information on Thrift Savings Plans is available at the TSP website, www.tsp.gov, or by calling the TSP Service Office toll-free at (877) 968-3778. Outside the U.S. and Canada, please call (404) 233-4400 (not toll-free).

Does Combat Zone Exclusion pay contributed to a TSP account receive different tax treatment?

Yes. The 10% penalty does not apply to any portion of a distribution which represents tax exempt contributions from pay earned in a combat zone. Also, Combat Zone Exclusion pay contributed to a TSP account is not taxable when withdrawn, unlike regular pay. However, the interest earned on amounts contributed to a TSP account that were exempt from tax because of the Combat Zone Exclusion is taxable. If a service member receives a distribution from an account that has both Exclusion and non-Exclusion contributions, the distribution will be paid in the same proportions as the service member’s Exclusion and non-Exclusion contributions.

Are taxes withheld from TSP account withdrawals?

Withdrawals from TSP accounts generally must be included in income. As a result, withdrawals are subject to withholding. See *Tax Notice: Important Tax Information About Payments from Your TSP Account*, available at www.tsp.gov/cgi-bin/byteserver.cgi/uniserv/forms/octax92-32.pdf.

State and local taxes are not withheld from TSP Distributions. However, the distributions are reported by the IRS to the service member’s state of residence at the time of the payment. Consequently, a service member generally will be required to pay state and local income taxes on the withdrawal unless an exception applies. Consult a state or local tax official or a tax advisor for more information.

Getting Additional Tax Help

Where can additional tax information be obtained?

IRS Publication 910, *IRS Guide to Free Tax Services*, can be accessed via the IRS website, www.irs.gov, or ordered by calling (800) 829-3676. Service members may call (800) 829-1040 for help with tax questions. Service members may also visit Taxpayer Assistance Centers, which can be located by visiting www.irs.gov/localcontacts/index.html or looking in the phone book under *United States Government, Internal Revenue Service*.

Service members and their families who are unable to resolve a problem through direct IRS assistance at the IRS’s toll-free number above should contact a Taxpayer Advocate by calling toll-free (877) 777-4778, or visiting www.irs.gov/advocate/index.html. The Taxpayer Advocate independently represents taxpayer interests and concerns with the IRS.



CHAPTER 9: LEGAL RIGHTS

Introduction

A number of laws, both state and federal, exist to protect service members, their families and disabled individuals. This chapter discusses four of the most important of these federal laws:

- > ***Uniformed Services Employment and Reemployment Rights Act (USERRA)*** protects service members' rights to take time off from work for military service and, in most cases, guarantees reemployment in positions of equal seniority, salary and benefits when they return from active duty.
- > ***Family and Medical Leave Act (FMLA)*** guarantees qualifying individuals up to 12 weeks of unpaid leave from work to recover from or seek treatment for a serious health condition, or to care for a family member with a serious health condition.
- > ***Americans with Disabilities Act (ADA)*** provides protections against discrimination for disabled individuals during the hiring process and in the workplace environment.
- > ***Servicemembers Civil Relief Act (SCRA)*** affords service members a number of benefits and protections including: the right to reinstatement of health care coverage upon return from active duty; interest rate caps on some forms of debt; temporary relief from eviction; the right to terminate real estate and automobile leases because of military service; and delay of certain court and administrative proceedings against service members while they are away on military service.

This chapter provides an overview of each of these major federal laws, including brief discussions of some of the rules concerning eligibility for and claiming protections under these laws. As these laws are complex, this section seeks to provide an overview and should not be considered a substitute for consultation with a lawyer where an individual wishes to obtain the protections of these laws or where an individual believes his or her legal rights may have been violated.



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The Department of Labor provides a helpful interactive resource for employers and employees to determine their rights and responsibilities under USERRA. See www.dol.gov/elaws/vets/userra/mainmenu.asp.

The Employer Support of the Guard and Reserve (ESGR), an agency within the Office of the Assistant Secretary for Defense for Reserve Affairs, is a great resource for returning Reservists and National Guard members with questions or conflicts concerning returning to work after completion of service. ESGR has trained volunteers available to respond to service members' inquiries about USERRA. Service members can reach ESGR at (800) 336-4590 or online at www.esgr.com.



The Uniformed Services Employment and Reemployment Rights Act (USERRA)

What rights does a disabled service member have with respect to an existing job when called to active duty by the military?

The Uniformed Services Employment and Reemployment Rights Act (USERRA) generally guarantees service members the right to take time off from work to attend to military duties and to return to their civilian employment upon completion of their service provided they meet four basic conditions: (1) providing advance written or verbal notice of active duty service or active duty for training service to their employer; (2) the cumulative length of absences from work for military service while at any single employer is less than five years; (see exceptions below); (3) returning to work or applying for reemployment in a timely manner after conclusion of service; and (4) separation from service with an honorable or general discharge. USERRA also prohibits employers from discriminating against employees based on their membership or service in the armed forces. If USERRA applies, the service member generally is entitled to return to a position that comes with the level of seniority and benefits he or she would have reached if, without the military service, he or she would have been continuously employed.

Who is eligible for USERRA reemployment protections?

USERRA protections apply to any person who is absent from work because of service in the United States uniformed services and who meets the four conditions listed above. Under this law, virtually all employers, including the federal government, are required to reemploy service members in their previous positions or in positions of equal seniority, status and pay whenever possible. This includes Reservists and members of the National Guard activated by the federal government. Although USERRA does not apply to National Guardsmen *activated by their state*, many states have laws that provide similar protections. Note: **USERRA does protect service members who take voluntary tours of duty.** The USERRA also protects part-time jobs that are expected to last indefinitely or for a significant period of time (i.e., non-temporary, part-time jobs). USERRA does not apply to independent contractors or self-employed individuals.

Is every employer required to rehire a disabled service member?

USERRA generally provides the same protections to disabled services members who meet the four conditions listed above as nondisabled service members. However, an employer is not obligated to reemploy the service member if the employer's circumstances have changed so drastically as to make reemployment impossible or unreasonable, if reemploying the disabled service member would impose a great hardship on the employer or if the employment from which the service member left generally was for a brief nonrecurrent period with no reasonable expectation that it would continue indefinitely or for a significant period of time. In addition, the employer may not be required to return the disabled service member to the same position. Please see the discussion below under *"Will the disabled service member have the exact same job he or she had before?"*

How must the service member notify his or her employer before leaving for military service in order to have the right to reemployment upon return?

Notice may be either oral or written. Notice may be provided by the service member or by an official from his or her military unit. Ideally, service members should provide their employers with written notice as far in advance as possible. The service member may be excused from the notification requirement if it would have been impossible or unreasonable for the service member (or the military unit) to inform his or her employer. For example, if the service member was given less than 48 hours to report to duty, or attempted but was unable to get in contact with his or her employer, he or she might be excused from providing notice.

What if the service member was away from work for military service longer than five years?

There are many exceptions to the 5-year rule. Generally, if the service member was unable to be released from service through no fault of his or her own, the five-year limitation will not apply. This includes service members ordered to remain on active duty because of a war or national emergency.

How quickly must a returning service member report back to his or her former employer?

The time limit for a service member to report back to work or submit an application for reemployment after completing his or her service depends on the duration of the military service.

- > Members with less than 30 days of service are required to report for their first regularly scheduled shift that begins following an 8-hour rest period after they return home.
- > Members who served for 31 to 180 days must submit an application for reemployment within 14 days of their return home.
- > Members with over 180 days of service have 90 days to submit an application for reemployment.

The time limits are extended for disabled service members who are allowed up to two additional years for hospitalization and recovery, which can be further extended to accommodate circumstances beyond the disabled service member's control that make it impossible or unreasonable to report within the two years. An application for reemployment may be oral or written, but it is advisable to apply in writing. An employer may require those returning from 31 days or more of service to provide documentation of their military service and eligibility for USERRA. Failure to report for work or submit a timely application for reemployment does not result in an automatic loss of USERRA benefits, but it does mean that the employer is permitted to apply employer's policies on unexcused absences from work to the service member for the period beginning when the service member was required to report for work or submit an application to the time he or she shows up or does submit the application.

For a complete list of the exceptions to the five-year rule regarding unemployment under USERRA, see www.nvti.cudenver.edu/userracd/Exceptions.htm.



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Will the disabled service member have the exact same job he or she had before?

Under USERRA, the employer must make reasonable efforts to accommodate the disabled service member's disability and allow the disabled service member to return to the position and salary that person would have reached if he or she had remained continuously employed.

If the disabled service member is not qualified for his or her previous position due to his or her disability, even with reasonable accommodation, then the service member must be employed in a position of equivalent seniority, status and pay. This applies so long as the disabled service member is qualified for that position or could become qualified for that position with reasonable efforts by the employer.

If the disabled service member is no longer qualified for either his or her former position or a position of equal status and pay, the service member must be employed in a position that is a close approximation to the position in terms of seniority, status and pay.

Under USERRA, what happens to vacation days accrued prior to leaving for military service?

Service members may elect to use accrued paid vacation days in order to receive salary during an absence for military service. However, an employer cannot force a service member to use vacation days (or any other similar earned days) for military service. An employer is not required to allow service members to accrue additional vacation days while absent for military service, unless the employer normally does so for employees on unpaid leaves of absence of similar duration.

What other rights does a service member have under USERRA, besides the right to reemployment?

USERRA provides that reemployed service members are entitled to the seniority, rights and benefits they would have attained if they had remained continuously employed, such as health care and pension benefits. In addition, employers must provide service members absent for military service with benefits they would normally provide to employees on leave of absence or furlough. In addition, employers are required to make available continued health insurance, subject to certain restrictions.

What are the requirements under USERRA for employers to continue to provide health insurance to service members who have departed for military service?

Under USERRA, service members absent from work for military service have a right to continue their health insurance plans (including coverage for dependents) for up to 24 months or for the duration of the military service (whichever is shorter). However, the service member can be required to pay for the health insurance. If the military service is for 30 days or less, the service member cannot be required to pay more than the normal employee share of the insurance premium (i.e., the normal employee's portion of the total payments made by the employer and employee for the insurance). If the military service lasts more than 31 days, the service member may be required to pay the entire premium (i.e., both the employer's and employee's portions) for the coverage, plus an additional two percent. Service members electing to continue their health care coverage are responsible for informing their employers of their desire to do so in accordance with



the requirements of their health plan administrator. Returning service members who failed to make an election should ask their health plan administrator about policies regarding retroactive reinstatement of coverage for the period of their absence. Immediate reinstatement of health care coverage upon return to work is mandatory regardless of any failure to make an election or a denial of retroactive coverage.

How does a service member enforce his or her rights under USERRA?

As a practical matter, service members should keep a detailed file, including letters, records of oral conversations and other documentation regarding their military service, notice of leave and requests for reemployment. The first step in taking action is to gather the necessary information.

Before taking formal action, service members might seek assistance from their command, including asking someone to call or write to their employer and give notice of USERRA requirements. In addition, military legal assistance attorneys can advise service members of their rights under USERRA and help in preparing appropriate documentation, including the written request for reemployment. See *Chapter 10, Legal Assistance*, for more information on military legal assistance attorneys. A service member should make sure that a legal assistance attorney does not contact an employer directly, as this may disqualify him or her from representation by the Veterans' Employment and Training Services (VETS) division of the Department of Labor (see the discussion below under "*Can a service member file a private lawsuit under USERRA?*").

If a service member has not yet brought a private lawsuit, VETS will investigate and attempt to resolve complaints that an employer has violated USERRA. If the service member's complaint is not successfully resolved by VETS, the service member may request that his or her complaint be submitted to the office of the Attorney General of the United States for possible court action.

Please note that service members who are federal employees may seek assistance from VETS, but must follow a different procedure to address unresolved complaints. Claims against federal agencies must be brought before the Merit System Protection Board (MSPB), instead of a trial court. Also, instead of being represented by the Attorney General, service members may seek representation from the U.S. Office of Special Counsel (OSC), a federal agency that protects federal employees from prohibited personnel practices.

Can a service member file a private lawsuit under USERRA?

USERRA specifically grants the right to sue employers under the following conditions: (1) if the service member elects not to file a USERRA complaint with VETS; (2) if VETS is unable to resolve the complaint; or (3) if the Attorney General decides not to pursue a claim after receiving the service member's complaint from VETS. The service member may refuse representation by the Attorney General, but he or she may not bring his or her own private lawsuit while represented by the Attorney General. For information on how to find and select a lawyer, please see *Chapter 10, Legal Assistance*.

Service members who are federal employees must follow a different procedure to file a lawsuit against a federal agency. Instead of a trial court, federal employees must file a complaint with the MSPB. A service member may not file a complaint with the MSPB while VETS is attempting to resolve his or her claim, or if he or she is already represented by the OSC.

Reserve Component service members may seek assistance from ESGR by calling (800) 336-4590 or calling their local office listed on the ESGR website, www.esgr.gov.

Visit www.osc.gov/userra.htm for more information about filing USERRA claims with the OSC. More information about the MSPB is available at www.mspb.gov.



For more information about the ADA, including the other protections afforded by the law, please visit www.ada.gov.



The Americans with Disabilities Act (ADA)

What is the ADA?

The ADA is a federal civil rights law that prohibits discrimination based on a person's disability. The ADA protects all people with disabilities from discrimination, not just disabled service members and veterans. The primary purpose of the ADA is to prohibit workplace discrimination and require employers to make reasonable accommodations for employees with disabilities. Other parts of the ADA address disabled persons' access to certain government services and public accommodations, such as public transportation, public parks and recreational areas, sports stadiums and even state and local government websites. The following discussion will focus on a disabled individual's workplace rights under the ADA.

Who is protected from employment discrimination under the ADA?

The ADA protects all disabled persons who are capable of performing a job when reasonable accommodations are made. An employee or job applicant is considered disabled if he or she has a physical or mental impairment that substantially limits one or more major life activities, such as seeing, hearing, walking or performing manual tasks. The ADA may also apply to conditions such as epilepsy, HIV/AIDS, diabetes, specific learning disabilities and other chronic conditions that limit major life activities. The ADA does not apply to minor, short-term conditions and illnesses. If an individual's disability or impairment is not obvious, he or she may be required to provide proof of his or her condition before an employer is required to make reasonable accommodations.

The ADA also protects two other categories of people who are not presently disabled. The first category includes those with a record of an impairment, such as someone with a history of cancer or a past mental illness. The second category includes those who do not have physically limiting impairments but are regarded (or treated by an employer) as having impairments. This may be the result of an employer's concerns about co-workers' or customers' reaction to a condition, such as a disfiguring injury, that does not impair an applicant's ability to perform a job.

In addition, the ADA contains a provision prohibiting discrimination against employees and job applicants based on a relationship or association with a disabled individual, whether or not they are themselves disabled. This provision covers a broad range of relationship, including individuals with disabled family members and those who do volunteer work with disabled individuals (including HIV/AIDS patients). An employer is not required to make reasonable accommodations for or provide extra health benefits to such individuals based on their associations, but the employer may not make employment decisions based on such relationships or associations. For more information on the "association provision" of the ADA, see the EEOC website at www.eeoc.gov/facts/association_ada.html.

It is important to note that the ADA does not provide a hiring preference for a job or provide a right to a job that the applicant is not qualified to perform. The law does not require employers to lower standards for quality, performance or productivity for employees with disabilities when performing essential job functions. The ADA does make it illegal to discriminate against a disabled applicant on the basis of his or her disability. In addition, the ADA prohibits employers from not hiring a disabled individual on the basis that the applicant cannot perform the job when reasonable accommodations would otherwise make performance possible.

Does every employer have to comply with the ADA?

The ADA applies to all employers with 15 or more employees, including state and local governments, employment agencies and labor unions. In other words, small business employers are not required to comply with the ADA.

How does the ADA protect individuals with disabilities from discrimination during the hiring process?

The ADA prohibits employers from discriminating against qualified individuals with disabilities when making hiring, promotion, compensation and training decisions.

The ADA prohibits employers from asking questions about the nature and extent of an applicant's disability, but an employer can ask questions about the applicant's ability to perform specific job functions. As noted above, an employer may require proof of a disabling condition where such condition is not obvious.

In addition, employers cannot require applicants to submit to a medical examination or inquiry before making a job offer. However, an employer may condition an offer on completing a post-offer medical examination, but only if this is required of all new employees in a particular job category; and any reason for rescinding an offer based on such an inquiry or examination must be job-related and based on business necessity. The ADA does not prohibit testing for illegal drugs.

What changes are employers required to make in order to accommodate an employee's disability?

Employers are generally required to make "reasonable accommodations" for employees with disabilities. For example, the employer may have to make existing facilities accessible (including adding wheelchair access); modify work schedules (including allowing part-time shifts); acquire or modify equipment, change tests, training materials or policies; and even restructure jobs by altering when or how a job function is performed. The federal government provides certain tax benefits to assist employers in making reasonable accommodations for employees. Nevertheless, an employer may not be required to make accommodations if they would require significant difficulty or expense relative to the company's overall resources. Such determinations are made on a case-by-case basis.

How can an individual enforce his or her rights against workplace discrimination under the ADA?

Any individual who believes his or her rights under the ADA have been violated can bring an action against his or her employer. Bringing an action under the ADA is slightly more complicated than bringing an action under USERRA. Before bringing a lawsuit under the ADA, the individual must first file a complaint with the Equal Employment Opportunity Commission (EEOC) **no more than 180 days after the violation has occurred**. This period may be extended to 300 days if the charge is also covered by state or local anti-discrimination law. Instructions for filing a complaint may be found on the EEOC website at www.eeoc.gov/charge/overview.charge.filing.html.

Once a complaint has been filed, the EEOC will usually conduct an investigation. In some cases, the EEOC may offer mediation as an alternative to a lengthy investigation. If an EEOC investigation establishes that there was discrimination, the EEOC generally

For more information on employment rights and other rights under the Americans with Disabilities Act, see the following websites:

Equal Opportunity Employment Commission: www.eeoc.gov/

ADA Homepage: www.ada.gov

Disability.Info.gov: www.disabilityinfo.gov

For examples of what are considered "reasonable accommodations" under the ADA, see

www.eeoc.gov/policy/docs/accommodation.html.



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The U.S. Department of Justice provides information about all aspects of the ADA through a toll-free ADA Information Hotline, at (800) 514-0301 (voice) or (800) 514-0383 (TTY).



will attempt to settle the claim between the parties. If it is unable to resolve the claim between the parties, the EEOC may decide to bring suit in federal court on behalf of the disabled individual. In the event the EEOC's investigation does not establish that there was discrimination, or if the EEOC decides not to pursue a claim in federal court, it will issue a notice of "right to sue," which allows the complaining party **90 days to file a lawsuit**. A complaining party also has the right to request a notice of "right to sue" from the EEOC 180 days after a charge was first filed with the Commission.

Remedies available for discrimination under the ADA may include back pay, front pay, hiring, promotion, reinstatement, reasonable accommodation, restored benefits, attorneys' fees, expert witness fees and court costs. A court or the EEOC may also award additional monetary damages in cases of intentional discrimination.

Are there state laws that protect a disabled service member's rights in the workplace?

Yes. Most states have laws that are similar to the USERRA and the ADA. Disabled service members should be certain to check the laws of the state where they live, as some states have laws that offer even more protection than the federal statutes. For example, as discussed above, the ADA applies only to employers that have 15 or more employees. State anti-discrimination laws often apply to employers with even fewer employees.

Taking Leave for Medical Care: The Family and Medical Leave Act (FMLA)

What is the FMLA?

The FMLA is a law that guarantees unpaid leave from work to individuals with serious health conditions and to the family members who care for them. The FMLA allows "eligible employees" of "covered employers" to take up to 12 weeks of unpaid leave from their jobs within a 12-month period because of a serious health condition or in order to care for a close family member with a serious health condition.

An "eligible" employee is an employee who has worked for a covered employer for at least 12 months, working a minimum of 1,250 hours (not including paid or unpaid leave), and is employed at a worksite with at least 50 employees within a 75 mile radius of that worksite.

A "covered" employer is one who has employed more than 50 employees during 20 or more workweeks in the current or preceding calendar year. Additionally, all public agencies as well as public and private elementary and secondary schools are covered under the FMLA.

Family members who need time off from work to care for wounded service members should ask their supervisor, union representative or their employer's human resources department whether the FMLA applies to them.

A limited group of "key employees" may not be entitled to full reinstatement upon return from leave because of the critical role they serve within the employer's organization. Such "key employees" must be among the highest paid 10% of all employees within a 75-mile radius of the employee's worksite. Employers must notify key employees of their status and its consequences as soon as is practicable after the receipt of a request for leave and provide reasonable time in which to return to work if leave has already commenced.

How does absence from work for military service affect eligibility for FMLA leave?

Under USERRA, absences for military service cannot disqualify an employee who otherwise would be eligible for FMLA leave. In determining eligibility, any person who leaves a job for military service and is granted reemployment by the same employer under USERRA is viewed as if he or she had worked regular hours during the period of service. Thus, each month of military service counts as a month towards the 12 months of employment requirement. An employee's preservice work schedule is generally used to calculate whether or not he or she meets the 1,250 hours of work requirement. Any regular hours missed for military service are added to the number of hours actually worked in the 12-month period. For example, an employee who normally works 40 hours per week and misses eight weeks of work to serve is considered as having worked those 320 hours (40 x 8) for purposes of FMLA eligibility.

Under what circumstances can an eligible employee take leave under the FMLA?

The FMLA permits an employee to take leave from work under the following circumstances:

- > the birth of a child of the employee;
- > the placement with the employee of a child for adoption or foster care;
- > when the employee is unable to work because of a serious health condition; and
- > to care for a close family member (spouse, child or parent) with a serious health condition. It is this circumstance that is most pertinent to family members of wounded service members.

Close family members consist of parents (including foster and adoptive parents, but not "in laws"), spouses and children (including adopted and foster children).

NOTE: The FMLA only grants leave to the parents of a child over 18 years of age when the child is "incapable of self-care" because of "a mental or physical disability," as defined by government regulations. A person is "incapable of self-care" if he or she needs active assistance or supervision to provide daily self-care in three or more designated activities. The list of such activities includes grooming, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation and other basic tasks.

Does the FMLA provide for paid leave?

No, the FMLA only guarantees 12 weeks of *unpaid* leave during a 12-month period. However, an employee may elect, or an employer may require the use of accrued vacation days, sick days, personal days or other forms of paid leave as part of the 12 weeks before granting additional unpaid leave. Once the employee exhausts all forms of paid leave, the FMLA guarantees additional unpaid leave until the 12-week limit has been reached. Employees should inquire about whether their employer requires the use of accrued paid leave towards the 12 weeks of FMLA leave.

Detailed information about the FMLA is available on the U.S. Department of Labor website: www.dol.gov/esa/whd/fmla/.

For a basic overview of the FMLA, see the FMLA Fact Sheet: dol.gov/esa/regs/compliance/whd/whdfs28.htm.

Family members of wounded service members should consult their supervisor, union representative, or employer's human resources department regarding their eligibility for FMLA leave.



How does the FMLA protect job status and benefits?

For most employees, the FMLA guarantees the right to return to the same job or a job with identical pay, benefits and status. However, “key employees” (usually the highest paid 10%) may not be entitled to full reinstatement upon return from leave because of the critical role they serve within their employer’s organization.

Must the 12 weeks of leave be taken all at one time?

No. The 12 weeks of FMLA leave need not be taken consecutively. An employee might elect to take a reduced work schedule or an intermittent leave schedule.

How is the 12-month period determined?

Employers may elect to grant leave based on any of the following 12-month periods:

- > the calendar year;
- > any fixed 12-month leave year, such as a fiscal year or a year from the “anniversary” of the date the employee began work;
- > the 12-month period from the date an employee first begins FMLA leave; or
- > a “rolling” 12-month period starting backwards from the date an employee uses FMLA leave.

Employees should inquire about their employer’s policy for determining the 12-month period when planning to take FMLA leave.

Must an employer maintain health care coverage while an employee is on FMLA leave?

Yes. During FMLA leave an employer must maintain an employee’s health benefits coverage under any group health plan. Employees on FMLA leave may be required to pay their employee share of the health benefit premiums while on leave or upon return to work.

When and how must an employee give notice of the intent to take FMLA leave?

Except in extraordinary circumstances, an employee is expected to provide oral or written notice within one or two working days of learning of a need for leave. Such notice is generally required to be given at least 30 days prior to the first date of the FMLA leave, but there are exceptions when such notice is not practicable. An employee’s spouse, family member or other spokesperson may provide the notice on his or her behalf if the employee is unable to do so personally.

An employee generally should provide oral notice (in person or via telephone) of his or her need to take leave. However, other forms of notice such as fax or email are also sufficient. The employee does not need to mention the FMLA specifically (the employer has the responsibility to designate the leave as FMLA leave, as discussed above), but he or she must state the reason for the leave (serious illness, caring for a wounded family member, etc.). The employer is expected to request any further information needed to determine if the employee qualifies for FMLA leave.



Employers may require employees to comply with their usual procedures for requesting leave, but they cannot deny FMLA leave as long as timely oral or other notice is given. In any case, employees should do their best to comply with their employer's policies whenever they can.

What type of permission must an employee receive from an employer in order to take leave under the FMLA?

It is an employer's responsibility to designate leave as FMLA leave, and to give prompt notice of the designation to the employee. The employer must provide written confirmation that the leave being taken is FMLA leave and should do so within one or two business days after receiving notice of the need for leave. FMLA leave can be designated retroactively, but it can only be done so while the leave is in progress, or within two days of the employee returning to work at the end of the leave. Therefore, it is important for an employee who has not received written notification to confirm the designation of FMLA leave with his or her employer while the leave is still active.

What types of information may an employer request to verify an employee's need for FMLA leave?

Upon receipt of a request for leave, an employer may make certain inquiries and may request medical certification to establish either that the employee's medical condition qualifies for FMLA or the employee is in fact needed to care for a family member, whichever is relevant.

It is important to note, however, that the employer does not have a right to see the employee's (or family member's) medical records as part of the medical certification. In any event, an employer must ask the employee's permission prior to contacting the employee's health care provider when verifying the medical certification. In addition, such an inquiry may not seek additional information regarding an employee's (or family members') health. An employer who wants a second opinion may require an employee to obtain additional medical certification at the employer's expense.

If FMLA leave is sought because of a family member's condition, an employer may require the employee to provide reasonable documentation of family relationship, such as a written statement from the employee, a court document or a child's birth certificate.

An employer is also permitted to require that an employee provide periodic reports on his or her status and plans to return to work.

Does the FMLA cover leave taken for physical therapy?

Yes. The FMLA permits employees to take leave for "continuing medical treatment by a health care provider," which may include absences to attend physical therapy.

What happens if an employee needs more than 12 weeks of leave in a 12-month period?

An employer is not obliged to guarantee job protection beyond the 12-week limit within the set 12-month period.

The Department of Labor's FMLA elaws advisor can help individuals determine their rights under the FMLA. Visit www.dol.gov/elaws/fmla.htm.

Individuals who wish to file a complaint with the Department of Labor should contact the nearest office of the Wage and Hour Division. To find your local Wage-Hour Office, visit www.dol.gov/esa/contacts/whd/america2.htm, or call (866) 4-US-WAGE ((866) 487-9243).



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Does workers' compensation leave, leave taken due to pregnancy and maternity leave, count towards the 12 weeks of FMLA leave?

Yes. Leave for worker's compensation, pregnancy and maternity leave may all be counted against an employee's entitlement to 12 weeks leave under the FMLA, if the employer designates them as such. Employees who have taken FMLA leave for any of these reasons during the past 12 months should take that into account when requesting further leave.

What if an employer refuses to grant an employee leave under the FMLA?

The FMLA makes it illegal for an employer to interfere with or deny the exercise of any right guaranteed by the FMLA. In addition, it is forbidden for employers to discharge or discriminate against anyone who opposes practices that are illegal under the FMLA. Victims of FMLA violations may file a complaint with the Department of Labor or bring a suit against a covered employer who refuses to comply with the FMLA. See *Chapter 10, Legal Assistance*, for more information on obtaining legal representation.

The Servicemembers Civil Relief Act (SCRA)

What is the SCRA?

The SCRA is a federal law passed in 2003 that allows service members (and their families) to postpone or suspend certain civil obligations so that they can focus on their military service duties. The SCRA is an amendment to the Soldiers' and Sailors' Civil Relief Act, which was first passed during World War I. The following discussion will cover five of the main protections available to service members returning from active duty:

- > reinstatement of health insurance coverage after military service;
- > interest rate caps on debt;
- > temporary relief from eviction;
- > termination of leases on real estate and automobiles; and
- > delay of court and administrative proceedings.

The SCRA creates a number of other rights for active duty service members: exclusion of one's period of military service from a statute of limitations (the time period in which a service member has to take action to enforce legal rights); limits on creditors' ability to foreclose on a service member's mortgaged property (for example, a home) during military service and for the 90-day period directly thereafter; permitting service members to request deferment of certain life insurance premiums and other payments for the period of military service and two years afterwards; and the right to suspension of insurance coverage for professional liability (for example, malpractice insurance for lawyers and doctors) during military service as well as reinstatement of coverage after service without an increase in premiums. For detailed information about these and other rights under the SCRA, visit www.uscg.mil/legal/la/topics/sscra/about_the_sscra.htm.



How can a service member reinstate health insurance upon termination or release from service?

The SCRA guarantees that all service members ordered to active duty can reinstate health insurance policies that were in effect when their military service began, as long as they ended at some point during military service. This provision allows self-employed individuals to suspend coverage while on active duty and prevents insurance companies from refusing to reinstate coverage because of “pre-existing” conditions that arose before or during service. The service member must submit a written request for reinstatement accompanied by a copy of his or her orders and release from active duty within 120 days of the end of military service for the SCRA protections to apply. Service members who return to their prior employers are guaranteed reinstatement of employer provided insurance by USERRA. Under both USERRA and the SCRA, conditions determined by the VA to be disabilities incurred or aggravated by military service may be excluded from coverage by the reinstated policy. Generally, the SCRA and USERRA prohibit employers and insurance companies from subjecting reinstatement of health insurance to a waiting period or an exclusion from coverage.

How does the SCRA affect interest rates on debt?

The SCRA creates a cap on the interest rate certain service members (and their spouses) must pay on debts incurred before military service. If a service member can show that military service has materially affected his or her ability to repay a loan taken before active duty, any interest above 6% charged during military service must be forgiven. The disabled service member is not required to pay it.

The interest rate cap provided by SCRA applies to all service members except those whose ability to pay was not materially affected by their military service. Essentially, if the service member’s income was reduced or his or her expenses increased as a result of the military service, the interest rate cap should apply. However, in order to obtain the reduced interest rate, the service member must provide written notice to the creditor along with copies of his or her orders for active duty within 180 days of the end of military service. The SCRA also prevents creditors from accelerating principal payments, and requires them to reduce monthly payments due in order to reflect the lower interest rate. Interest on debt incurred after entering active duty is NOT subject to the 6% cap.

Can a service member cancel a lease because of military service?

Under many circumstances, the SCRA permits a service member to cancel a lease due to military service. For example, if a service member entered into a lease before entering the military service, the service member may cancel the lease by providing a copy of his or her military orders. If the lease was entered into after the start of military service, the service member can cancel the lease if he or she receives orders for a permanent change of station (PCS) or deployment for more than 90 days. The SCRA generally applies to both residential and business leases.

Can a service member be evicted if military service makes paying rent difficult?

The SCRA may allow a service member to avoid eviction for a period of time (usually three months) if the service member can show that his or her ability to pay rent is materially affected by military service. In general, a landlord cannot evict a service



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The U.S. Coast Guard Legal Assistance website contains an excellent summary of the SCRA and the protections it affords to service members. Visit www.uscg.mil/legal/la/topics/sscra/about_the_sscra.htm.

Military.com has an extensive description of the SCRA available at www.military.com/benefits/legal-matters/scra/overview.



member (or dependents of a service member) during military service without a court order. If the service member cannot pay rent because of military service, the court may delay the eviction for 90 days or longer. The SCRA does not guarantee that a court will delay eviction proceedings and does not excuse a service member from paying rent. Failure to pay rent may still result in both military and civilian legal consequences, including eviction. This provision only applies to personal residences for which the monthly rent is below a certain amount.

NOTE: Service members and their families who believe that military service has materially affected their ability to pay rent should seek legal assistance right away; they should not simply stop paying rent. See *Chapter 10, Legal Assistance*, for information on obtaining legal representation.

Can a service member cancel a lease on a car due to military service?

Generally, yes, as the SCRA also applies to automobile leases. A service member may cancel an automobile lease entered into before military service if he or she is ordered to active duty for 180 days or more. The same rule applies if a service member on active duty leases a car and subsequently receives orders for a PCS outside the continental United States or is ordered to deploy with a military unit for more than 180 days. As with a lease on a home, the service member must notify the owner of the automobile in writing. The service member must also return the automobile to the owner within 15 days of cancelling the lease.

How does the SCRA protect service members in court proceedings?

The SCRA provides for temporary suspension of court and administrative proceedings brought against service members during their military service and for 90 days afterwards. Service members who cannot appear in court because of active duty, sickness or injury can request in writing that the proceeding be postponed for 90 days or more.

In addition, the SCRA allows a service member to reopen a default judgment (i.e., a judgment against the service member because he or she failed to appear) if it was issued against the service member either while he or she was on active duty or during the 60 days following his or her military service. To reopen a default judgment, the service member must apply to the court within 90 days of the end of military service and show that his or her ability to make a defense was materially affected by military service, and that he or she has a defense to at least some part of the action.

How does the service member enforce his or her rights under the SCRA?

In most cases, the protections offered by the SCRA are not automatic, and they require some action on the part of the service member, such as sending a letter or other notification to a landlord or creditor. Generally, notification must be sent within a specified period of time after the end of the relevant military service. Any service member who believes his or her rights under SCRA have been violated, or believes that he or she is entitled to protection under the SCRA, should seek legal assistance as soon as possible from a military legal assistance attorney or a civilian lawyer. See *Chapter 10, Legal Assistance*, for details on how to find and hire a lawyer.

CHAPTER 10: LEGAL ASSISTANCE

Introduction

Service members and their families often have special legal needs related to their military service, benefits and employment rights. There are many resources available to assist them with a variety of legal issues that may arise, whether military-related or not. This chapter provides basic information on legal representation as well as tips on hiring and having discussions with a lawyer and information about the many legal resources available for members, including consultations with free military legal assistance attorneys at the local JAG office, free civilian pro bono attorneys and paid civilian attorneys.

This chapter also contains specific information for veterans and their dependents seeking assistance in filing VA claims and appealing VA findings. Many of the benefits described in this handbook require that potential recipients file applications with their local VA office. If the applicant is denied benefits, or the level of benefits awarded is considered to be too low, he or she may be entitled to appeal the determination to the Board of Veterans' Appeals (BVA). BVA decisions can be reviewed by the U.S. Court of Appeals for Veterans Claims (USCAVC). Numerous veterans service organizations (VSOs) have service officers stationed at local VA offices to provide information, counseling and assistance in the preparation of claims, and to provide representation during appeals. This chapter describes the appeals process and provides contact information for a number of organizations who can provide assistance and representation to veterans and their dependents.

The Role of a Lawyer

The Model Rules of Professional Conduct published by the American Bar Association (ABA), defines the role of the lawyer as that of an advisor, advocate, negotiator, and evaluator. The preamble to these rules includes the following passage:

As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.



Engaging a Lawyer

The following are important issues that should be considered and raised when engaging a lawyer:

1. Understand the fees and costs

On initial contact with a lawyer, even before a first meeting, the client should ask the lawyer whether there is a fee for the initial consultation (the first visit with the lawyer), and if so, the amount of that fee.

At the first meeting with a lawyer, the client should be prepared to discuss and ask questions about the legal problems or issues which created the need for the lawyer's services.

If, after the first meeting, the client decides to hire the lawyer, he or she should ask for an estimated total cost for services. The client should understand from the first meeting how much the lawyer will charge to handle the matter, which is known as the lawyer's fees. Costs, as opposed to fees, are the expenses incurred to pursue the matter, such as court costs and filing fees if there are papers to be submitted to a court. Typically, the client is responsible for these expenses as well.

The client should establish an understanding of the required legal fees as well as costs for the action that the lawyer is going to take on his or her behalf. A lawyer may charge on an hourly rate or work on a contingency fee basis, and he or she should fully explain the reason for the fee. Before actually agreeing upon representation, the client should get an explanation of the fee in writing from the lawyer. Most lawyers will enter into a written agreement listing the fees, other costs and the nature and extent of the lawyer's representation. This agreement should be signed by both the client and the lawyer. Below is a description of the various types of fees:

Retainer fee – advance payment to the lawyer for a portion of his or her fee. This is similar to a deposit and is typically required regardless of the type of fee arrangement ultimately established. As an advance payment, the lawyer must return any unearned amount to the client at the end of the representation.

Contingency fee – an agreed upon percentage of any money obtained for the client through a settlement or verdict. Typically, fees range between 30% and 40% of the recovery plus the lawyer's expenses, but clients are free to negotiate a different arrangement. There is no fee if the lawyer is unable to recover any money, **though the client may still owe costs.**

Hourly fee – the lawyer's hourly rate multiplied by the number of hours (or portion of hours) spent on the case.

Fixed fee – a specific amount of money for a specific service.

Cost advance – periodic advance payment to the lawyer for on-going expenses.

Mixed fee – combination of contingency and hourly fees.



2. Establishing that there is a legal problem

The client should fully explain the situation to the lawyer without leaving out any facts. Even if they relate to a sensitive subject, such facts could affect the advice given. The lawyer is obligated to keep all information confidential even if the client decides not to hire the lawyer after the initial meeting. The client should also bring all papers or documents to the first meeting that may help explain the situation. The client should be sure to discuss with the lawyer any practical solutions or nonlegal alternatives to the problem as well as ask about all of the options available under the law.

3. Establishing that the lawyer is qualified to handle the legal problem

Many lawyers specialize in handling specific legal problems. The client should discuss with the lawyer how much experience the lawyer has in dealing with cases similar to the client's matter. If the lawyer expresses doubts about his or her competence to handle the matter, the client can ask for a referral to other lawyers who are familiar with similar cases. The client should also ask about the outcomes of other cases that the lawyer has handled, as well as whether or not the anticipated fees and costs that have been quoted by the lawyer are consistent with the fees and costs charged in the other cases.

4. Establishing the length of time it will take to solve the legal problem

The client should ask the lawyer how long it has typically taken to bring similar cases to a conclusion in the past. If the case involves issues more complex than the lawyer's previous cases, then it should be determined whether or not that will affect the expected time to resolve this case. The client should also ask if there are any legal time limitations which restrict the length of time available to bring an action in court, called a "statute of limitations." The length of statutes of limitations varies depending on the nature of the case and the location of the action. The client should ask the lawyer what he or she believes to be the best- and the worst-case scenarios with regard to the amount of time that the case will take. If there is no way to predict how long the matter might take, the client should establish the reasons and find out if there is anything he or she can do to speed up the process.

5. Establishing reasonable expectations for what can be accomplished

The client should ask the lawyer whether or not the facts presented in the first meeting provide enough information for the lawyer to provide guidance as to the likely outcome of any proposed legal action. The lawyer should explain the law as it relates to the case. If sufficient facts have been presented, the lawyer should also explain the range of possible and likely outcomes. It is extremely important that both the client and lawyer fully understand each other with regard to the results expected. This should play a big part in the ultimate decision of whether or not the cost and the time involved in pursuing the matter are worth the expected results.

There are a number of online directories that help put individuals in touch with lawyers who can address their legal needs. The American Bar Association provides a state-by-state directory of both paid and pro bono referral services on its website at www.findlegalhelp.org.



Obtaining Legal Assistance

Military Legal Assistance

Does the military offer legal assistance?

Yes. The military offers free legal assistance to active duty and retired service members, including medically retired service members and their dependents, through legal assistance attorneys located in the Judge Advocate General (JAG) office on nearly every military base. Because of the JAG's expertise in military matters, this should often be the first place the disabled service member seeks legal assistance for military issues.

What is the role of a military legal assistance attorney?

A military legal assistance attorney is a military or civilian Department of Defense lawyer whose primary duty is to advise individuals eligible for military legal assistance about their personal legal affairs. While the service is free, it is subject to resource constraints and limited to certain issues, some of which are described below.

What are the qualifications of a military legal assistance attorney?

All military legal assistance attorneys, whether military or civilian, are graduates of accredited law schools and licensed to practice law in at least one state or U.S. territory. Nevertheless, it is not possible for any one attorney to have expertise in every area of the law in which an individual may need professional advice. One should ask a military legal assistance attorney about his or her experience and expertise, and the prospects for the matter, as discussed earlier in this section.

What types of legal services can a military legal assistance attorney provide?

For eligible persons, a military legal assistance attorney can:

Provide advice or representation about select areas of the law, such as:

- > military Medical and Physical Evaluation Boards (MEBs and PEBs);
- > family and domestic relations (including family support, adoption, custody, paternity and name changes);
- > consumer affairs;
- > taxes on real and personal property and income;
- > landlord/tenant issues (including leases, inability to pay rent, security deposits and evictions); and
- > immigration and naturalization;

and perform general legal services, such as:

- > serving as advocate and counsel;
- > preparing and signing correspondence on behalf of the client;
- > negotiating with another party or that party's attorney;



- > preparing legal documents;
- > notarizing documents;
- > drafting powers of attorney;
- > drafting wills;
- > drafting advance medical directives (living wills);
- > offering estate planning advice;
- > reviewing contracts and leases;
- > offering some types of personal financial advice; and
- > when necessary, referring eligible persons to a civilian lawyer.

Since there are restrictions on the types of services that a military legal assistance attorney can provide, service members who wish to use the services of such an attorney should clearly state the type of services needed at the first meeting. As noted above, although the areas of law and the legal services that these attorneys may be able to provide appear broad, in many instances resource constraints will make it difficult for the service member to obtain the services of these attorneys.

Civilian Legal Assistance

Are there alternatives besides a military legal assistance attorney?

Individuals whose legal needs cannot be met by a military legal assistance attorney or who are not eligible for a military assistance attorney should consider contacting a civilian attorney. Finding the right civilian attorney depends on the individual's legal needs and financial means.

Low Cost and Free Legal Services

Can an individual obtain free legal services?

Sometimes. Legal Aid offices or pro bono legal services offer low cost or free legal help. Legal Aid offices are staffed with attorneys who offer assistance and expertise on issues that affect the poor. Pro bono legal services are often provided through local bar associations or private law firms by attorneys who donate their time to work for eligible clients. Generally, these legal services are only available to those who are extremely needy. To be eligible for Legal Aid or pro bono legal assistance, an individual's or family's income typically must be around or below the federal poverty line.

The Legal Services Corporation (LSC), a private, nonprofit corporation established by Congress, provides certain types of legal services to individuals and families that meet low income eligibility requirements. For more information on the types of cases LSC handles, eligibility, and local office locations, visit the LSC website at www.lsc.gov, call (202) 295-1500, or email info@lsc.gov.



Are there any legal services specially available to service members and their families?

The American Bar Association's Operation Enduring LAMP program provides legal services to military service members and their families through a network of state and local bar associations. For more information about Operation Enduring LAMP and a directory of participating bar associations, visit www.abanet.org/legalservices/helpreservists.

The Department of Labor's Veterans' Employment & Training Services (VETS) can assist veterans in bringing a legal claim under USERRA. See the Legal Rights section of this handbook for more information about USERRA.

There are also a number of veterans service organizations (VSOs) that can provide advice and representation with respect to claims for VA benefits and appeals of denied claims. A full list of VSOs chartered by Congress and/or recognized by the VA for claim representation is available at www1.va.gov/vso/index.cfm?template=view. See the part of this section titled *Assistance with Claims for VA Benefits* for more information about VSOs.

Are there special legal services for disabled service members and veterans?

Yes. The Equal Employment Opportunity Commission (EEOC) can help all disabled individuals with complaints under the ADA. More information about the ADA can be found in the "Legal Rights" chapter of this handbook. In addition, the American Bar Association has a special commission devoted to mental and physical disability laws as well as a directory of disability lawyers. Information on the commission is available at www.abanet.org/disability or by calling (202) 662-1570. Most states offer similar legal resources for disabled individuals.

The Disabled American Veterans (DAV), a nonprofit organization of disabled service members, also provides legal services for its members on legal matters related to disability issues, such as VA disability compensation, rehabilitation, education, employment and training programs as well as counseling and representation during the DES process. Information on the DAV is available at www.dav.org.

Full Fee Legal Services

What if an individual does not qualify for free legal assistance?

Full fee legal services are provided by private civilian attorneys for individuals who do not qualify for free legal services.

How does one look for a civilian lawyer?

The most traditional route for finding a lawyer is to consult other people for a referral. Individuals may consider asking friends, teachers, employers, co-workers, relatives, neighbors and veteran support organizations. In addition, there are many legal referral services available.



How does a legal referral service work?

The traditional legal referral services organization provides a telephone number where “a representative” will ask the caller questions about his or her needs. This individual most likely is not a lawyer. Based on the discussion, the person will provide contact information for one or more lawyers in the area who seem qualified to handle those legal needs. Generally, there is no charge for legal referral services.

Assistance with Claims for VA Benefits

What is the process for claiming VA Benefits?

In general, veterans and their dependents must apply for benefits by submitting the appropriate VA forms and supporting documentation to their regional VA office. Once an applicant submits a “plausible claim” for benefits, the VA is responsible for fully developing the evidence, evaluating the claim and providing the claimant with notice of its decision. See the previous sections of this handbook for information on specific benefits and how to apply. A concise outline of all VA benefits is available online at www.vba.va.gov/bln/21/summaryVAbenefits.pdf.

What can a veteran or his or her dependents do upon a denial of benefits or a feeling that the level of benefits granted is too low?

Generally, anyone who has applied for benefits and received a determination can appeal the VA’s complete or partial denial of a claim for benefits or the level of benefits granted to the Board of Veterans Appeals. The most common types of appeals are by veterans who were denied benefits for a disability they believe began in service, or who believe their disabilities are more severe than the VA rated them. Veterans and their dependents cannot appeal decisions concerning the need for medical care or any type of medical treatment, such as a physician’s decision not to prescribe a certain drug.

How much time does an applicant have to appeal VA decisions?

Generally, an applicant must appeal one year from the date the VA regional office mailed its determination to the applicant. In cases of **simultaneously contested claims**, in which more than one person is trying to claim a single benefit (for example, multiple claimants for all of the proceeds from a service member’s life insurance policy), the applicant must appeal within 60 days of the mailing date of the original VA decision.

How does a veteran or his or her dependents file an appeal of a VA decision?

Generally, an applicant can file an appeal by submitting a written Notice of Disagreement (NOD) to the regional VA office that made the decision. The NOD must state that the applicant disagrees with a particular decision, and that he or she wants to appeal.

Upon receiving the NOD, the VA must either change its decision or respond with a Statement of the Case (SOC). The SOC explains the reason for its denial of benefits and contains a VA Form 9, *Appeal to Board of Veterans’ Appeals*.

If the applicant wants to continue to pursue the appeal, the applicant must then “perfect the appeal” by completing and submitting the VA Form 9. The Form 9 is also sometimes referred to a “Substantive Appeal.” By submitting the VA Form 9, the applicant is making

The following resources contain general information on the appeals process for VA benefits:

Veterans Benefits Administration:
www.vba.va.gov

VA Pamphlet: How Do I Appeal? www.va.gov/vbs/bva/010202A.pdf

VA Pamphlet: Understanding the Appeals Process:
www.va.gov/vbs/bva/y2000.pdf

U.S. Court of Appeals for Veterans Claims:
www.vetapp.uscourts.gov

National Organization of Veterans Advocates:
www.vetadvocates.com



his or her appeal to the Board of Veterans' Appeals (BVA). The deadline for submitting a VA Form 9 is either one year from the mailing date of the original decision or 60 days from the mailing date of the SOC, whichever is later. In cases of **simultaneously contested claims** the VA Form 9 must be filed within 30 days of the mailing date of the SOC.

What type of information should an applicant include in a VA Form 9?

When submitting a VA Form 9, the applicant should carefully follow the instructions on the Form. In accordance with these instructions, the applicant should include any evidence or information that may help the BVA decide the case, such as records of recent medical treatments or evaluations. In addition, the applicant should be careful to clearly state the benefit he or she wants, identify anything he or she disagrees with in the SOC, and state if he or she wants a personal hearing. The applicant should also identify any issues in the SOC that he or she does not want to appeal. Withdrawing unnecessary issues from the appeal may speed up the entire process.

If the applicant provides any new information or raises any new issues in the Form 9, the VA may send a supplemental statement of the case (SSOC). This is like the SOC, but it addresses the new information and issues submitted in the VA Form 9. If the applicant disagrees with the SSOC, he or she has 60 days to submit a written response in order to continue the appeal as it pertains to any new issues covered in the SSOC.

Appealing to the VBA can be a complex process. The applicant is permitted, and may want to consider, obtaining advice and representation before or during the appeals process. For more information, see the discussion below under “*Who can provide representation for applicants seeking to file a claim for VA benefits or to appeal VA findings to the BVA or the USCAVC?*”

Do applicants have the right to a hearing?

Yes. Applicants may request two types of hearings: “regional office hearings” and “BVA hearings.” At both types of hearings, applicants may appear with a representative and may present evidence and testimony regarding the claim. A regional office hearing takes place before a hearing officer at the VA regional office. An applicant can contact the VA regional office to request such a hearing. A BVA hearing takes place before a member of the BVA. An applicant can request a BVA hearing on the VA Form 9 or by filing a separate written request with the BVA following the submission of a Form 9. BVA hearings can take place at the BVA office in Washington, D.C., at the regional office, or via videoconference between the regional office and the BVA office. Videoconference is often the quickest way to obtain a hearing with a BVA board member.

What are the possible outcomes of an appeal?

The BVA may decide a claim in three ways: allow the claim, deny the claim or remand the claim to the regional VA office. When the BVA remands a claim, it is sent back to the regional VA office for additional development. This may occur because the BVA feels it does not have enough information to decide the case, and it wants the regional VA office to do additional work on the case. After the additional work, the regional VA office will issue a new decision. If it denies the claim, the regional VA office will return the case to the BVA for a final decision.



What happens if an applicant disagrees with the BVA's final decision regarding a claim?

Applicants who disagree with the board's final decision have several options:

Reopening: Applicants can request that the VA regional office reopen their case. This requires "new and material evidence" that was not on file when the BVA decided the case.

Motion to Reconsider: Applicants can also file a motion with the BVA to reconsider the case. Motions to reconsider must show that the BVA made a mistake that caused the claim to be decided wrongly. Mere disagreement with the VA's decision is not sufficient grounds to support a motion to reconsider.

CUE Motion: Applicants can move for reconsideration on the grounds that there was a "clear and unmistakable error" (CUE). CUE is a technical legal term, and CUE motions must meet certain specific requirements. It is best to consult a qualified representative before bringing this type of motion.

Appeal to the U.S. Court of Appeals for Veterans Claims: The USCAVC is a federal court that provides independent review of BVA decisions. The court does not conduct trials, hear testimony or review new evidence; it only reviews the BVA decision, the administrative record of the case and the briefs of the parties before it. Applicants must appeal to the USCAVC within 120 days of the date the BVA decision was mailed to the applicant. If an applicant files a motion to reconsider during the 120 days following the BVA decision, he or she will have 120 days from the denial of the motion to reconsider to file an appeal with the USCAVC.

Do applicants for VA benefits have to be represented during the appeals process?

No. There is no requirement that applicants be represented during the process. However, having an experienced representative can make an important difference during the appeals process. A qualified representative can offer a great deal of knowledge and expertise, help gather information and advocate on behalf of the applicant. Representatives do not have to be attorneys. See below for more information about obtaining representation during the appeals process.

Who can provide representation for applicants seeking to file a claim for VA benefits or to appeal VA findings to the BVA or the USCAVC?

A number of veterans service organizations (VSOs) offer free assistance, advice and representation to veterans and their dependents claiming VA benefits or submitting appeals to the BVA. Most VSOs provide assistance through service officers who are experts in rules and procedures for claiming VA benefits and appealing decisions to the BVA. Service officers generally are not attorneys, and the range of services they can provide is usually limited to matters involving VA benefits. Service officers may be certified to represent veterans and dependents before the USCAVC.

Veterans and dependents may hire an attorney to appeal a final decision of the BVA, but in most cases attorneys are not allowed to collect fees for services performed before the BVA issues a final decision. Therefore, attorneys generally cannot be retained to prepare and submit the NOD or VA Form 9, or to appear at a VBA or regional office hearing unless they are willing to perform such services free of charge.



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Additional Resources

To find the nearest military legal assistance office, use the legal assistance locator at <http://legalassistance.law.af.mil/content/locator.php>.

For additional information on legal assistance for each branch of the military, visit the following web addresses or write or call the relevant service branch:

AIR FORCE

Air Force Legal Services Agency
150 Chennault Circle
Maxwell Air Force Base,
AL 36112
Phone: (334) 953-4179
<http://hqja.jag.af.mil/>

ARMY

US Army Legal Assistance Policy Division, Client Services Branch
1777 North Kent St., Suite 9001
Rosslyn, VA 22209
Phone: (703) 696-1477
www.jagcnet.army.mil/Legal

COAST GUARD

Legal and Defense Services
4200 Wilson Blvd., Suite 750
Ballston, VA 22203
Phone: (202) 493-1745
www.uscg.mil/legal/la/

MARINE CORPS

Commandant of the Marine Corps (JAL)
HQMC
2 Navy Annex
Washington, DC 20380
Phone: (703) 614-1266, (703) 614-3880 or (703) 614-3886
<http://sja.hqmc.usmc.mil/>

NAVY

Legal Assistance Division
1322 Patterson Ave.,
Suite 3000
Washington Navy Yard,
DC 20374
Phone: (202) 685-4642
www.jag.navy.mil/html/OJAGLegal%20AssistHome.htm



The ABA's Operation Enduring LAMP provides legal services to military service members through a network of state and local bar associations. For more information and a directory of bar associations providing help, see www.abanet.org/legalservices/helpreservists.

Additional information on legal services for military personnel and their families is available through the ABA's standing committee on Legal Assistance for Military Personnel (LAMP) at www.abanet.org/legalservices/lamp/home.html.

Service members can submit USERRA complaints to VETS online at www.dol.gov/elaws/vets/userra/1010.asp or contact VETS at:

Office of the Assistant Secretary for Veterans' Employment and Training
Investigation and Compliance Division
U.S. Department of Labor
200 Constitution Ave., NW, Room S-1325
Washington, DC 20210
Phone: (202) 693-4731
Fax: (202) 693-4755

Service members can contact the EEOC with any questions by letter, phone or email at:

U.S. Equal Employment Opportunity Commission
1801 L St., NW
Washington, DC 20507
Phone: (800) 669-4000
Fax: (703) 997-4890
Email: info@ask.eeoc.gov
www.eeoc.gov

A full list of VSOs chartered by Congress and/or recognized by the VA for claim representation is available at www1.va.gov/vso/index.cfm?template=viewreport&Org_ID=28.

The following organizations advocate on behalf of veterans' rights and can assist veterans both in filing claims for VA benefits and/or obtaining representation for appeals:

The American Legion

The American Legion's Veterans Affairs and Rehabilitation (VA&R) program can provide advice and assistance to veterans, dependents and survivors applying for any federal or state benefits to which they may be entitled. The program employs a network of Department Service Officers (DSOs), who are available to answer questions and offer guidance and support to veterans filing claims with the VA.

Washington Office
1608 K St., N.W.
Washington, D.C. 20006
Phone: (202) 861-2700
Fax: (202) 861-2728
www.legion.org





American Veterans (AMVETS)

AMVETS is a veterans service organization whose activities include community service, legislative action on behalf of veterans and assisting honorably discharged veterans and their dependents in obtaining government benefits. AMVETS National Service Officers (NSOs) offer information, counseling and claims services on a variety of issues including: disability compensation, hospitalization, pension, health care, education and other benefits. AMVETS NSOs can also provide representation with appeals and at VA hearings.

4647 Forbes Blvd.
Lanham, MD 20706-4380
Phone: (301) 459-9600
Phone: (877) 726-8387
Fax: (301) 459-7924
Email: amvets@amvets.org
www.amvets.org

Disabled American Veterans (DAV)

DAV is a nonprofit organization of disabled service members that provides legal services for disabled veterans relating to disability issues, such as VA disability compensation, rehabilitation, education, employment and training programs. DAV's staff of highly trained National Service Officers (NSOs) can assist in the preparation of claims, writing briefs and assembling evidence in support of claims. NSOs can represent veterans and their families before the BVA and the USCAVC (the federal court that hears appeals of all BVA findings).

3725 Alexandria Pike
Cold Spring, KY 41076
Phone: (877) I Am A Vet (877-426-2838)
(859) 441-7300
www.dav.org

Military Order of the Purple Heart Service Foundation

The Foundation provides various services to veterans and their families, including veterans' benefits experts at various VA facilities who can provide advice and help with processing claims for VA benefits. The Foundation also employs a full-time attorney who can represent veterans before the USCAVC.

P.O. Box 49
Annandale, VA 22003
Phone: (703) 256-6139
Fax: (703) 256-6142
Email: pshf@purpleheartfoundation.org
www.purpleheartfoundation.org

National Association of County Veterans Service Officers (NACVSO)

NACVSO is an organization made up of local government employees working in county veterans offices in 28 states. County veterans service officers can assist veterans claiming VA benefits in developing and processing their claims.

Email: webmaster@nacvos.org
www.nacvso.org

National Veterans Legal Services Program (NVLSP)

NVLSP offers training to attorneys and other veterans advocates and publishes self-help guides for veterans seeking VA benefits. In addition, through their Veterans Consortium Pro Bono Program, NVLSP provides legal representation to veterans and their families with appeals pending before the USCAVC. The consortium handles appeals only; it doesn't provide general legal advice or legal services related to claims pending before the VA.

P.O. Box 65762
Washington, DC 20035
Phone: (202) 265-8305
Fax: (202) 328-0063
Email: info@nvlsp.org
www.nvlsp.org

Paralyzed Veterans of America

PVA is an organization dedicated to benefiting veterans with Spinal Cord Injury/Disease. Their Veterans Benefits Department has a team of National Service Officers located in VA facilities nationwide who can assist veterans in all stages of claiming VA benefits as well as appeals before the BVA. In addition, the PVA website contains disability rights information and resources for disabled veterans.

National Headquarters
801 Eighteenth St., NW
Washington, DC 20006-3517
Phone: (800) 424-8200
TTY: (800) 795-HEAR (4327)
Health Care Hotline:
(800) 232-1782
Email: info@pva.org
www.pva.org

Veterans Consortium Pro Bono Program (for court appeals only)

701 Pennsylvania Ave., NW, Suite 131
Washington, DC 20004
Toll-free: (888) 838-7727
Phone: (202) 628-8164
Fax: (202) 628-8169
Email: mail@vetsprobono.org
www.vetsprobono.org



Veterans of Foreign Wars of the United States of America (VFW)

The VFW provides various services to assist service members and their families in obtaining benefits from the VA. VFW services officers can offer advice to veterans handling their own VA claims, help them fill out VA benefit forms and prepare BVA appeals for denial of claims. The VFW also assists veterans in finding experienced attorneys to represent them in court.

406 West 34th St.
Kansas City, MO 64111
24-hour Hotline: (800) VFW-1899 (839-1899)
Phone: (816) 756-3390
Fax: (816) 968-1149
Email: info@vfw.org
www.vfw.org

The Wounded Warrior Project (WWP)

WWP benefits counselors assist patients at their bedside at Walter Reed Army Hospital and Bethesda Naval Medical Center in Washington, DC. WWP staff also makes regular visits to Brooke Army Medical Center in San Antonio, Texas. WWP counselors can help wounded veterans identify and access various government benefits that may be available to aid in their transition back to civilian life.

7020 AC Skinner Pkwy.,
Suite 100
Jacksonville, FL 32256
Phone: (904) 296-7350
Fax: (904) 296-7347
Email: info@woundedwarriorproject.org
www.woundedwarriorproject.org



CHAPTER 11: STATE RESOURCES

Introduction

In addition to the numerous federal benefits discussed throughout this handbook, most states have laws that provide special rights or benefits for veterans. The scope of benefits offered varies from state to state. These variations, which are often quite significant, affect both the type of the benefits provided and the qualifications necessary to receive the benefits.

States generally have a veterans affairs office to provide information on, and help individuals receive, all of the benefits to which they are entitled. The National Association of State Directors of Veterans Affairs provides an online directory of websites for state veterans administration offices at www.nasdva.com. Also, the current contact information for each state's veterans affairs office, in addition to other important state-specific information, may be found in the pages that follow.

As discussed above, the full scope of benefits provided by states to veterans varies greatly. For example, California offers special, below market interest rate home loans to qualified veterans (www.cdva.ca.gov/calvet/default.asp) and Oklahoma offers one-time emergency financial aid to veterans and their dependents who satisfy certain eligibility requirements (www.ok.gov/DDVA/Financial_Assistance/index.html). Therefore, including a complete summary of each state's benefits in this handbook is not practicable.

However, there are three sets of benefits that are commonly (although not universally) offered to veterans and, in some cases, certain of their dependents:

- > education benefits (generally in the form of tuition reductions at public universities);
- > real estate property tax reductions or exemptions (usually the amount of any reduction or exemption is based upon income levels or service-connected disability levels); and
- > employment preferences for state civil service jobs (commonly applied as "preference points" to civil service exams and increased in the case of service-connected disabilities).

The following pages contain state-by-state websites and general information telephone numbers for state health departments and state tax authorities. The state health department is provided as a resource for state medical and mental health care programs, which may provide services to qualifying state residents, often regardless of veteran status. The state tax authority websites are good starting points for obtaining tax



return forms and answers to many basic state tax questions, including state-specific benefits available to veterans and veterans with disabilities. Certain state tax benefits may be offered to qualifying state residents, again regardless of veteran status. However, veterans are strongly encouraged to consult with a tax professional for advice about their particular situations.

State by State Resources

ALABAMA

Tax

Department of Revenue:
(334) 242-1170
www.ador.state.al.us/

Health

Department of Public Health:
(800) ALA-1818 (252-1818)
www.adph.org/

More Information

www.va.state.al.us/laws.htm

CALIFORNIA

Tax

Franchise Tax Board:
(800) 852-5711
www.ftb.ca.gov/

Health

Department of Health Services:
(916) 445-4171
www.dhs.ca.gov/

More Information

www.cdva.ca.gov/cdva/benefits.asp

ALASKA

Tax

Department of Revenue:
(907) 465-2300
www.revenue.state.ak.us/

Health

Mental Health Board:
(907) 465-8920
www.hss.state.ak.us/amhb/

More Information

[www.ak-prepared.com/vetaffairs/
state_benefits.htm](http://www.ak-prepared.com/vetaffairs/state_benefits.htm)

COLORADO

Tax

Department of Revenue:
(303) 238-SERV (7378)
[www.revenue.state.co.us/main/
home.asp](http://www.revenue.state.co.us/main/home.asp)

Health

Department of Public Health and
Environment:
(303) 692-2100
www.cdphe.state.co.us/

More Information

[www.dmva.state.co.us/viewpage.php?
UGFnZUIEPTU](http://www.dmva.state.co.us/viewpage.php?UGFnZUIEPTU)

ARIZONA

Tax

Department of Revenue:
(800) 352-4090
www.azdor.gov/

Health

Department of Health Services:
(602) 542-1000
www.azdhs.gov/

More Information

[www.azdvs.gov/Departments/VSD/
Veterans%20Guide.pdf](http://www.azdvs.gov/Departments/VSD/Veterans%20Guide.pdf)

CONNECTICUT

Tax

Department of Revenue Services:
(800) 382-9463
www.ct.gov/drs/site/default.asp

Health

Connecticut Department of Public Health:
(860) 509-8000
www.dph.state.ct.us/index.html

More Information

www.dph.state.ct.us/index.html

ARKANSAS

Tax

Department of Finance & Administration:
(800) 882-9275
www.arkansas.gov/dfa/index.html

Health

Department of Health & Human Services:
(800) 482-8988
www.healthyarkansas.com/

More Information

www.nasdva.com/arkansas.html

DELAWARE

Tax

Division of Revenue:
(302) 577-8200
www.state.de.us/revenue/default.shtml

Health

Health and Social Services:
(302) 744-4700
www.dhss.delaware.gov/dhss/

More Information

www.state.de.us/veteran/services.shtml



FLORIDA

Tax

Florida Department of Revenue:
(800) 352-3671
<http://dor.myflorida.com/dor/>
(must use "http")

Health

Department of Health:
(850) 245-4444
www.doh.state.fl.us/

More Information

www.floridavets.org/benefits/benefits.asp

GEORGIA

Tax

Department of Revenue:
(404) 417-4477
www.etax.dor.ga.gov/

Health

Division of Public Health:
(404) 657-2700
www.health.state.ga.us/

More Information

www.sdvs.georgia.gov/00/channel_title/0,2094,26646926_26692185,00.html

HAWAII

Tax

Department of Taxation:
(808) 587-4242
www.state.hi.us/tax/index.htm

Health

Department of Health:
(808) 974-6006
www.hawaii.gov/health/

More Information

www.dod.state.hi.us/ovs/benefits.html

IDAHO

Tax

Tax Commission:
(800) 972-7660
www.tax.idaho.gov/

Health

Adult Mental Health Division:
www.healthandwelfare.idaho.gov/portal/alias__Rainbow/lang__en-US/tabID__3461/DesktopDefault.aspx

More Information

www.military.com/benefits/veteran-benefits/idaho-state-veterans-

ILLINOIS

Tax

Illinois Department of Revenue:
(800) 732-8866
www.revenue.state.il.us/

Health

Department of Public Health:
(217) 782-4977
www.idph.state.il.us/

More Information

www.state.il.us/agency/dva/vetben.htm

INDIANA

Tax

Indiana Department of Revenue:
(317) 233-4018
www.in.gov/dor/

Health

Indiana Department of Health:
(317) 233-1325
www.in.gov/isdh/index.html

More Information

www.in.gov/veteran/sso/brochure/index.html

IOWA

Tax

Iowa Department of Revenue:
(800) 367-3388
www.state.ia.us/tax/index.html

Health

Iowa Department of Public Health:
(515) 281-7689
www.idph.state.ia.us/

More Information

www.legis.state.ia.us/Isadocs/IssReview/1995/IR21E.PDF

KANSAS

Tax

Department of Revenue:
(785) 368-8222
www.ksrevenue.org/

Health

Department of Health and Environment:
(785) 296-1500
www.kdheks.gov/

More Information

www.kcva.org/vb/

KENTUCKY

Tax

Department of Revenue:
(502) 546-4581
www.revenue.ky.gov/

Health

Department for Public Health:
(800) 372-2973
www.chfs.ky.gov/dph/

More Information

www.kdva.net/benefitsbook.pdf



**WOUNDED WARRIOR
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LOUISIANA

Tax

Department of Revenue:
(225) 219-7462
www.rev.state.la.us/

Health

Office of Public Health:
(225) 342-9500
www.dhh.louisiana.gov/offices/?ID=79

More Information

www.vetaffairs.com/state.html

MAINE

Tax

Revenue Services:
(207) 287-2076
www.maine.gov/revenue/

Health

Department of Health and Human Services:
(207) 287-3707
www.maine.gov/dhhs/index.shtml

More Information

www.maine.gov/dvem/bvs/benefits.htm

MARYLAND

Tax

Comptroller's office:
(410) 260-7980
(800) MD-TAXES (638-2937)
www.comp.state.md.us/default.asp

Health

Mental Health Division:
(410) 402-8476
www.dhmm.state.md.us/health/mentalhealth.htm

More Information

www.mdva.state.md.us/index.html and
www.military.com/benefits/veteran-benefits/maryland-state-veterans-

MASSACHUSETTS

Tax

Department of Revenue:
Division of Local Services:
(617) 626-2300
www.mass.gov/dor

Health

Department of Public Health:
(866) 627-7968
www.mass.gov/dph/

More Information

www.veteransinfo.net/Mass.html

MICHIGAN

Tax

Department of Treasury:
(517) 373-3200
www.michigan.gov/treasury/

Health

Department of Community Health:
(517) 373-3740
www.michigan.gov/mdch

More Information

<http://elearn.mrs.state.mi.us/vr/vets/VBS-Booklet.pdf> (must use "http")

MINNESOTA

Tax

Department of Revenue:
(651) 296-3781
www.taxes.state.mn.us/taxes/index.shtml

Health

Department of Health:
(651) 201-5000
www.health.state.mn.us/

More Information

www.mdva.state.mn.us/stateprgms.htm

MISSISSIPPI

Tax

Tax Commission:
(601) 923-7000
www.mstc.state.ms.us/

Health

Department of Health:
(866) 458-4948
www.msdlh.state.ms.us/

More Information

www.vab.state.ms.us/booklet.htm

MISSOURI

Tax

Department of Revenue:
(573) 751-4450
www.dor.mo.gov/index.htm

Health

Department of Health and Senior Services:
(573) 751-6400
www.dhss.mo.gov/

More Information

www.mvc.dps.mo.gov/State_Ben.htm#vp



MONTANA

Tax

Department of Revenue:
(406) 444-6900
www.mt.gov/revenue/default.asp

Health

Department of Public Health & Human Services:
(406) 444-5622
www.dphhs.mt.gov/

More Information

www.dma.mt.gov/mvad/functions/state.asp

NEBRASKA

Tax

Department of Revenue:
(800) 742-7474
www.revenue.state.ne.us/

Health

Health and Human Services:
(402) 471-2306
www.hhs.state.ne.us/

More Information

www.vets.state.ne.us/index_html?page=content/benefits.html

NEVADA

Tax

Department of Taxation:
(775) 684-2000
www.tax.state.nv.us/

Health

Health Division:
(775) 684-4200
www.health.nv.gov/

More Information

www.veterans.nv.gov/NOVS/Veterans%20Benefits.html

NEW HAMPSHIRE

Tax

Department of Revenue Administration:
(603) 271-2191
www.revenue.nh.gov/index.htm

Health

Department of Health and Human Services:
(603) 271-8140
www.dhhs.state.nh.us/DHHS/DHHS_SITE/default.htm

More Information

www.military.com/benefits/veteran-benefits/new-hampshire-state-veterans-

NEW JERSEY

Tax

Division of Taxation:
(609) 292-6400
www.state.nj.us/treasury/taxation/

Health

Department of Health and Senior Services:
(800) 367-6543
www.state.nj.us/health/

More Information

www.state.nj.us/military/veterans/njguide/index.html

NEW MEXICO

Tax

Taxation and Revenue Property Tax Division:
(505) 827-0885
www.tax.state.nm.us/

Health

Department of Health:
(505) 827-2613
www.health.state.nm.us/

More Information

www.dvs.state.nm.us/

NEW YORK

Tax

Department of Taxation and Finance:
(800) 443-3200
www.tax.state.ny.us/

Health

Department of Health:
(866) 881-2809
www.health.state.ny.us/

More Information

www.military.com/benefits/veteran-benefits/new-york-state-veterans-benefits

NORTH CAROLINA

Tax

Department of Revenue:
(877) 252-3052
www.dornc.com/forms/

Health

Department of Health and Human Services:
(800) 662-7030
www.dhhs.state.nc.us/

More Information

www.doa.state.nc.us/vets/statebenefits.htm



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NORTH DAKOTA

Tax

Tax Department:
(701) 328-2770
www.nd.gov/tax/

Health

Department of Health:
(701) 328-2352
www.health.state.nd.us/

More Information

www.nd.gov/veterans/benefits/

OHIO

Tax

Department of Taxation:
(800) 282-1780
www.tax.ohio.gov/index.stm

Health

Department of Health:
(800) 411-4142
www.odh.state.oh.us/

More Information

www.veteransaffairs.ohio.gov/benefits.htm

OKLAHOMA

Tax

Tax Commission:
(405) 521-3160
www.tax.ok.gov/

Health

Department of Health:
(405) 271-5600
www.health.state.ok.us/

More Information

www.military.com/benefits/veteran-benefits/oklahoma-state-veterans-

OREGON

Tax

Department of Revenue:
(503) 378-4988
www.oregon.gov/DOR/

Health

Department of Human Services:
(503) 945-5944
www.dhs.state.or.us/dhs/publichealth/index.shtml

More Information

www.oregon.gov/ODVA/

PENNSYLVANIA

Tax

Department of Revenue:
(888) PATAXES (728-2937)
www.revenue.state.pa.us/

Health

Department of Health:
(877) 724-3258
www.dsf.health.state.pa.us/health/site/default.asp

More Information

www.military.com/benefits/veteran-benefits/pennsylvania-state-veterans-

PUERTO RICO

Tax

Secretary of the Treasury:
(787) 723-7085
www.hacienda.gobierno.pr/

Health

Department of Health:
(787) 274-7676
www.salud.gov.pr/

More Information

www.nasdva.com/puertorico.html

RHODE ISLAND

Tax

Division of Taxation:
(401) 222-1040
www.tax.state.ri.us/

Health

Department of Health:
(401) 222-2231
www.health.state.ri.us/

More Information

www.military.com/benefits/veteran-benefits/rhode-island-state-veterans-

SOUTH CAROLINA

Tax

Department of Revenue:
(803) 898-5709
www.sctax.org/

Health

Department of Health and Environmental Control:
(803) 989-3432
www.scdhec.net/

More Information

www.govoepp.state.sc.us/va/benefits.html#prop_tax_home



SOUTH DAKOTA**Tax**

Department of Revenue and Regulation:
 (605) 773-3311
www.state.sd.us/drr2/revenue.html

Health

Department of Health:
 (800) 738-2301
www.state.sd.us/DOH/

More Information

www.state.sd.us/applications/MV91MVAInternetRewrite/default.asp?navid=11

TENNESSEE**Tax**

Department of Revenue:
 (800) 342-1003
www.state.tn.us/revenue/

Health

Department of Health:
 (800) 778-4123
www.state.tn.us/health/

More Information

www.state.tn.us/veteran/benefitsstate.html

TEXAS**Tax**

Comptroller's Office:
 (800) 252-9121
www.window.state.tx.us/

Health

Department of Health:
 (888) 963-7111
www.tdh.state.tx.us/

More Information

www.tvc.state.tx.us/#

UTAH**Tax**

Tax Commission:
 (801) 297-6358
www.tax.utah.gov/

Health

Department of Health:
 (888) 222-2542
www.health.utah.gov/

More Information

www.ut.ngb.army.mil/veterans/utah_veterans_benefits.pdf

VERMONT**Tax**

Department of Taxes:
 (866) 828-2865
www.state.vt.us/tax/

Health

Department of Health:
 (804) 863-7200
www.healthvermont.gov/

More Information

www.va.state.vt.us/Downloads/Brochure%20-%20State%20Benefits%20-%20WebVersion.pdf

VIRGINIA**Tax**

Department of Taxation:
 (804) 367-8031
www.tax.virginia.gov/

Health

Department of Health:
 (804) 864-7009
www.vdh.state.va.us/

More Information

www.dvs.virginia.gov/statebenefits.htm

WASHINGTON**Tax**

Department of Revenue:
 (800) 647-7706
www.dor.wa.gov/

Health

Department of Health:
 (800) 525-0127
www.doh.wa.gov/

More Information

http://www.dva.wa.gov/veterans_benefits.html

WEST VIRGINIA**Tax**

Tax Department:
 (304) 558-3333
www.state.wv.us/taxdiv/

Health

Department of Health and Human Resources:
 (304) 558-2971
www.wvdhhr.org/bph/

More Information

www.wvs.state.wv.us/va/state_fed.htm



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WISCONSIN

Tax

Department of Revenue:
(608) 266-8641
www.revenue.wi.gov/

Health

Department of Health & Family Services:
(800) 642-6552
www.dhfs.wisconsin.gov/

More Information

www.dva.state.wi.us/benefits.asp

WYOMING

Tax

Department of Revenue:
(307) 777-7961
<http://revenue.state.wy.us/>

Health

Department of Health:
(307) 777-7656
<http://wdh.state.wy.us/main/index.asp> (must use "http")

More Information

www.wy.ngb.army.mil/PAO/VetBenefitbook06.pdf



TABLE OF ACRONYMS AND ABBREVIATIONS

ADA – Americans with Disabilities Act: a federal law that requires employers to make reasonable accommodations for employees with disabilities and prohibits discrimination against qualified individuals with disabilities when making hiring, promotion, compensation and training decisions. See *Chapter 9, Legal Rights: The Americans with Disabilities Act*.

ADME – Active Duty Medical Extension: a program that allows wounded reservists to remain on active duty (and receive active duty salary) during the disability evaluation process. See *Chapter 1, Immediate Concerns*.

AEA – Actual Expense Allowance: an allowance that, under special circumstances, permits family members to be reimbursed for actual and necessary expenses that exceed the per diem allowance that otherwise serves as the maximum amount an individual will be reimbursed when traveling under an invitational travel order. See *Chapter 1, Immediate Concerns*.

AMVETS – A service organization dedicated to working on behalf of the interests of veterans. AMVETS can represent honorably discharged veterans and their dependents in obtaining VA benefits. See *Chapter 10, Legal Assistance*.

BVA – Board of Veterans' Appeals: a Department of Veterans Affairs (VA) panel that reviews benefit claims determinations made by local VA offices and issues decisions on appeals. See *Chapter 10, Legal Assistance: Obtaining Legal Assistance*.

CHAMPVA – Civilian Health and Medical Program of the Department of Veterans Affairs: a VA health benefits program that shares the costs of certain health care services and supplies for dependents of disabled veterans. See *Chapter 5, Health Care*.

CHCBP – Continued Health Care Benefit Program: a temporary health care plan available to veterans and their families for the interim period between the end of eligibility for military health benefits and the beginning of civilian health care coverage. See *Chapter 5, Health Care*.

COAD – Continuation on Active Duty: the program by which service members with 15-20 years of service who become disabled as a result of combat may request to remain on active duty, even if found unfit by a PEB. Service members often use COAD as a means of obtaining a longer length of service in order to receive higher retirement benefits. See *Chapter 2, The Disability Evaluation System*.

CONUS – The Continental United States, as opposed to OCONUS (Outside CONUS).



CRDP – Concurrent Retirement & Disability Payments: a DoD program that provides a gradual reduction, over a period of ten years, of the off-set a veteran must take on his or her DoD pay when he or she is also receiving VA disability payments. CRDP is available to veterans with at least 20 years of service and at least 50% disability ratings. See *Chapter 4, DoD and VA Disability Compensation: Concurrent Receipt Payments*.

CRSC – Combat-Related Special Compensation: a DoD program that restores the full amount of the VA disability compensation for a qualifying injury (e.g., a combat injury) that would otherwise be offset by DoD disability benefits. CRSC is available to veterans with least 20 years of service and a qualifying injury that is assigned a disability rating of at least 10%. See *Chapter 4, DoD and VA Disability Compensation: Concurrent Receipt Payments*.

CUE – Clear and Unmistakable Error: an applicant to the Board of Veterans Appeals may make a motion for reconsideration on the basis of a clear and unmistakable error, a technical term referring to a defined set of circumstances. See *Chapter 10, Legal Assistance*.

DAV – Disabled American Veterans: a nonprofit, veterans service organization that can represent veterans and their dependents in front of the VA and is focused on building better lives for disabled veterans and their families primarily by providing free assistance in obtaining government benefits and services. See *Chapter 10, Legal Assistance*.

DEA – Survivors’ and Dependents’ Educational Assistance Program: a VA program that provides education benefits to qualified dependents and survivors. See *Chapter 6, Education and Employment Benefits: Education Programs for Service Members’ Families*.

DEERS – Defense Enrollment Eligibility System: a computerized database containing relevant personal information for military personnel, their families and others who are eligible for health care benefits from TRICARE. Service members are automatically registered in DEERS. Family members must be registered in order to receive TRICARE benefits. See *Chapter 5, Health Care*.

DES – Disability Evaluation System: a general term applied to the entire process the military uses to determine whether injured service members are fit to continue active military service. The DES is a multistage process, and the results of a service member’s DES evaluation also affects his or her eligibility to receive DoD disability retirement benefits. See *Chapter 2, The Disability Evaluation System*.

DoD – Department of Defense: the department of the federal government responsible for coordinating and supervising all government agencies and activities directly related to the military and national security.

DSO – Department Service Officers of the American Legion: a veterans service organization that can represent veterans and dependents in front of the VA. DSO officers are available to answer questions and offer guidance to veterans filing claims with the VA. See *Chapter 10, Legal Assistance*.



EEOC – Equal Employment Opportunity Commission: the federal agency charged with ending employment discrimination. Victims of discrimination can file a complaint against an employer with the EEOC. The EEOC conducts investigations, brings lawsuits against private employers on behalf of victims of discrimination and offer mediation dispute resolution services. The agency also serves as an adjudicatory body for claims against government agencies. See *Chapter 9, Legal Rights*.

ESGR – Employer Support of the Guard and Reserve: the DoD agency whose activities are aimed at promoting understanding and cooperation between reservists (and guard members) and their civilian employers. ESGR also assists in enforcing rights under USERRA and reducing and resolving conflicts between reserve component members and employers. See *Chapter 9, Legal Rights: The Americans with Disabilities Act* and *Chapter 10, Legal Assistance: Low Cost and Free Legal Services*.

FMLA – Family and Medical Leave Act of 1993: a federal law guaranteeing certain workers unpaid leave from work in order to care for themselves or for certain family members who are seriously ill. See *Chapter 1, Immediate Concerns; Chapter 9, Legal Rights*.

GI BILL – Montgomery GI Bill: federal programs that provides monthly educational assistance to military veterans, including reservists and members of the National Guard. See *Chapter 6, Education and Employment Benefits: Montgomery GI Bill*.

GWOT – Global War on Terrorism: injured reserve component service members mobilized in the Global War on Terrorism may be eligible to receive their regular service salary and benefits. See *Chapter 1, Immediate Concerns*.

IRA – Individual Retirement Account: a retirement plan account that provides certain tax advantages. IRAs take two basic forms: traditional IRAs and Roth IRAs. See *Chapter 8, Federal Tax Issues: Paying for Disability-Related Expenses with Retirement Funds*.

ITO – Invitational Travel Order: official government orders authorizing travel by relatives of seriously ill or wounded service members to enable the relatives to visit the service members in military treatment facilities. ITOs often cover round trip transportation as well as meals, lodging and other incidental travel expenses. See *Chapter 1, Immediate Concerns*.

MEB – Medical Evaluation Board: The first formal stage of the disability evaluation process. The MEB evaluates the service member’s injury and ongoing treatment in order to determine whether his or her injuries are severe enough to prevent continued military service. The term MEB or “medical board” is often used to refer to three different things: (1) the group of physicians who convene to evaluate the service member’s injuries; (2) the “narrative summary” of the service member’s injuries dictated by the board; or (3) the service member’s complete disability case file. See *Chapter 2, The Disability Evaluation System: The Medical Evaluation Board*.



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MGIB – See *Table of Acronyms and Abbreviations: GI Bill*.

MMRB – MOS Medical Retention Board: an administrative board before which injured service members must appear to request a change of MOS. See *Chapter 2, The Disability Evaluation System: The Physical Evaluation Board*.

MOS – Military Occupational Specialty: a service member’s job classification code in either the Army or the Marine Corps. The Air Force uses a similar classification system known as the Air Force Specialty Codes (AFSC). The Navy uses the Navy Enlisted Classification (NEC) system. The DoD disability evaluation is based on ascertaining whether a service member can continue in his or her current MOS. See *Chapter 2, The Disability Evaluation System*.

MRP – Medical Retention Processing: a program through which reserve component service members mobilized in support of the GWOT (Operation Enduring Freedom, Operation Iraqi Freedom, etc.) may remain on active duty pending evaluation of an injury. MRP allows reservists and guard members to continue to receive their regular active duty salaries during this period. See *Chapter 1, Immediate Concerns*.

NACVSO – National Association of County Veterans Service Officers: an organization made up of local government employees working in county veterans offices in 28 states. See *Chapter 10, Legal Assistance*.

NOD – Notice of Disagreement: the means by which an applicant for VA benefits can appeal a VA decision regarding benefits. See *Chapter 10, Legal Assistance*.

NSO – National Service Officer: a title used by both AMVETS and DAV for the officers of each organization that are dedicated to providing information, counseling on veterans benefits and representation in front of the VA. See *Chapter 10, Legal Assistance*.

NVLSP – National Veterans Legal Services Program: offers training to attorneys and other veteran advocates in the area of veterans’ claims. This nonprofit organization is dedicated to training NSOs attorneys and veterans organizations on obtaining veterans benefits and representing veterans and their dependents in front of the VA and in courts and publishes self-help guides for veterans seeking VA benefits. See *Chapter 10, Legal Assistance*.

OCONUS – Outside the continental United States (see CONUS).

PDRL – Permanent Disability Retirement List: a service member will be entitled to disability retirement pay when he or she is placed on either the PDRL or the Temporary Disability Retirement List. See *Chapter 4, DoD and VA Disability Compensation: Severance Pay and Disability Retirement Pay*.

PEB – Physical Evaluation Board: the second formal phase of the Disability Evaluation System, the PEB evaluates a service member’s physical ability to continue in the military service. See *Chapter 2, The Disability Evaluation System*.

PEBLO – PEB Liaison Officer: acts as a counselor and liaison for the service member throughout the disability evaluation process. See *Chapter 2, The Disability Evaluation System*.



PVA – Paralyzed Veterans of America: a nonprofit veterans service organization dedicated to serving the interest of veterans with spinal cord injury or disease and authorized to represent veterans and their dependents in front of the VA. See *Chapter 10, Legal Assistance*.

REALifelines – Recovery and Employment Assistance Lifelines: a Department of Labor initiative that provides injured and wounded service members and their families with access to a free career assistance network. See *Chapter 9, Legal Rights*.

REAP – Reserve Educational Assistance Program: a program that provides education assistance to reservists and National Guard members who were called up for at least 90 days of active duty since September 11, 2001. See *Chapter 6, Education and Employment Benefits*.

Reserve Components – Includes the Army National Guard, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air National Guard, the Air Force Reserve and the Coast Guard Reserve.

S-DVI – Service-Disabled Veterans Life Insurance: Service members who are granted a service-connected disability but are otherwise in good health may apply to the VA for up to \$10,000 in life insurance coverage at standard insurance rates within two years from the date VA notifies the veteran that the disability has been rated as service-connected. See *Chapter 7, Miscellaneous Federal Benefits: Service-Disabled Veterans Life Insurance*.

SCRA – Servicemembers Civil Relief Act: a federal law that guarantees that all service members ordered to active duty can reinstate health insurance policies that were in effect when their military service began, as long as they ended at some point during military service. See *Chapter 9, Legal Rights*.

SGLI – Servicemembers Group Life Insurance: a government-sponsored life insurance program for service members. See *Chapter 1, Immediate Concerns*.

SMC – Special Monthly Compensation: The additional monthly payments above and beyond the basic VA disability compensation that are provided to eligible service members who sustain particularly severe injuries, such as amputations, blindness and other severe traumas. See *Chapter 4, DoD and VA Disability Compensation*.

SOC – Statement of the Case: a response from the VA explaining its reasons for denial of benefits. See *Chapter 10, Legal Assistance*.

SSA – Social Security Administration: the government agency responsible for the Social Security System. See *Chapter 7, Miscellaneous Federal Benefits*.

TAMP – Transitional Assistance Management Program: the temporary health care program provided through the VA after separation. See *Chapter 5, Health Care*.

TAP – Transition Assistance Program: a program that helps service members make the initial transition from military service to the civilian workplace by providing employment and training information within 12 months of separation or 24 months of retirement. See *Chapter 6, Education and Employment Benefits*.



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TDRL – Temporary Disability Retirement List: the TDRL is for service members who are found unfit due to a condition that is unstable enough to make any disability rating premature or who have been assigned an initial disability rating of 30% or more but show the possibility of recovering sufficiently over an extended period of time to be returned to duty. See *Chapter 2, The Disability Evaluation System*.

TDY – Temporary Duty: A temporary assignment other than the normal billet, often at another location and frequently with additional pay during the period.

TLD – Temporary Limited Duty: TLD is a specified period of limited duty. The TLD period is normally eight months and generally will not exceed a total of 16 cumulative months. See *Chapter 2, The Disability Evaluation System*.

TSGLI – Traumatic Servicemembers' Group Life Insurance: an insurance program that provides qualified service members with up to \$100,000 in the direct aftermath of a qualifying traumatic injury. See *Chapter 1, Immediate Concerns*.

TSP – Thrift Savings Plan: the TSP is a retirement savings plan with special tax advantages for federal government employees and service members. See *Chapter 7, Miscellaneous Federal Benefits*.

USAPDA – U.S. Army Physical Disability Agency: the central agency of the Army which oversees the regional Physical Evaluation Boards.

USCAVC – U.S. Court of Appeals for Veterans Claims (formerly the U.S. Court of Veterans Appeals): a federal court with jurisdiction to review findings of the Board of Veterans Appeals (BVA).

USERRA – Uniformed Services Employment and Reemployment Rights Act: a federal law that generally prohibits employers from discriminating against employees based on their membership or service in the armed forces and that, under certain circumstances, provides service members with the right to return to civilian jobs after military service. See *Chapter 9, Legal Rights*.

VA – Department of Veterans Affairs (formerly Veterans Administration): the federal agency responsible for administering various government benefits available to veterans in areas such as health care, education, job training and financial assistance, disability benefits and pensions.

VASRD – Veterans Administration Schedule for Rating Disabilities: the VA guidelines that list various medical conditions and degrees of severity and which is used to rate service members from zero to one hundred percent disabled. See *Chapter 2, The Disability Evaluation System*.

VETS – Veterans Employment and Training Services: a Department of Labor program that oversees numerous programs designed to assist veterans in seeking jobs. See *Chapter 6, Education and Employment Benefits*.



VFW – Veterans of Foreign Wars of the United States: the VFW is a veterans service organization dedicated to aiding service members and veterans in a variety of areas including educating veterans on available benefits and representing veterans in front of the VA. See *Chapter 10, Legal Assistance*.

VHA – Veterans Health Administration: the VHA, part of the VA, manages the VA’s health care benefits and services. See *Chapter 10, Legal Assistance*.

VONAPP – Veterans Online Applications: VA website allowing applicants to submit documents online.

VR&E – Vocational Rehabilitation & Employment Services (sometimes referred to as VRES): a division of the VA, the VR&E helps qualified veterans with service-connected disabilities gain and maintain suitable employment. See *Chapter 6, Education and Employment Benefits*.

VRA – Veterans Recruitment Appointment: Disabled veterans, recently separated veterans and veterans who received an Armed Forces Medal or campaign or expeditionary medal may be eligible to receive a noncompetitive appointment to a job in the competitive service, which after two years of satisfactory service may be converted to a permanent appointment. See *Chapter 6, Education and Employment Benefits*.

VSO – Veterans Service Organization: a VSO is an organization that is dedicated to advancing the interests of service members, veterans and their dependents. Certain, but not all, VSOs are authorized to represent veterans in front of the VA. These VSOs are also known as “Chartered VSOs.” If a VSO is not authorized to represent veterans in front of the VA, they are called “non-Chartered VSOs.”



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WHO WE ARE

The Intrepid Fallen Heroes Fund

The Intrepid Fallen Heroes Fund is a leader in supporting the men and women of the Armed Forces and their families. Begun in 2000 under the auspices of the Intrepid Museum Foundation, and established as an independent not-for-profit organization in 2003, the Fund has provided close to \$60 million in support for the families of military personnel lost in service to our nation, and for severely wounded military personnel and veterans. These efforts are funded entirely with donations from the public, and hundreds of thousands of individuals have contributed to the Fund. 100% of contributions raised by the Intrepid Fallen Heroes Fund go towards these programs; all administrative expenses are underwritten by the Fund's Trustees.

From 2000 to 2005 the Fund provided close to \$20 million to families of United States military personnel lost in performance of their duty, mostly in service in Iraq and Afghanistan. The Fund provided unrestricted grants of \$11,000 to each spouse and \$5,000 to each dependent child; and \$1,000 to parents of unmarried servicemembers. The payments were coordinated with the casualty offices of the Armed Forces, to ensure all families received these benefits. In 2005 federal legislation substantially increased the benefits granted to these families. With that mission therefore accomplished, the Fund redirected its support toward the severely injured.

In January 2007 the Fund completed construction of a \$40 million world-class state-of-the-art physical rehabilitation center at Brooke Army Medical Center in San Antonio, Texas. The "Center for the Intrepid" serves military personnel who have been catastrophically disabled in operations in Iraq and Afghanistan, and veterans severely injured in other operations and in the normal performance of their duties. The 60,000 square foot Center provides ample space and facilities for the rehabilitation needs of the patients and their caregivers. It includes state-of-the-art rehabilitation equipment and extensive indoor and outdoor facilities.

With the Center for the Intrepid complete, the Fund's Board of Trustees is currently determining, in consultation with the Armed Forces and the Department of Veterans Affairs, the next area of need for our wounded military personnel and veterans that the Fund will address.



The Wounded Warrior Project

Mission: to raise awareness and enlist the public's aid for the needs of severely injured service men and women, to help severely injured service members aid and assist each other, and to provide unique, direct programs and services to meet their needs

The Wounded Warrior Project (WWP) exists to provide tangible comfort and support to severely injured service members from the Global War on Terror as they transition back to civilian life. Many of the injuries suffered by our wounded warriors are traumatic amputations, traumatic brain injuries (TBI), gunshot wounds, burns, and blast injuries that will retire these brave warriors from military service. WWP lets them know that America has not forgotten them or their sacrifices by bringing a message of hope for the future in their time of need.

WWP's support begins just after injury. Transitional Care Packs are provided at overseas hospitals to offer immediate comfort during a warrior's relocation to a U.S. military trauma center. There they receive a full, signature WWP Backpack with comfort items and necessities, benefits counseling, and family assistance, all to help them through their initial stages of rehabilitation. WWP helps to then speed rehabilitation and recovery through adaptive sports and recreation programs, raising patients' morale and confidence, exposing them to the endless possibilities of life after an injury. Finally, the WWP provides ongoing, lifelong assistance in the form of internship opportunities, employment programs, and an alumni network to further foster communication, support, and brotherhood between wounded warriors.

Lifelong support provided by WWP also includes representation before the Department of Veterans Affairs, bringing public attention to the needs of wounded service members and advocating for regulatory and statutory changes beneficial to veterans, active duty service members, and their families. Most notably, WWP was instrumental in drafting and proposing the Wounded Warrior Bill signed by President Bush that creates insurance that will pay severely wounded service men and women up to \$100,000 upon their admission to a stateside military hospital.



Davis Polk & Wardwell

Davis Polk & Wardwell is a global law firm based in New York City. Its clients include many of the world's leading corporations and financial institutions. Davis Polk has more than 600 lawyers in offices in New York, Menlo Park, CA, Washington, D.C., London, Paris, Frankfurt, Madrid, Hong Kong, Beijing and Tokyo.

In 2005, Davis Polk, in collaboration with the Intrepid Fallen Heroes Fund, published the Handbook for Families of Deceased Service Members. That handbook is available at <http://www.fallenheroesfund.org/common/page.php?ref=familyinfo>.

The following people at Davis Polk & Wardwell made substantial contributions to this Handbook for Injured Service Members and Their Families:

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For more information about the
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please visit
www.fallenheroesfund.org
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For more information about the
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