



# Veterans Affairs: Benefits for Service-Connected Disabilities

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November 1, 2010

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

RL33323

## Summary

Congress provides various benefits to American veterans and their dependents through the United States Department of Veterans Affairs (VA). One of these benefits is *disability compensation*, which is a monthly cash benefit program for veterans currently impaired from past service-connected activities.

A claim for disability compensation is initially analyzed by the VA at the local level to determine (1) whether the claimant is considered a “veteran” (eligible for benefits); (2) whether the veteran qualifies for disability compensation (entitled to benefits); (3) the extent of the impairment and the “rate” of the disability; and (4) the effective date for the compensation.

Three requirements to qualify for disability compensation are (1) medical diagnosis of the current impairment; (2) evidence of an in-service occurrence or an aggravation of the disease or injury; and (3) medical proof of a connection between the in-service incident or aggravation of an injury or illness and the current disability. The requisite standard of proof and certain medical presumptions are set by statute. The VA is required to provide assistance to the veteran in his/her case preparation by providing records and medical examinations. Special rules have been established for certain specific situations involving combat veterans, prisoners of war, and veterans exposed to Agent Orange.

If the veteran is found eligible for disability compensation, the VA then uses the Schedule for Rating Disabilities (SRD) to set the amount of earnings impairment on a percentage basis; the higher the percentage, the greater the compensation will be. Certain complications arise with the use of the rating system. A veteran’s rating may be increased or decreased over time—depending on his/her medical condition. Rating decisions may be appealed administratively.

Legislation passed in the first session of the 111<sup>th</sup> Congress increased the 2010 monthly disability compensation payments by providing veterans a cost-of-living adjustment (COLA) for their VA benefits equal to the COLA for Social Security benefits (P.L. 111-37). However, in an unprecedented situation, no COLA for Social Security benefits was enacted. Therefore, there was no increase in the 2010 VA monthly disability compensation payments. Similarly, legislation passed in the second session of the 111<sup>th</sup> Congress increased the 2011 monthly disability compensation payments by providing veterans a COLA for their VA benefits equal to the COLA for Social Security benefits (P.L. 111-247). But, in a parallel situation to last year, there will apparently be no Social Security COLA for 2011, and subsequently, no increase in the 2011 VA monthly disability compensation payments.

The 111<sup>th</sup> Congress has considered additional legislation that may affect service-connected disabilities and has enacted legislation. The Veterans’ Benefits Act of 2010 (P.L. 111-275) provides various benefits and increases in certain existing programs. Title VI deals with compensation and pension matters. Other bills have been introduced to deal with the number of claims pending at the VA and issues related to the receipt of disability benefits. These include H.R. 3504 (the VA Case Backlog Alleviation and Economic Stimulus Act of 2009); H.R. 4121 (the Veterans Appeals Improvement and Modernization Act of 2009); H.R. 5549 (the RAPID Claims Act); H.R. 5928 (the Veterans’ Disability Claims Efficiency Act of 2010); H.R. 6132 (the Veterans Benefits and Economic Welfare Improvement Act of 2010); S. 3286; S. 3348; S. 3368; S. 3370; S. 3517 (the Claims Processing Improvement Act of 2010); S. 728; and H.R. 1037.

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## Introduction

### Veterans' Disability Programs

Congress, through the United States Department of Veterans Affairs (VA), provides a wide variety of services and benefits to veterans and to certain members of their families.<sup>1</sup>

Two disability programs are administered by the VA. These programs pay monthly cash benefits to certain disabled veterans.<sup>2</sup> *Disability compensation*, the focus of this report, provides a monthly cash benefit if the veteran is at least 10% disabled as a consequence of his/her military service—which is considered to be a *service-connected disability*.<sup>3</sup> A veteran applying for service-connected disability compensation does not need to be totally disabled, have low income, or wartime military service. In contrast, a *disability pension* may be paid to a *wartime* veteran with limited income, who is no longer able to work, or is at least age 65.<sup>4</sup> A disability pension is not related to a service-connected injury or medical condition and takes into account the material needs of the veteran; it is a “needs-based” pension.<sup>5</sup>

### The “Local Determination”

The VA analyzes each veteran's claim for disability compensation at the VA regional office closest to the veteran's residence, called the “local determination.” This determination involves a four-step adjudication process of the veteran's claim.

First, the VA determines the claimant's basic eligibility to receive VA benefits. A determination is made as to whether the claimant was discharged or separated under other than dishonorable conditions, whether the claimant had “active service,” and whether the claimant's condition is based upon the veteran's willful misconduct.<sup>6</sup>

Second, if the claimant is found eligible for benefits,<sup>7</sup> the VA then determines whether the veteran qualifies for in-service disability compensation.

Third, if the VA determines that the veteran is entitled to disability compensation, the VA then evaluates the extent of the disability and makes a determination of the percentage of the disability

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<sup>1</sup> See generally *Federal Benefits for Veterans, Dependents and Survivors*, published by the Departments of Veterans Affairs (2010 edition) (hereinafter cited as “*Federal Benefits*”), available at [http://www1.va.gov/opa/publications/benefits\\_book.asp](http://www1.va.gov/opa/publications/benefits_book.asp). See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer, regarding the fundamental requirements for disability benefits.

<sup>2</sup> *Id.*

<sup>3</sup> The severity of the veteran's disability is evaluated by the VA and a determination is made as to what percentage of employment capacity is impaired. See discussion below.

<sup>4</sup> See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, by Douglas Reid Weimer, at 2 for a discussion of the disability pension.

<sup>5</sup> For further discussion of a disability pension or a non-service-connected pension, see CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, at 10-11.

<sup>6</sup> See CRS Report RL33113, *Veterans Affairs: Basic Eligibility for Disability Benefit Programs*, at 3-4 in general. For a discussion of “active service” see p. 6, and for a discussion of “willful misconduct” see pp. 8-9.

<sup>7</sup> Hence, the claimant becomes a “veteran” for purposes of benefits.

based upon the “Schedule for Rating Disabilities,” which is sometimes referred to as the “SRD” and/or the “VASRD.”<sup>8</sup> Findings adverse to the interests of the veteran may be appealed administratively.

Fourth, the VA establishes the effective date for the award.

## Requirements for Disability Compensation<sup>9</sup>

The purpose of disability compensation is to assist currently disabled veterans whose injury is connected to military service, and to that end, a veteran must meet three basic criteria to the VA’s satisfaction:<sup>10</sup>

- *One:* A recent medical diagnosis of a *current* impairment, disability, or disease.
- *Two:* Medical or, on occasion, lay evidence of an *in-service* occurrence or aggravation of the disease or injury.
- *Three:* Medical proof of a *connection* between the current disability and the in-service occurrence or aggravation of an injury or illness.

Each of these requirements is examined below.

## Medical Evidence of the Current Impairment or Disability

Disability compensation is available only to veterans with current disabilities.<sup>11</sup> Although a veteran may have been ill or sustained an injury while in service, the mere fact that this occurred is not compensable.

To provide evidence of the current medical problem, the veteran may submit medical records of the current diagnosis and/or treatment. Letters from physicians may be added to the record. Generally speaking, lay evidence of a medical condition is not sufficient. The VA has certain duties to assist veterans in the application process.<sup>12</sup> The VA must assist by providing the veteran with the appropriate records.<sup>13</sup> Usually, the VA is required to provide veterans with a medical exam in order to diagnose a current medical condition.<sup>14</sup> However, in certain circumstances, the VA may not be required to provide such an examination or assistance to the veteran.<sup>15</sup> In addition,

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<sup>8</sup> 38 U.S.C. § 1155; 38 C.F.R. § 4. See discussion below.

<sup>9</sup> See Barton F. Stichman et al., *Veterans Benefits Manual* at § 3.1.5. (Hereinafter cited as “*Veterans Benefits Manual*.”)

<sup>10</sup> For the purposes of this report, it is assumed that the claimant/applicant has met the very basic eligibility requirements for VA benefits. The claimant/applicant will be referred to as the “veteran” for the remainder of this report.

<sup>11</sup> 38 U.S.C. §§ 1110, 1131. These provisions deal with the basic entitlement for disability compensation.

<sup>12</sup> 38 U.S.C. § 5103A.

<sup>13</sup> 38 U.S.C. §§ 5103A(b),(c).

<sup>14</sup> 38 U.S.C. § 5103A(d).

<sup>15</sup> 38 U.S.C. § 5103A(a)(2).

the VA must advise veterans of incomplete applications<sup>16</sup> and the evidence needed to evaluate the veteran's claim.<sup>17</sup>

## Evidence of an In-Service Occurrence or Aggravation of the Disease or Injury

The second requirement for disability compensation is that there is medical or, under certain circumstances, lay evidence of an in-service occurrence or aggravation of a disease or injury. The in-service requirement is construed broadly. A disability incident or onset of disability is not required to be related to the veteran's military responsibilities and is covered even if it occurred during leave.<sup>18</sup> Further, the evidence submitted on the record must only demonstrate that it is as likely as not that there was an in-service aggravation or occurrence of a disease or injury. When there is nearly equal positive and negative evidence regarding a material issue, the Secretary of Veterans Affairs is required to give the benefit of the doubt to the veteran.<sup>19</sup>

The veteran must submit corroborating evidence of the incident and a statement describing the occurrence, disease, or injury in detail, along with the circumstances surrounding the event.<sup>20</sup> The type of evidence that the veteran must submit may depend upon the type of injury or disease which is being connected to the time of service. For example, a veteran who sustained a fall while in-service might produce evidence of medical treatment for the fall at the time of its occurrence and evidence from military personnel who witnessed the fall.

## Medical Proof of a Connection Between the In-Service Incident or Aggravation of an Injury/Illness and the Current Disability

This third element requires a *link* between the current injury or illness (requirement 1) and that the disease, injury, or event happened during a period of military service (requirement 2). This requirement is sometimes known as service-connected, the "service connection," or the nexus requirement.

Statutes and regulations require proof of one of five types of connections. *One*: there is a direct connection between the current disability and an incident that happened during the period of military service.<sup>21</sup> *Two*: the current medical condition existed prior to service but was exacerbated during service.<sup>22</sup> *Three*: the current medical problem did not appear during military service, but is

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<sup>16</sup> 38 U.S.C. § 5102(b).

<sup>17</sup> 38 U.S.C. § 5103(a).

<sup>18</sup> For example, a veteran may receive compensation for a medical condition that resulted from a sports injury incurred during in-service time. See *Veterans Benefit Manual* at §3.1.1.1.

<sup>19</sup> 38 U.S.C. § 5107(b).

<sup>20</sup> 38 C.F.R. § 3.303.

<sup>21</sup> 38 C.F.R. §§ 3.303(a), 3.304, 3.305. See also 38 U.S.C. § 1154. In determining whether the current condition relates to the in-service problem, the VA determines whether the problem is *acute* or *chronic*. An acute problem is considered to be a problem of relatively short duration. A chronic condition is of lengthy duration and may return.

<sup>22</sup> 38 U.S.C. § 1153; 38 C.F.R. § 3.306(a). If the disability existed prior to service, the VA must ascertain whether there was an *increase in the disability during service*. The preexisting problem will not be considered to be aggravated by service if the VA determines that the exacerbation resulted from the natural progression of the disease.

presumed to have begun or to be connected with something that occurred during service, either by statute or by VA regulation.<sup>23</sup> *Four*: the present problem is the result of a primary medical condition, and that condition is connected to a period of military service.<sup>24</sup> *Five*: the condition is the result of an injury caused by VA health service, VA training/rehabilitation services, or by participation in a VA sponsored work therapy program.<sup>25</sup>

To establish this connection, the claim must contain adequate medical evidence.<sup>26</sup> What this signifies is that for the in-service connection to be approved, the veteran must have medical proof that the disease, injury, or event which occurred during service *actually caused* the veteran's current disability.

## **The VA's Obligations in the Preparation/Presentation of the Veteran's Case and Certain Presumptions**

The VA is required by law to use certain standards in reviewing a veteran's claims, and the VA has certain statutory obligations in the preparation of the veteran's case. In addition, statute and regulations provide for certain presumptions of disability as a result of certain occurrences. These standards, requirements, and presumptions are summarized below.

### **Standard of Proof**

As previously explained, in order to receive disability benefits, evidence is required to prove a connection between an in-service incident and a current disability, but in assessing evidence on these elements, the veteran is to be given the "benefit of the doubt."<sup>27</sup> The statute provides that "When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant."<sup>28</sup> Regulations provide that when reasonable doubt arises, such doubt will be resolved in favor of the claimant.<sup>29</sup> Hence, in order to satisfy this element, the submitted medical evidence generally needs to show that it is as likely as not that there is a connection between the in-service injury, occurrence, or illness and the current disability.

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<sup>23</sup> 38 U.S.C. §§ 1112, 1116, 1133; 38 C.F.R. §§ 3.307-3.309; 38 C.F.R. § 3.313(b). If the disability claimed is a disease which was not diagnosed or recorded on the veteran's service record, the VA is required to ascertain whether the *incubation time* for the disease could have started during in-service time (38 C.F.R. § 3.03(d)).

<sup>24</sup> 38 C.F.R. § 3.310(a). If the disability claimed cannot be determined to be in-service, either directly or by exacerbation, the VA will then decide whether the problem may be *service-connected on a secondary basis*. This reasoning is based on the theory that it was proximately caused by a service-connected condition. For instance, a primary disease is contracted in-service. A related, secondary disease develops as a result of the primary disease.

<sup>25</sup> 38 U.S.C. § 1151.

<sup>26</sup> 38 U.S.C. § 5107.

<sup>27</sup> 38 U.S.C. § 5107(b).

<sup>28</sup> *Id.*

<sup>29</sup> 38 C.F.R. § 3.102.

## Assistance in Case Preparation

The VA has a responsibility to assist the veteran in developing a claim. Among other things, the VA is required to advise the veteran of the type of evidence that must be submitted to substantiate the claim.<sup>30</sup>

The VA also must make service and medical records available to veterans for the preparation of their cases.<sup>31</sup> Such records are often crucial in proving the veteran's claim. In many instances, the VA is required to provide veterans with a *medical examination* in order to diagnose the current medical condition.<sup>32</sup> However, under certain circumstances the VA may not be required to provide assistance to the veteran.<sup>33</sup>

## Certain Presumptions

In its analysis of certain claims, the VA is required by statute and/or regulation to make certain presumptions.

### Presumption of Medical Soundness

In evaluating a veteran's claim, the VA generally presumes that the veteran entered the service in sound medical condition.<sup>34</sup> This may assist the veteran in proving a claim by making it difficult for the VA to claim that the condition or disease existed prior to service. However, if the medical impairment was noted at the time of entry into service, the veteran may have to prove that the condition was exacerbated in-service. If the VA is able to prove by "clear and unmistakable evidence" that the disease or injury was in existence prior to service, and that it was not worsened during service, the veteran's claim will be denied.<sup>35</sup>

### Special Rules for Certain In-Service Occurrences

Special rules require the VA to consider a service-connected problem by presumption. For example, certain diseases associated with exposure to Agent Orange will be presumed to be service-related in the case of Vietnam veterans.<sup>36</sup>

A similar regulation holds that veterans who were held prisoners of war or who served in combat can be presumed to have suffered traumatic, stressful events during their military service.<sup>37</sup>

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<sup>30</sup> 38 U.S.C. § 5103(a).

<sup>31</sup> 38 U.S.C. §§ 5103A(b)(c).

<sup>32</sup> 38 U.S.C. § 5103A(d).

<sup>33</sup> 38 U.S.C. § 5103A(a)(2).

<sup>34</sup> 38 U.S.C. § 1111.

<sup>35</sup> *Id.*

<sup>36</sup> 38 C.F.R. § 3.307(a)(6)(iii). See generally, CRS Report RL34370, *Veterans Affairs: Health Care and Benefits for Veterans Exposed to Agent Orange*, by Sidath Viranga Panangala and Douglas Reid Weimer; and CRS Report R41405, *Veterans Affairs: Presumptive Service Connection and Disability Compensation*, coordinated by Sidath Viranga Panangala.

<sup>37</sup> 38 C.F.R. § 3.304(f).



Similarly, special rules apply to combat veterans in proving an in-service injury, or other incident.<sup>38</sup> If a combat veteran claims to have suffered a disease, injury, or other event during combat, the VA will usually accept that statement as fact. This is the case even if there are no service records to substantiate the claim.

## The VA Rating System

Congress has established by statute a rating system to categorize a veteran's degree of disability for in-service injuries.<sup>39</sup> This system is implemented by the VA through a series of complex regulations and procedures.

After the VA determines that a disability is service-connected, the VA regional office goes through a review process (the "rating activity") to determine the disability rating (on a percentage basis). As used by the VA, the term "disability" is defined as "the average impairment in earning capacity" that results from diseases, injuries, or their resultant aftermath.<sup>40</sup>

## Schedule for Rating Disabilities (SRD or VASRD)

By authority of Congress, the VA set up the Schedule for Rating Disabilities ("SRD" or "VASRD"), which rates various disabilities on a percentage basis.<sup>41</sup> The statute provides for 10 grades of disability, and the higher the disability determination, the higher is the monthly compensation that the veteran receives.<sup>42</sup> The VA determines the disability level for an eligible veteran, and Congress sets the compensation rates for veterans based on ratings.<sup>43</sup>

Again, in making individual determinations, the VA and the Board of Veterans' Appeals (BVA) apply the various ratings of the SRD.<sup>44</sup> The SRD is detailed: various sections deal with injuries or

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<sup>38</sup> 38 U.S.C. § 1154(b); 38 C.F.R. § 3.304(d)(f).

<sup>39</sup> 38 U.S.C. § 1155.

<sup>40</sup> 38 C.F.R. § 4.1.

<sup>41</sup> 38 U.S.C. § 1155.

<sup>42</sup> 10% through 100%.

<sup>43</sup> The current monthly rates, effective on December 1, 2008, are as follows: An unmarried veteran without dependents and with a 10% disability receives \$123 per month. The rates increase to a 100% disability payment of \$2,673 per month (for an unmarried veteran without dependents). For rate tables and a compensation calculator, see <http://www.vba.va.gov/bln/21/rates/comp0108.htm>. *The payment rates are not automatically adjusted for inflation, and are only increased if Congress passes enabling legislation.* Congress usually grants an increase based on the consumer price index or the cost-of-living formula used to determine the Social Security old age increase. The 2009 rates were set by P.L. 110-324, 110<sup>th</sup> Cong., 2d Sess. (September 24, 2008), the Veterans' Compensation Cost-of-Living Adjustment Act of 2008. As discussed below, P.L. 111-37, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. (June 30, 2009), the Veterans' Compensation Cost-of-Living Adjustment Act of 2009, provided for an increase in disability benefits equal to the increase provided for Social Security benefits. In an unprecedented situation, in 2009, Congress did not enact a COLA for 2010 Social Security Benefits. The practical effect of this situation is that although an increase for disability benefits was enacted, the monthly benefits remain at their 2009 levels (as enacted in 2008). Likewise, the Veterans' Compensation Cost-of-Living Adjustment Act of 2010 (P.L. 111-247) provided for an increase in disability benefits equal to the increase provided for Social Security benefits. On October 15, 2010, the Social Security Administration announced that there would be no Social Security COLA for 2011, and hence, under current law, there will be no increase in benefits. Therefore, veterans' disability benefits will remain at the current levels, unless otherwise changed by Congress.

<sup>44</sup> 38 C.F.R. § 4.1.

diseases that impact particular body functions/parts, including the musculoskeletal system, eyes, and other functions such as hearing, infectious diseases, respiratory system, cardiovascular system, digestive system, genitourinary system, gynecological conditions, and other functions.<sup>45</sup> Each of these sections of the SRD (dealing with a particular body part or function) has a series of medical diagnoses with a numerical diagnostic code (dc) that breaks down percentages of disability based upon the severity of the disability.<sup>46</sup> Each degree of disability under each dc has a description of the symptoms that the claimant veteran must have in order to qualify for that rating. The disability degree increases with the increase in the severity of the symptoms.

## **Application of the Rating System<sup>47</sup>**

Applying this rating system, the VA examines the veteran's medical records to determine the medical diagnosis for the veteran's service-connected disability. The VA then finds the applicable diagnostic code for the disability and finds the degree of disability that is appropriate to the symptoms and diagnosis of the veteran's condition. If a rating falls between two ratings, and the symptoms are closer to the higher rating, then the higher rating will be selected.<sup>48</sup> In making its determination, the VA examines all of the available evidence, including service records, lay statements, and medical records and other evidence.<sup>49</sup>

## **Complications in the Use of the Rating System**

When the VA applies the diagnostic code(s) to veterans' claims, a number of variables come into play, some of which may be quite complex. And while every rating has unique circumstances, VA ratings in similar cases may not always seem consistent. Having to make fine distinctions within an intricate rating system based on a reading of a veteran's symptoms inevitably leads to some claims that a rating is "wrong" or "underrated."

Another potential complication in the rating process is that a medical condition may be able to be rated under more than one diagnostic code, sometimes to the detriment of the veteran. In addition, not all disabilities and their symptoms and complications are listed on the rating chart, in which case an analogous condition may be used for the rating.<sup>50</sup>

A further complication in the rating system occurs when a veteran has two or more service-connected disabilities. In such a circumstance, the overall percentage of disability is determined by combining the individual ratings, but *not by adding them together*. To calculate the appropriate combined rating, the VA considers each impairment in the order of its severity. Direction on how to make these determinations is contained in the "Combined Rating Table" in the VA regulations.<sup>51</sup>

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<sup>45</sup> For example see 38 C.F.R. §§ 4.40 to 4.73 for the musculoskeletal system; 38 C.F.R. §§ 4.75 to 4.84a for the eyes.

<sup>46</sup> See 38 C.F.R. § 4.84a for an example of the ratings and diagnostic codes chart for impairment of vision.

<sup>47</sup> See CRS Report RL33991, *Disability Evaluation of Military Servicemembers*, by Christine Scott and Don J. Jansen.

<sup>48</sup> 38 C.F.R. § 4.7.

<sup>49</sup> 38 C.F.R. § 3.103(d).

<sup>50</sup> 38 C.F.R. § 4.20. However, if a veteran's disability is so extraordinary or unusual that an analogy cannot be made through use of the rating charts, an "extraschedular rating" for a veteran may be made (38 C.F.R. § 3.321(b)).

<sup>51</sup> 38 U.S.C. § 1157; 38 C.F.R. § 4.25.

## **Changes in Veterans' Ratings**

Should the severity of the service-connected disability increase over time, the veteran may apply for an increase in the rated percentage of disability.<sup>52</sup> Similarly, should the condition improve, the ratings percentage may be decreased, and the monthly payments would decrease.

## **Special Monthly Compensation (SMC)**

Veterans with severe disabilities may be entitled to special monthly compensation (SMC) which provides compensation payments at a rate higher than the 100% rate.<sup>53</sup> In addition to the SMC, certain veterans with severe disabilities that require daily assistance or regular health services may be eligible for extra compensation.<sup>54</sup>

## **Zero Percent Evaluation**

If the degree of disability from a service-connected incident does not impair earning capacity, a veteran may receive a 0% rating.<sup>55</sup> However, even a noncompensable evaluation under certain circumstances may entitle the veteran to preferences in federal or state employment and VA health care. A noncompensable evaluation may also be used to document a medical condition if it subsequently worsens.

## **Periodic Examinations**

Following the award of compensation benefits, the VA may require periodic examinations to determine whether the condition is constant in its severity and whether continued payment of disability compensation is warranted.<sup>56</sup> The VA is authorized to reexamine veterans receiving compensation benefits at any time. However, under certain circumstances—for example, if the condition is static—the VA may not schedule review examinations.

## **Appeals from Ratings**

Some veterans may not be satisfied with their disability rating and may wish to appeal the determination. Such an appeal is first undertaken at the local VA level and may eventually proceed to the Court of Veterans Claims (“Court”).<sup>57</sup> The Court examines whether the VA considered all of the appropriate facts and set forth a satisfactory explanation for its choice and application of the diagnostic code.

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<sup>52</sup> See “Compensation and Pension Service” section at VA website; *A Summary of VA Benefits: Putting Veterans First*, VA Pamphlet 21-00-1 (April 2008); see also <http://www.va.gov> (click on “Veteran Services”; then go to “General Benefits Information”; then go to “Compensation and Pension”).

<sup>53</sup> 38 U.S.C. § 1114(k); 38 C.F.R. § 3.350. Such disabilities may involve the loss of use of a hand or foot and other serious impairments.

<sup>54</sup> 38 U.S.C. § 1114(r)(2); 38 C.F.R. § 3.352.

<sup>55</sup> Many conditions listed within the ratings tables are rated as 0. See also 38 C.F.R. § 4.31.

<sup>56</sup> 38 C.F.R. § 3.327(a).

<sup>57</sup> See CRS Report RS22561, *Veterans Affairs: The U.S. Court of Appeals for Veterans Claims—Judicial Review of VA Decision Making*, by Douglas Reid Weimer.

## Evaluation of the Rating System

A 2005 Government Accountability Office (GAO) study, *Veterans' Disability Benefits—Claims Processing Challenges and Opportunities for Improvements*,<sup>58</sup> evaluated certain aspects of the disability compensation process. GAO noted that the VA provided \$30 billion in cash disability benefits to more than 3.4 million veterans and their survivors in FY2004.<sup>59</sup> GAO found that the VA has continuing challenges in the disability compensation process, including large numbers of pending claims and long processing times.<sup>60</sup>

Another issue that GAO highlighted is the lack of consistency and accuracy of rating decisions at and among the VA's 57 regional offices.<sup>61</sup> Consequently, veterans with similar disabilities may receive different evaluations from the different VA regional offices, and hence may receive significantly different compensation. GAO also noted that the VA's evaluative process has not kept pace with recent developments in medical technology.<sup>62</sup>

GAO uncovered another issue—that more recently discharged veterans with severe injuries would appear to favor a lump sum compensation payment, as opposed to monthly compensation payments over an extended period of time.<sup>63</sup>

## Recent and Proposed Legislation

### Veterans' COLA (Cost-of-Living Adjustment)

The veterans' COLA is not automatic. Congress typically has passed legislation annually to provide a COLA in veterans' disability compensation equal to the COLA provided under permanent law to recipients of Social Security disability. The Veterans' Compensation Cost-of-Living Adjustment Act of 2008<sup>64</sup> increased, effective December 1, 2008, the rates (dollar amounts) of veterans' disability compensation (and also increased compensation for dependents, the clothing allowance for certain disabled veterans, and the dependency and indemnity compensation for surviving spouses and children).<sup>65</sup>

Similarly, the Veterans' Compensation Cost-of-Living Adjustment Act of 2009<sup>66</sup> increased, effective December 1, 2009, the rates (dollar amounts) of veterans' disability compensation, and also increased compensation for dependents, the clothing allowance for certain disabled veterans, and the dependency and indemnity compensation for surviving spouses and children. The law

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<sup>58</sup> GAO-06-283T, Testimony before the Committee on Veterans' Affairs, House of Representatives; Statement for the Record by Cynthia A. Bascetta, Director, Education, Workforce, and Income Security Issues (GAO) (December 7, 2005).

<sup>59</sup> *Id.* at 1.

<sup>60</sup> *Id.* at 2, 4-6.

<sup>61</sup> *Id.* at 5-7.

<sup>62</sup> *Id.* at 8-9.

<sup>63</sup> *Id.* at 9-10.

<sup>64</sup> P.L. 110-430, 110<sup>th</sup> Cong., 2d Sess. (September 24, 2008).

<sup>65</sup> This law amended 38 U.S.C. § 1114 and established increased monthly payments.

<sup>66</sup> P.L. 111-37, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. (June 30, 2009).

required that the increase was to be the same percentage as the increase in benefits provided under Title II (Old Age, Survivors, and Disability Insurance) of the Social Security Act, on the same effective date. However, in an unprecedented situation, Congress did not enact a Social Security COLA, so there was no increase for disability compensation benefits, and benefits remained at their 2009 levels (as set by the 2008 legislation).

The Veterans' Compensation Cost-of-Living Adjustment Act of 2010<sup>67</sup> increased, effective December 1, 2010, the rates of veterans' disability compensation, and increased compensation for dependents, and contained other provisions similar to those contained in the 2009 legislation. Likewise, the law required that the increase was to be the same percentage as that provided by the Social Security Act. As had occurred in 2009, the Social Security Administration did not recommend a COLA for 2011,<sup>68</sup> and unless Congress takes action, there will be no Social Security COLA or veterans' disability compensation COLA for 2011. Hence, it is expected that veterans' disability compensation will remain at its 2009 levels (as set by the 2008 legislation).

Legislation has been introduced in the 111<sup>th</sup> Congress that would create an automatic veterans' COLA based on the Social Security adjustment. S. 3359 (sponsored by Senator John Thune),<sup>69</sup> the proposed Veterans' Disability Compensation Automatic COLA Act, would require that whenever there is an increase in SSI benefits, there would be an increase in veterans' disability benefits by the same percentage amount.

## **Veterans' Benefits Act of 2010**

A major piece of veterans' benefits legislation was enacted in the second session of the 111<sup>th</sup> Congress, the Veterans' Benefits Act of 2010.<sup>70</sup> The legislation provides for a wide array of benefits for veterans, including assistance with employment, small business establishment, education, housing, insurance, and burial matters.

Title VI of the legislation specifically deals with matters of compensation and pension. Section 601 provides for enhancement of disability compensation for certain disabled veterans with difficulties using prostheses and disabled veterans in need of regular aid and assistance for the residuals of traumatic brain injury. Section 602 provides a COLA for temporary dependency and indemnity compensation payable for surviving spouses and dependent children under the age of 19. However, this COLA is tied to the Social Security COLA. Section 603 provides for the payment of dependency and indemnity compensation to survivors of former prisoners of war who died on or before September 30, 1999. Section 604 excludes certain amounts from consideration as income for the purposes of veterans pension benefits. The commencement of the period of payment of original awards of compensation for veterans retired or separated from the uniformed services for catastrophic disability is set by Section 605. Other sections deal with pensions payable to certain children of veterans, to the extension of reduced pension for certain veterans covered by Medicaid plans for services furnished by nursing facilities, and to the codification of

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<sup>67</sup> P.L. 111-247, 111<sup>th</sup> Cong., 2d Sess. (Sept. 30, 2010).

<sup>68</sup> See <http://www.ssa.gov/pressoffice/pr/2011cola-pr.htm>. For additional information about the 2011 COLA, go to <http://www.socialsecurity.gov/cola>.

<sup>69</sup> S. 3359, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced and referred to the Senate Committee on Veterans' Affairs on May 13, 2010.

<sup>70</sup> P.L. 111-275, 111<sup>th</sup> Cong., 2d Sess. (Oct. 13, 2010).

the 2009 COLA adjustment in rates of pension for disabled veterans and surviving spouses and children.

Other provisions of the legislation deal with employment and reemployment rights of members of the uniformed services, certain other benefit matters, and the authorization of medical facility projects and major medical facility leases.

## **Veterans' Claims Pending and Related Issues**

Presently, there is a large number of pending veterans' claims before the VA. According to the VA, which tracks these figures, for the week ended October 12, 2010, there were 565,327 compensation and pension entitlement cases pending.<sup>71</sup> This compares to a pending number of 449,400 rating cases from the time period of October 13, 2009.<sup>72</sup> Concern over this large number of pending claims has been expressed by legislators and veterans' groups.

In response to this large number of pending claims, several bills have been introduced in the 111<sup>th</sup> Congress that would impact disability determinations by the VA and the manner in which they are processed.

H.R. 3504, the proposed VA Case Backlog Alleviation and Economic Stimulus Act of 2009, was introduced by Representative Jeff Miller.<sup>73</sup> The bill would provide additional funding to the Secretary of Veterans Affairs to hire more claims processors. The bill would require that the Secretary ensure that such processors are assigned proportionately to each state according to the percentage of veterans residing in that state.

H.R. 4121, the proposed Veterans Appeals Improvement and Modernization Act of 2009, was introduced by Representative John J. Hall.<sup>74</sup> The bill provides that if a veteran claimant submits evidence in support of a case for which a substantive appeal has been filed to the Board of Veterans' Appeals, such evidence shall be submitted directly to the Board and not to a regional office of the VA, unless the claimant requests that the evidence first be reviewed by the regional office. The bill would further empower the Court of Appeals for Veterans Claims (CAVC) to affirm, modify, reverse, remand, or vacate and remand a decision of the Board after deciding all relevant assignments of error raised on appeal. Whenever the CAVC reverses a decision on the merits of a particular claim and orders an award of benefits, the CAVC would need not decide any additional assignments of error relating to that claim. The bill would also establish the Veterans Judicial Review Commission to evaluate and make specific decisions to improve the administrative and judicial appellate review processes of veterans' and survivors' benefits determinations.

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<sup>71</sup> The VA breaks these figures down in very detailed "workload reports." For more information, go to the VA website, <http://www.va.gov>, and search under "workload reports." Then go to "2010 Monday Morning Workload Report" and access for the current statistics.

<sup>72</sup> *Id.*

<sup>73</sup> H.R. 3504, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2009). The bill was introduced and referred to the House Appropriations Committee and the House Veterans' Affairs Committee on July 31, 2009.

<sup>74</sup> H.R. 4121, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2009). The bill was introduced and referred to the House Committee on Veterans' Affairs on November 19, 2009, and was referred to the House Subcommittee on Disability Assistance and Memorial Affairs on November 20, 2009.

H.R. 5549, the proposed RAPID Claims Act, was introduced by Representative Joe Donnelly.<sup>75</sup> This bill would allow a claimant to waive a claim development period, and would provide expeditious treatment of such a claim. If the submitted claim is not fully developed, the claimant would be notified and informed of the information needed to fully develop the claim.

H.R. 5928, the proposed Disability Claims Efficiency Act of 2010, was introduced by Representative Timothy J. Walz.<sup>76</sup> If enacted, the bill would allow the Secretary of the VA, in a case of a disability claim with multiple conditions, to assign an interim disability rating that could be assigned without further development, and to continue the development of the remaining conditions(s). The bill would require an interim disability rating to remain in effect unless the Secretary later assigns an increased rating for such condition. The bill would also direct the Secretary to establish a process for the rapid identification of initial claims for disability compensation that should, in adjudication, receive priority in the order of review. The Secretary would be required to identify whether claims have the potential of being adjudicated quickly, the claims qualify for priority treatment, and a temporary rating could be assigned for such claims. The Secretary would be authorized to provide priority based on the effect such priority would have on a claimant.

H.R. 6132, the proposed Veterans Benefits and Economic Welfare Improvement Act of 2010, was introduced by Representative Bob Filner.<sup>77</sup> In addition to providing benefits and training to certain veterans, the bill would allow a claimant to waive any claim development period upon submission of a fully developed claim and would require the Secretary to provide an expeditious treatment of such a claim. The Secretary would be required to notify a claimant of a non-fully developed claim within 30 days after that determination. In denying a benefit, the Secretary would be required to include any form or application required to appeal the decision.

S. 3286, introduced by Senator Arlen Specter, would require the VA to carry out a pilot program on the award of grants to state and local government agencies and nonprofit organizations to provide assistance to veterans with their submittal of claims to the Veterans Benefits Administration, with the purpose of reducing claim processing time.<sup>78</sup>

S. 3348 was introduced by Senator Daniel K. Akaka.<sup>79</sup> The bill provides that if a claimant adversely affected by a final decision of the Board of Veterans' Appeals who has not filed a notice of appeals with the United States Court of Appeals for Veterans Claims within the required 120-

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<sup>75</sup> H.R. 5549, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced and referred to the House Committee on Veterans' Affairs on June 17, 2010. The bill was referred to the Subcommittee on Disability Assistance and Memorial Affairs on June 18, 2010. On June 27, 2010, there was subcommittee consideration, a markup session was held, and the bill was forwarded by the subcommittee to the full committee by a voice vote.

<sup>76</sup> H.R. 5928, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced on July 29, 2010, and referred to the House Committee on Veterans' Affairs. It was referred to the Subcommittee on Disability Assistance and Memorial Affairs on July 30, 2010.

<sup>77</sup> H.R. 6132, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced and referred to the House Committee on Veterans' Affairs on September 15, 2010. On September 28, 2010, the bill was reported by the Committee on Veterans' Affairs (H.Rept. 111-630), placed on the Union Calendar (Calendar No. 370), and a motion to suspend the rules and pass the bill as amended was agreed to by voice vote. On September 29, 2010, the bill was referred in the Senate and referred to the Committee on Veterans' Affairs.

<sup>78</sup> S. 3286, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced and referred to the Senate Committee on Veterans' Affairs on April 29, 2010. The committee held hearings on May 19, 2010.

<sup>79</sup> S. 3348, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced and referred to the Senate Committee on Veterans' Affairs on May 12, 2010. The committee held hearings on May 19, 2010.

day period files a document with the Board or the agency of original jurisdiction within the 120 days after the Board's decision expressing disagreement with the decision, such document would be treated as a motion for reconsideration by the Board. The bill further provides that such a document would not be considered a motion for reconsideration if the Board or agency of original jurisdiction received the document, determines that it expresses an intent to appeal the decision to the United States Court of Appeals for Veterans Claims, and forwards the document to the CAVC with the 120-day period.

S. 3368 was introduced by Senator Daniel K. Akaka.<sup>80</sup> The bill would authorize the following persons to sign veterans' benefits claims filed on behalf of a person who is under 18, mentally incompetent, or physically unable to sign: (1) a court-appointed representative or person responsible for care; or (2) in the case of an institutionalized person, the manager or principal officer of the institution.

S. 3370 was introduced by Senator Daniel K. Akaka.<sup>81</sup> The bill would amend Title 38 to improve the process by which an individual files jointly for Social Security and dependency and indemnity compensation.

S. 3517, the proposed Claims Processing Improvement Act of 2010, was introduced by Senator Daniel K. Akaka.<sup>82</sup> The bill would require the Secretary of the VA to carry out a pilot program to assess the feasibility of establishing an alternative schedule for rating service-connected disabilities of the musculoskeletal system. In a disability claim with multiple conditions, the Secretary would be allowed to assign a disability rating for conditions that can be assigned without further development and to continue development of the remaining condition(s). Other provisions would provide for accelerated evaluations and decisions.

Two companion bills deal with increased disability compensation benefits and related issues. H.R. 1037 was introduced by Representative Stephanie Herseth Sandlin.<sup>83</sup> The companion bill, S. 728, was introduced by Senator Daniel K. Akaka.<sup>84</sup> Among other provisions, the bill would provide increased disability compensation for certain categories of disabled veterans.

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<sup>80</sup> S. 3368, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced and referred to the Senate Committee on Veterans' Affairs on May 13, 2010. The committee held hearings on May 19, 2010.

<sup>81</sup> S. 3370, 111<sup>th</sup> Cong., 2d Sess. (2010). The bill was introduced and referred to the Senate Committee on Veterans' Affairs on May 13, 2010. The committee held hearings on May 19, 2010.

<sup>82</sup> S. 3517, 111<sup>th</sup> Cong., 2d Sess. On June 22, 2010, the bill was introduced and referred to the Committee on Veterans' Affairs. On July 5, 2010, the committee ordered the bill to be reported with an amendment favorably.

<sup>83</sup> H.R. 1037, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2009). The bill was introduced in the House on February 12, 2009, and passed the House on July 14, 2009. It passed the Senate on October 7, 2009. A message on the Senate action was sent to the House on October 8, 2009.

<sup>84</sup> S. 728, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2009). The bill was introduced in the Senate on March 26, 2009, and the Senate passed the companion measure, H.R. 1037, on October 7, 2009.



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