

## A SURVEY OF MILITARY RETIREMENT BENEFITS

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### I. Introduction

This survey is intended to give legal assistance officers an overview of the primary benefits associated with military retirement, and to serve as a starting point when researching basic retirement benefit questions. It explains the primary Department of Defense (DOD) and Department of Veterans Affairs (VA) retirement benefits and answers the most fundamental questions that pre-retirement and post-retirement clients and their family members often raise. In addition to explaining the three DOD retirement formulas, the VA non-disability medical benefit programs, and the authority for each, this survey also outlines VA burial benefits, educational benefits, home loans, and life insurance benefits.

This survey does not cover topics such as the divisibility of military retirement pay pursuant to divorce proceedings,<sup>2</sup> compensation for veterans with service-connected or non-service-connected disabilities,<sup>3</sup> VA benefits available to dependents and surviving family members of deceased veterans,<sup>4</sup> or the VA claims adjudication process.<sup>5</sup>

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2. This topic and the applicability of the Uniformed Services Former Spouse's Protection Act, 10 U.S.C.S. § 1408(c)(1) (LEXIS 2003), to military retirement pay is extensively covered in law review articles and journals. See, e.g., Landever Bond, *The Uniformed Services Former Spouses' Protection Act: A Practitioner's Guide*, 10 AM. J. FAM. L. 145 (1996); Major Mary J. Bradley, *Calling for a Truce on the Military Divorce Battlefield: A Proposal to Amend the USFSPA*, 168 MIL. L. REV. 40 (2001); Captain Kristine D. Kuenzli, *Uniformed Services Former Spouses' Protection Act: Is There Too Much Protection for the Former Spouse?*, 47 A.F. L. REV. 1 (1999).

## II. Department of Defense Retirement Pay Benefits

Generally, regular and Reserve commissioned officers, warrant officers, and enlisted members may retire after completing twenty or more years of active federal service.<sup>6</sup> Upon completion of twenty years of active federal service, service members are entitled to retirement pay.<sup>7</sup>

### A. The DOD Military Retirement Pension Formulas

The DOD uses three formulas for computing non-disability retirement pay. The date that an individual first entered military service determines which formula is used to compute his retirement pay. This date is called the Date of Initial Entry to Military Service (DIEMS) or the DIEMS date.<sup>8</sup> The following discussion highlights the three DOD military retirement formulas.

#### 1. Fifty Percent of Final Basic Pay (Fifty Percent Formula)

Service members eligible for retirement pay under the “fifty percent of final basic pay” formula (Fifty Percent Formula) include those with a DIEMS date before 8 September 1980.<sup>9</sup> The DOD computes monthly

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3. See VETERANS BENEFITS MANUAL (Barton F. Stichman, Ronald B. Abrams, David F. Addlestone eds., 2001) [hereinafter VETERANS BENEFITS MANUAL]. The *Veterans Benefits Manual* contains information about VA benefits for disabled veterans. The *Veterans Benefits Manual* covers other topics such as the requirements for obtaining disability compensation, the evidentiary standard required to prove the existence of a service-connected disability, eligibility requirements for non-service-connected disability pension benefits, and the procedural steps necessary to apply for each of these benefits. See *id.*

4. See generally Gerald A. Williams, *A Primer on Veterans' Benefits for Legal Assistance Attorneys*, 47 A.F. L. REV. 163 (1999).

5. The VETERANS BENEFITS MANUAL, *supra* note 3, is an excellent resource to use when advocating on behalf of a VA client. This manual includes advice and practice information on topics such as: advising and assisting clients with the VA claims adjudication and appeals process; disability benefits for veterans; VA benefits for non-veterans and family members of living or deceased veterans; rules affecting the amounts of benefits paid; and procedures for the correction of military records.

6. 10 U.S.C.S. §§ 3911, 3914.

7. *Id.* § 3929.

8. The DIEMS date should not be confused with the Basic Active Service Date (BASD). A soldier's BASD and DIEMS dates are often different. The DIEMS date for each Army service member is now listed on the monthly leave and earnings statement.

9. 10 U.S.C.S. § 1406.

retirement payments under this formula at fifty percent of final basic pay after twenty years of service with an increase of two and one-half percent for each additional year served up to thirty years.<sup>10</sup> For example, under the Fifty Percent Formula, a lieutenant colonel retiring with twenty-two years of military service will receive monthly retirement pay computed as follows:

Final Monthly Basic Pay	\$6300
Multiplier (time in service (TIS) X 2.5% per year)	x .55
Pre-tax Monthly Retirement Pay Amount	\$3465 <sup>11</sup>

The DOD annually adjusts the monthly payments under the Fifty Percent Formula to protect the purchasing power of retirement pay.<sup>12</sup> Service members retiring under the Fifty Percent Formula receive full inflation protection through annual cost of living adjustments (COLA) based on changes in the consumer price index (CPI).<sup>13</sup>

## 2. Average of Highest Three Earning Years (High Three Formula)

Service members eligible for retirement pay under the “high-three” pay formula (High Three Formula) include those with a DIEMS date between 8 September 1980 and 31 July 1986.<sup>14</sup> The DOD computes monthly retirement payments under this formula similarly to the method used under the Fifty Percent Formula.<sup>15</sup> The main difference between the

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10. *Id.* § 1409(b)(1). Under this formula, a retiree with thirty years of service receives seventy-five percent of final basic pay. *Id.* § 1409(b)(3).

11. The final monthly basic pay figure used in this example is a hypothetical figure used for illustration only. The pre-tax monthly retirement pay amount does not factor in the applicable cost of living adjustment (COLA) increase or reflect any premium deduction for participation in the Survivor Benefit Plan.

12. 10 U.S.C.S. § 1401a(b).

13. *Id.* The Secretary of Defense makes COLA adjustments effective on 1 December of each year. *Id.*

14. *Id.* §§ 1407(a), 1409(b)(2).

15. Under the High Three Formula, the service member receives a two and one-half percentage base increase for each year of service over twenty years. For example, the retirement pay of a service member retiring under the High Three Formula with twenty-six years of service is computed at 65% (TIS x 2.5%) of his highest three earning years. Under this formula, a retiree with thirty years of service receives 75% of the average of the highest three earning years.

Fifty Percent Formula and the High Three Formula is that the DOD applies the two and one-half percent increase (for each additional year after twenty years) to the average basic pay for the highest three earning years rather than the final basic pay at retirement.<sup>16</sup> For example, under the High Three Formula, a lieutenant colonel retiring with twenty-two years of military service will receive monthly retirement pay computed as follows:<sup>17</sup>

Average Basic Pay For Highest Three Earning Years	
(\$6100 + \$6200 + \$6300 divided by 3)	\$6200
Multiplier = (TIS x 2.5%)	<u>x .55</u>
Pre-tax Monthly Retirement Pay Amount	\$3410

Similar to the Fifty Percent Formula, monthly payments under the High Three Formula receive full inflation protection through annual COLA increases based on changes in the CPI.<sup>18</sup>

### 3. *Military Retirement Reform Act (REDUX Formula)*

Service members eligible for retirement pay under the reduction in pay formula (REDUX Formula) include those with a DIEMS date after 1 August 1986.<sup>19</sup> Acceptance of the REDUX Formula is contingent upon the service member's agreement to accept a mid-career bonus at the fifteenth year of service and remain on active duty for at least twenty years.<sup>20</sup>

Under the REDUX Formula, service members have a choice between two retirement options. They may retire under the High Three Formula or under provisions of the Military Retirement Reform Act by electing to take a \$30,000 career retention bonus during their fifteenth year of military service.<sup>21</sup> To receive this bonus, the service member must agree to complete a twenty-year active duty career.<sup>22</sup> The member may continue service

16. 10 U.S.C.S. §§ 1407(b), (c). The statute defines the "highest three earning years" as "the 36 months out of all the months of active duty served by the member . . . for which the monthly basic pay to which the member was entitled was the highest." *Id.*

17. The average basic pay for the highest three earning years in this example are hypothetical figures used for illustration only. The pre-tax monthly retirement pay amount does not factor in the applicable COLA increase or reflect any premium deduction for participation in the Survivor Benefit Plan.

18. 10 U.S.C.S. § 1401a(b).

19. 37 U.S.C.S. § 322(a) (LEXIS 2003).

20. *Id.*

21. *Id.* § 322(b), (d)(1).

22. *Id.* § 322(a)(2).

beyond twenty years, but the service obligation only extends to twenty years.<sup>23</sup>

The DOD computes monthly retirement payments under the REDUX Formula at forty percent of the average of the highest three earning years of basic pay after twenty years of service.<sup>24</sup> The service member then receives a three and one-half percent increase per year for each additional year served up to thirty years.<sup>25</sup> For example, a lieutenant colonel retiring with twenty-two years of military service will receive monthly retirement pay computed as follows:<sup>26</sup>

Average Basic Pay For Highest Three Earning Years	
(\$6100 + \$6200 + \$6300 divided by 3)	\$6200
Multiplier = [40% + (TIS over 20 years x 3.5%)]	<u>x .47</u>
Pre-tax Monthly Retirement Pay Amount	\$2914

A twenty-four year retiree will receive a 54% multiplier, a twenty-six year retiree will receive a 61% multiplier, a twenty-eight year retiree will receive a 68% multiplier, and a thirty-year retiree will receive a 75% percent multiplier.

The REDUX retirement formula and the \$30,000 career retention bonus are considered components of a package deal. The service member receives the entire \$30,000 bonus shortly after he commits to the twenty-year service obligation at the fifteenth year of service.<sup>27</sup> If the member does not complete the twenty-year obligation, however, he or she must

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23. *Id.*

24. 10 U.S.C.S. §§ 1409(b)(2), 1407(b) (LEXIS 2003). The “reduction” resulting in a 40% multiplier is computed by subtracting 1% for each full year the service member’s total creditable service is less than thirty years. For example, a service member retiring at twenty years will receive a 40% REDUX multiplier computed as follows: 50% multiplier (20 years TIS x 2.5%) minus 10% (1% x 10 years of service (30 years of potential service minus 20 years of actual service)) is equal to the 40% REDUX multiplier. *Id.*

25. *Id.* § 1409(b)(2). The 3.5% increase for each year over twenty years is the sum of a 2.5% increase in the multiplier plus 1% recaptured from the “reduction” for each year less than thirty years of service. *Id.*

26. The average basic pay for the highest three earning years in this example are hypothetical figures used for illustration only. The pre-tax monthly retirement pay amount does not factor in the applicable COLA increase or reflect any premium deduction for participation in the Survivor Benefit Plan.

27. 10 U.S.C.S. § 322(d). Under the statute, the DOD pays the bonus to the service member within sixty days after service secretary receipt of the member’s REDUX election and written agreement to serve twenty years. *Id.*

repay a pro-rated share of the bonus.<sup>28</sup> The combination of the bonus and monthly retirement pay may be advantageous to some individuals. The REDUX portion provides retirement pay based on length of service and the retention bonus provides funds for savings, investing, or starting a business upon retirement.<sup>29</sup>

The DOD also computes the annual COLA adjustments under the REDUX Formula differently than under the two preceding retirement formulas. Under the REDUX Formula, the DOD computes COLA at one percent less than inflation, as measured by the CPI.<sup>30</sup>

The recomputation of benefits when the retiree reaches age sixty-two is another unique component to the REDUX Formula. Retirees experience two adjustments to REDUX retirement pay at age sixty-two. First, the retiree's pay is raised to the amount he would have received had he retired under the High Three Formula.<sup>31</sup> Thus, a twenty-year retiree will receive a 50% multiplier, a twenty-two year retiree will receive a 55% multiplier, a twenty-four year retiree will receive a 60% multiplier, a twenty-six year retiree will receive a 65% multiplier, and a twenty-eight year retiree will receive a 70% multiplier.<sup>32</sup> The DOD applies this multiplier to the retiree's original average of his highest three years of basic pay.<sup>33</sup> For example, a lieutenant colonel retiring with twenty-two years of military service will

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28. *Id.* § 322(f).

29. See Office of the Sec'y of Defense, *Military Compensation—CSB/REDUX Retirement System* (n.d.), at [http://militarypay.dtic.mil/actives/retirement/ad/04\\_redux.html/](http://militarypay.dtic.mil/actives/retirement/ad/04_redux.html/).

30. 10 U.S.C.S. § 1401a(b)(3).

31. *Id.* § 1410(2).

32. *Id.* § 1410. Note that service members who retire after thirty years of service under REDUX, receive no recomputation of benefits because their benefits are already computed at seventy-five percent as if they retired under the "high-three" formula. *Id.*

33. See Major Vivian Shafer, *Choosing Between the High-Three and the REDUX Military Retirement Programs: Thrift Savings Plan Participation a Valuable Option*, *ARMY LAW*, Sept. 2000, at 18 (comparing the "High-Three" and "REDUX" military retirement pay formulas).

receive an increased amount of monthly retirement pay at age sixty-two, computed as follows:<sup>34</sup>

Average Basic Pay For Highest Three Earning Years	
(\$6100 + \$6200 + \$6300 divided by 3)	\$6200
Age 62 Multiplier = (50% + (TIS over 20 years x 2.5%))	x .55
Age 62 Pre-tax Monthly Retirement Pay Amount	\$3410

Secondly, in order to restore the purchasing power lost since retirement, the retiree's monthly retirement payment is recalculated to the amount payable had full CPI protection been in effect.<sup>35</sup> In essence, the retiree receives a one-time catch up of full CPI for each previous retirement year to reach a recalculated monthly retirement amount.<sup>36</sup> This recalculated amount will be the same amount as if the retiree had retired under the High Three Formula.<sup>37</sup> Thus, at age sixty-two, the REDUX and High Three monthly retirement payments are the same.<sup>38</sup> After age sixty-two, however, annual COLA adjustments for REDUX recipients returns to the original formula of CPI minus one percent, for life, making the High Three Formula a more attractive retirement alternative over time.<sup>39</sup>

### III. Veterans Administration Benefits

#### A. Eligibility Requirements for VA Benefits—"Veteran" Defined and the Impact of Characterization of Discharge

To become eligible for most VA benefits, "the claimant must be a veteran or the dependent or survivor of a veteran."<sup>40</sup> The VA defines a "veteran" as a person who "served in the active military . . . and who was discharged or released therefrom under conditions other than dishonorable."<sup>41</sup> The term "under conditions other than dishonorable" poses a

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34. The average basic pay for the highest three earning years in this example are hypothetical figures used for illustration only. The pre-tax monthly retirement pay amount does not include any premium reductions for participation in the Survivor Benefit Plan.

35. 10 U.S.C.S. § 1410(1).

36. *Id.* § 1410.

37. *Id.*

38. See generally Office of the Sec'y of Defense, *Military Pay and Benefits*, at <http://pay2000.dtic.mil/> (last visited Sept. 2, 2003) (including a retirement calculator and a discussion comparing the High Three and REDUX retirement formulas).

39. *Id.*

40. VETERANS BENEFITS MANUAL, *supra* note 3, at 25.

problem for judge advocates because this statutory definition is different from the language the military uses to characterize its discharges.<sup>42</sup>

The VA considers most honorable and general discharges as “other than dishonorable,” qualifying former service members as “veterans” under the statute.<sup>43</sup> Discharge under other than honorable conditions and bad conduct discharges, however, do not automatically disqualify a former service member and his or her dependents from receiving VA benefits.<sup>44</sup> The regional VA office reviews such cases and makes a character of service determination to determine whether the military separated the service member under dishonorable conditions or other than dishonorable condi-

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41. 38 C.F.R. § 3.1(d) (2001). Note that the veteran’s characterization of service (as wartime or peacetime) and his length of service may also impact upon the eligibility for some VA benefits. VETERANS BENEFITS MANUAL, *supra* note 3, at 35-38; *see* 38 U.S.C.S § 5303A (LEXIS 2003) (governing length-of-service requirements); *see also infra* note 168 (defining periods of wartime service the VA uses to make benefit eligibility determinations).

42. VETERANS BENEFITS MANUAL, *supra* note 3, at 28. Generally, there are five types of military discharges: (1) honorable; (2) under honorable conditions, or general; (3) under other than honorable conditions, or undesirable discharge; (4) bad-conduct discharge, issued by either special or general courts-martial; and (5) dishonorable or (in the case of an officer) dismissal, issued only by a general courts-martial. *Id.*

If the statutory language used by the VA . . . corresponded directly to terminology used by the military services, then all discharges other than the final “dishonorable” discharge would qualify the individual as a veteran. This, however, is not the case. The rules followed by the VA are somewhat different.

*Id.* Despite discord between the statute and military discharge terminology, when making benefit eligibility determinations, the VA will focus upon the reason for discharge rather than the type of discharge. *Id.* at 1636. When reviewing discharges, the VA uses a “character of service determination” process to determine benefit eligibility. *See infra* note 42; 38 U.S.C.S §§ 5303, 5303A; 38 C.F.R. § 3.12 (governing VA benefit program general eligibility requirements); *see also* VETERANS BENEFITS MANUAL, *supra* note 3, at 1635-39.

43. VETERANS BENEFITS MANUAL, *supra* note 3, at 28.

44. *Id.* at 29. The Code of Federal Regulation bars receipt of all VA benefits if the service member was: (1) released from service as a conscientious objector; (2) released by reason of a sentence of a general court-martial; (3) an officer who resigned for the good of the service; (4) a deserter; or (5) discharged under other than honorable conditions as the result of being absent without leave (AWOL) for at least 180 days without a compelling reason. 38 C.F.R. § 3.12(c) (2003).

tions.<sup>45</sup> Veterans may appeal adverse decisions by a regional VA office to the U.S. Court of Appeals for Veterans Claims.<sup>46</sup>

Dishonorable discharges are an automatic bar to receipt of VA benefits, unless the service member's Board for Correction of Military Records or Discharge Review Board upgrades the discharge to at least a general discharge.<sup>47</sup> Note that if the VA determines that the veteran's injury or disease was caused by his own "willful misconduct," the veteran will be barred, by regulation, from receiving any benefits related to the treatment of that injury or disease.<sup>48</sup>

## B. Medical and Health Care Benefits

The VA provides an extensive network of health care for veterans at either no cost or for a fee.<sup>49</sup> Despite past promises made to many service members, however, not every veteran is automatically entitled to VA health care or "free lifetime medical care."<sup>50</sup> Free VA health care is primarily reserved for treatment of veterans with service-connected disabilities, low-income veterans,<sup>51</sup> and some combat veterans.<sup>52</sup> Other veterans

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45. VETERANS BENEFITS MANUAL, *supra* note 3, at 29. "This character of service determination is a review by the VA of the entire period of enlistment to evaluate the quality of service and judge if it was good enough to merit receipt of veterans benefits." *Id.*; see U.S. VETERANS' ADMINISTRATION, VA ADJUDICATION PROCEDURE MANUAL M21-1, pt. IV, ¶ 11.01-11.06 (n.d.) [hereinafter VA ADJUDICATION PROCEDURE MANUAL] (discussing the VA's procedures for determining character of service).

46. VETERANS BENEFITS MANUAL, *supra* note 3, at 29.

47. 38 C.F.R. § 3.12(e)-(h). All discharges upgraded to at least a general discharge are "final and conclusive" for the VA and render the veteran eligible for benefits. *Id.*

48. *Id.* § 3.1(n)(1). The Code defines "willful misconduct" as:

[A]n act involving conscious wrongdoing or known prohibited action. . . .

(1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(2) Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.

(3) Willful misconduct will not be determinative unless it is the proximate cause of injury, disease or death.

*Id.*

49. VETERANS BENEFITS MANUAL, *supra* note 3, at 747.

receive a lower priority for care and may be required to pay for any treatment they receive.<sup>53</sup>

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50. In *Schism v. United States*, 316 F.3d 1259 (Fed. Cir. 2002), 2002 U.S. App. LEXIS 23769 (Nov. 18, 2002), *cert denied*, 123 S. Ct. 2246 (2003), the U.S. Court of Appeals for the Federal Circuit upheld the determination of the district court, which concluded that the U.S. Air Force Secretary lacked authority when the plaintiff's joined the Air Force to promise free and full medical care because the statute upon which they relied, 5 U.S.C.S. § 301, authorized only space-available treatment at the time they joined, not free health insurance for life. Moreover, the veterans were unable to assert a breach of an implied-in-fact contract because military retiree compensation, including free medical care and government-provided insurance, was controlled exclusively by statute. *Schism*, 316 F.3d at 1264.

51. 38 U.S.C.S § 1722 (LEXIS 2003) establishes three categories of veterans eligible for free VA health care based on income alone. Veterans who fall within these three groups qualify for mandatory access to VA health care so long as they meet the threshold income requirements under § 1722(b). *Id.*

52. VETERANS BENEFITS MANUAL, *supra* note 3, at 747. Under 38 U.S.C.S § 1710, free VA hospital care is only available to the following combat veterans (note that this list is not exhaustive):

- (1) for treatment of a service-connected disability;
- (2) with a compensable service-connected disability, for the treatment of any disability;
- (3) whose discharge or release from active service was for a compensable disability incurred or aggravated in the line of duty, for the treatment of any disability;
- (4) former prisoners of war, or who have been awarded the Purple Heart, for the treatment of any disability;
- (5) who are veterans of the Mexican border period or World War I, for the treatment of any disability;
- (6) of the Vietnam era, who was herbicide-exposed, for the treatment of any disability;
- (7) who was exposed to radiation during service, for treatment of any disability;
- (8) who may have been exposed to a toxic substance or an environmental hazard in the Persian Gulf War;
- (9) having low income and meeting VA's definition of "unable to defray the expenses of necessary care," for the treatment of any disability.

VETERANS BENEFITS MANUAL, *supra* note 3, at 760-61.

53. *Id.* at 747; *see generally* U.S. Dep't of Veterans' Affairs, *Health Benefits & Services* (July 31, 2003), at <http://www.va.gov/vbs/health>.

1. *Eligibility for Care Under the Uniform Benefits Package*

Presuming a veteran meets the eligibility requirements discussed above, veterans seeking VA medical services must first be enrolled into the VA system<sup>54</sup> or become exempt from enrollment.<sup>55</sup> Veterans who fail to enroll in the VA health care system cannot receive VA hospital and outpatient care.<sup>56</sup> Veterans may enroll at any VA facility providing medical services, by mail, or the Internet.<sup>57</sup> Once the veteran files a completed enrollment application, the VA assigns the veteran a priority category and then informs the veteran of his or her enrollment status.<sup>58</sup> The VA determines which of the seven priority categories will be selected for enrollment annually.<sup>59</sup> The level of congressional funding dictates VA's ability to provide benefits to veterans within all seven priority categories.<sup>60</sup> The VA then publishes these priority categories in the Federal Register.<sup>61</sup> If the VA selects the veteran's assigned category for enrollment, the veteran should qualify for a bundle of services, which the VA designates a "Medi-

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54. 38 C.F.R. § 17.36(a). Veterans may apply for enrollment at any time. Once enrolled, the VA recognizes the veteran's enrollment status at any VA medical facility throughout the United States. *Id.*

55. *Id.* § 17.37. Even if not enrolled in the VA healthcare system, the following veterans will receive VA hospital and outpatient care provided for in the Medical Benefits Package (note that this list is not exhaustive):

- (1) Veterans rated for service-connected disabilities at 50% or greater;
- (2) Veterans seeking care for a service-connected disability;
- (3) Veterans discharged or released from active military service for a disability incurred or aggravated in the line of duty;
- (4) When there is a compelling medical need to complete a course of VA treatment started when the veteran was enrolled in the VA healthcare system;
- (5) Veterans participating in VA's vocational rehabilitation program;
- (6) Veterans receiving VA hospital or outpatient care based on factors other than veteran status (such as care received by VA employees or DOD retirees).

*Id.*

56. *Id.* § 17.36(a)(1).

57. VETERANS BENEFITS MANUAL, *supra* note 3, at 750. Veterans applying for enrollment should complete VA Form 10-10EZ. See <https://www.1010ez.med.va.gov/sec/vha/1010ez/>.

58. VETERANS BENEFITS MANUAL, *supra* note 3, at 750.

cal Benefits Package.”<sup>62</sup> The VA’s Medical Benefits Package consists of both “basic care”<sup>63</sup> and “preventive care”<sup>64</sup> services.

*2. Priority of Care—Admission to VA Facilities and Determination of Medical Need*

Although a veteran may qualify for free health care, the VA chooses which veterans have priority for admission to its hospitals and nursing homes.<sup>65</sup> Absent a medical emergency, this policy can result in the VA denying admission to one veteran while selecting another for treatment.<sup>66</sup> Veterans who do not receive care under these circumstances may receive

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59. 38 C.F.R. § 17.36(b). The VA assigns veterans to a priority group. Veterans in Category 1 are given the highest priority of VA enrollment while Category 7 veterans are given the lowest. Veterans will be eligible for benefits enrollment based on the following order of priority:

- (Category 1) Veterans with a disability rating of 50 percent or greater;
- (Category 2) Veterans with a service-connected disability rating of 30 or 40 percent;
- (Category 3) Former POWs; recipients of the Purple Heart; veterans with a service-connected disability rating of 10 or 20 percent; veterans discharged from active military service for a disability incurred or aggravated in the line of duty; veterans receiving disability compensation under 38 U.S.C.S. § 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the 10 percent rating level based on multiple noncompensable service-connected disabilities that clearly interfere with normal employability;
- (Category 4) Veterans who receive increased pension based on their need for aid and attendance or by reason of being permanently housebound; veterans who are determined, by the Chief of Staff of the VA facility where they were examined, to be catastrophically disabled;
- (Category 5) Veterans not in priority groups 1 through 4 who are determined by the VA to have insufficient income to defray the expenses of necessary care under 38 U.S.C.S. § 1722(a);
- (Category 6) All other eligible veterans not required to make co-payments for their care; and
- (Category 7) All veterans not in categories 1 through 6, who agree to pay specified co-payments.

*Id.*; see also VETERANS BENEFITS MANUAL, *supra* note 3, at 752.

60. VETERANS BENEFITS MANUAL, *supra* note 3, at 750. In 2000, the VA enrolled all seven priority categories of veterans who applied for benefits. *Id.*

61. 38 C.F.R. §17.36(c).

62. *Id.* § 17.38.

either fee-based care or VA funded care at a non-VA facility, such as a

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63. The following hospital and outpatient care constitutes the “basic care” portion of the Medical Benefits Package, as defined in 38 C.F.R. § 17.38(a)(1):

- (1) Outpatient, medical, surgical, mental healthcare, and care for substance abuse;
- (2) Inpatient hospital, medical, surgical, mental healthcare, and care for substance abuse;
- (3) Prescription drugs, over-the-counter drugs, and surgical supplies;
- (4) Emergency care in VA facilities and those non-VA facilities under contract or otherwise authorized;
- (5) Bereavement counseling as authorized;
- (6) Comprehensive rehabilitative services;
- (7) Professional counseling, consultation, training, and mental health services for immediate family members or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, if needed to treat a qualifying condition;
- (8) Authorized durable medical equipment and prosthetic and orthotic devices, including eyeglasses and hearing aids;
- (9) Home health services;
- (10) Reconstructive plastic surgery required due to disease or trauma, excluding medically unnecessary cosmetic surgery;
- (11) Respite, hospice, and palliative care;
- (12) Payment of travel and travel expenses for eligible veterans; and
- (13) Pregnancy and delivery services as authorized.

*Id.*

64. The following hospital and outpatient care constitutes the “preventive care” Medical Benefits Package, as defined in 38 C.F.R. § 17.38(a)(2):

- (1) Periodic medical exams;
- (2) Health and nutrition education;
- (3) Maintenance of drug-use profiles, drug monitoring, and drug use education;
- (4) Mental health and substance abuse preventive services;
- (5) Immunizations against infectious disease;
- (6) Prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature;
- (7) Genetic counseling concerning inheritance of genetically determined diseases;
- (8) Routine vision testing and eye-care services; and
- (9) Periodic reexamination and treatment of members of high-risk groups for selected diseases and functional decline of sensory organs.

*Id.*

65. VETERANS BENEFITS MANUAL, *supra* note 3, at 762 (citing 38 C.F.R. § 17.49).

66. *Id.* at 762.

DOD hospital, a public hospital, or a private hospital.<sup>67</sup> Before receiving such care, the veteran must receive prior authorization from the VA to avoid paying for non-VA care.<sup>68</sup>

The VA considers two factors when determining which veteran should first receive medical care.<sup>69</sup> The VA first determines the veteran's "medical need" and then considers the veteran's priority category.<sup>70</sup> The VA places the veteran into one of three categories of medical need: emergency, urgent, or general.<sup>71</sup> The VA's hospitals immediately admit veterans with "emergency" conditions regardless of their priority category, giving them priority over veterans with less serious conditions.<sup>72</sup>

Once the VA establishes a medical need, it can choose from a number of options when determining the method and means of a veteran's medical treatment.<sup>73</sup> The VA may immediately admit the veteran as an inpatient, place the veteran in an outpatient care status, pre-admit the veteran for preliminary diagnostic testing with a view toward future inpatient care, schedule the veteran for later admission, place the veteran on a waiting list for admission, or determine that no care is necessary.<sup>74</sup>

### 3. *Payment for Care—Co-payments*

Veterans ineligible to receive free VA health care services (Category 7 veterans) must agree to pay a co-payment to receive that service, contingent on the availability of resources and space.<sup>75</sup> The co-payment amount is based on the type of services received—hospital, outpatient, nursing home, or pharmacy care.<sup>76</sup> Generally, the co-payment cost for VA care is much less than the cost for private care. "This means in many cases a vet-

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67. *Id.* at 762-63 (citing 38 C.F.R. § 17.46(a)(1)).

68. *Id.* at 763.

69. *Id.* at 762.

70. *Id.*

71. *Id.* at 763 (citing VA ADJUDICATION PROCEDURE MANUAL, *supra* note 45, M-1, pt. I, ¶ 1.114-1.116).

72. *Id.* at 762 (citing VA ADJUDICATION PROCEDURE MANUAL, *supra* note 45, M-1, pt. I, ¶ 4.26a).

73. *Id.* at 764.

74. *Id.*

75. 38 U.S.C.S. § 1710(f) (LEXIS 2003).

76. *Id.* § 1710(f)(2)(A)(i).

eran, who has a choice between obtaining VA care for a cost or private care not covered by insurance, will save money by choosing VA care.”<sup>77</sup>

#### 4. Outpatient Pharmacy Services

“In general, if a veteran is eligible for VA treatment of a condition, he or she can receive from the VA drugs, medications, or medical supplies if they were *prescribed by the VA* for treatment of the condition.”<sup>78</sup> A veteran who receives a prescription for a non-service-connected condition during VA outpatient treatment must pay a two-dollar co-payment to fill the prescription at a VA pharmacy.<sup>79</sup> Under the Veterans Millennium Health Care and Benefits Act of 1999,<sup>80</sup> the VA is authorized to raise the co-payment and to establish a monthly and annual cap on the amount of veterans’ co-payments.<sup>81</sup> Under some circumstances, the VA will not

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77. VETERANS BENEFITS MANUAL, *supra* note 3, at 796 (citing Pub. L. No. 106-117, § 201(a), 113 Stat. 1560 (1999)). This law gives the Secretary of Veterans’ Affairs authority to establish the outpatient co-payment rate. The VA recently reduced its co-payment requirements for its services as follows: (1) medication—the prescription co-payment charge is \$2 for each supply of medications provided on an outpatient basis for nonservice-connected conditions for thirty days or less; (2) outpatient medical treatment—the outpatient co-payment amount is based on three different tiers of services ranging from no co-payment, \$15 for a primary care visit, or \$50 for a specialty care visit; (3) inpatient medical treatment—Congress determined that the appropriate inpatient co-payment should be the current inpatient Medicare Deductible Rate (\$840 in 2003) for the first ninety days that the patient remains in the hospital, plus a \$10 per diem charge; and (4) long term medical care—these charges vary by type of service provided and the individual veteran’s ability to pay. *Id.*; see also U.S. Dep’t of Veterans’ Affairs, *Enrolling in VA’s Health Care System: Financial Information* (July 25, 2003), at <http://www.va.gov/elig/Co-payments.htm> (annotating the latest co-payment amounts).

78. *Id.* at 783 (citing VA ADJUDICATION PROCEDURE MANUAL, *supra* note 45, M-1, pt. I, ¶ 16.64a).

79. *Id.* at 783 (citing 38 U.S.C.S. § 1722A).

80. Pub. L. No. 106-117, § 201, 113 Stat. 1545 (1999).

81. VETERANS BENEFITS MANUAL, *supra* note 3, at 783.

charge veterans pharmacy co-payments.<sup>82</sup> Some veterans may even qualify to have their non-VA prescriptions filled at VA pharmacies.<sup>83</sup>

### 5. VA Dental Benefits

The VA provides dental services to eligible veterans, including dental examinations and emergency and non-emergency outpatient dental treatment.<sup>84</sup> Relatively few veterans receive unlimited, unrestricted free VA dental treatment because of the strict eligibility requirements.<sup>85</sup> In contrast to other types of VA health care, the VA does not offer free dental care to low-income veterans.<sup>86</sup>

## B. Burial Benefits

### 1. General

“The VA burial benefits program is generally intended to assist the survivors of deceased veterans in meeting the funeral and burial costs associated with the veteran’s death.”<sup>87</sup> A portion of these benefits may also be available to certain family members. The VA sponsors the following six different types of burial benefits for eligible veterans: a burial payment for non-service-connected deaths or deaths in service;<sup>88</sup> a plot or interment

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82. The following veterans are not required to pay the co-payment for medication:

- (1) Veterans with a service-connected disability rated 50% or more; or
- (2) Veterans meeting certain income requirements under 38 U.S.C.S § 1521.

38 U.S.C.S. § 1722A (LEXIS 2003).

83. See *id.* § 1712(d). Typically, this benefit is limited to veterans living in private nursing homes who are also eligible for VA pensions with aid and attendance, disability compensation benefits, or military retirement pay (these veterans are also exempt from the two-dollar pharmacy co-payment). *Id.*

84. See 38 C.F.R. § 17.160-.166 (2002).

85. See *id.* § 17.161(a) (listing nine groups of veterans who may be eligible for dental care; three eligible groups receive unrestricted, unlimited dental care and the other six groups receive limited services as described). *Id.*

86. VETERANS BENEFITS MANUAL, *supra* note 3, at 791.

87. *Id.* at 887 (citing VA ADJUDICATION PROCEDURE MANUAL, *supra* note 45, M21-1, pt. III, ¶ 13.01); see U.S. Dep’t of Veterans’ Affairs, *Burial & Memorial Benefits* (June 26, 2003), at <http://www.cem.va.gov>.

allowance;<sup>89</sup> burial in a national cemetery;<sup>90</sup> free headstone or grave marker; or reimbursement for a private headstone or marker;<sup>91</sup> and payment for transporting remains.<sup>92</sup> The VA also provides the veteran's next-of-kin a U.S flag and Presidential Memorial Certificate.<sup>93</sup> Each burial benefit has its own eligibility requirements.

## 2. Burial Allowances

### a. Non-Service-Connected Deaths

For deaths not connected to military service, the VA may pay up to \$300 per veteran for funeral and burial expenses.<sup>94</sup> To apply for this benefit, veterans must file VA Form 21-530, Application for Burial Benefits, within two years following the burial of the veteran.<sup>95</sup> Eligible claimants include: any person who paid out-of-pocket for funeral, burial, and transportation expenses; the funeral director, if any part of the funeral bill remains unpaid; and the legal representative of the veteran's estate.<sup>96</sup> Veterans eligible for this benefit include those veterans receiving military retirement pay or a VA pension or compensation at the time of death.<sup>97</sup>

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88. 38 C.F.R. § 3.1600(b) (non-service-connected deaths); 38 C.F.R. § 3.1600(a) (service-connected deaths).

89. *Id.* § 3.1600(f).

90. 38 U.S.C.S. § 2402 (LEXIS 2003); 38 C.F.R. § 1.620 (2002); *see also* U.S. Dep't of Defense, *Military Funeral Honors*, at <http://www.militaryfuneralhonors.osd.mil> (last visited Sept. 4, 2003).

91. 38 C.F.R. §§ 1.630, 1.632, 3.1612 (2002).

92. *Id.* § 3.1606.

93. 38 U.S.C.S. § 2301; *see* U.S. Dep't of Veterans' Affairs, VA Form 2008, Application for United States Flag for Burial Purposes (Sept. 1999). Veterans may apply for the Presidential Memorial Certificate at the nearest regional VA office. Requests for a certificate should include a copy of the deceased veteran's discharge document. *See* U.S. Dep't of Defense, DD Form 214, Certificate of Release or Discharge From Active Duty (Nov. 1988).

94. 38 U.S.C.S. § 2302.

95. *Id.* § 2304; 38 C.F.R. § 3.1601(a); *see* U.S. Dep't of Veterans' Affairs, VA Form 21-530, Application for Burial Benefits (Sept. 1995).

96. 38 C.F.R. § 3.1601(a).

97. *Id.* § 3.1600(b)(1).

*b. Service-Connected Deaths*

If the VA determines that a veteran's death is related to military service, the VA pays up to \$1500 toward the cost of the veteran's funeral and burial.<sup>98</sup> The VA pays this benefit when a service-connected debilitating event either directly results in or contributes to the veteran's death.<sup>99</sup> There is no time limit attached to the application for this benefit.<sup>100</sup> If the veteran's immediate survivors are entitled to Dependency and Indemnity Compensation (DIC) as a result of a service-connected death, then the VA will not pay a service-connected burial allowance.<sup>101</sup> "Payment of the service-connected burial allowance also precludes payment of the plot or interment allowance and the non-service-connected burial allowance."<sup>102</sup>

*3. Plot or Interment Allowance*

The VA pays up to \$150 to the person or entity incurring the expenses for a plot or interment for deaths not connected to military service.<sup>103</sup> If the veteran is buried in a national cemetery or the veteran's employer paid the veteran's plot or interment expenses in full, then the veteran is ineligible for the plot or interment allowance.<sup>104</sup> The plot or interment allowance, however, is payable in cases where the veteran has prepaid his or her funeral expenses.<sup>105</sup> Veterans eligible for this benefit include those veter-

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98. 38 U.S.C.S. § 2307; 38 C.F.R. § 3.1600(a).

99. 38 C.F.R. § 3.312(a), (c).

100. *Id.* § 3.1601(a).

101. VETERANS BENEFITS MANUAL, *supra* note 3, at 889 (citing VA ADJUDICATION PROCEDURE MANUAL, *supra* note 45, M21-1, pt. III, ¶ 13.28a(1)). "Only non-service-connected burial allowance, plot-interment allowance and transportation expenses may be paid in these cases." *Id.*

102. *Id.* at 889 (citing 38 C.F.R. § 3.1600(a)).

103. 38 U.S.C.S. § 2303(b); 38 C.F.R. § 3.1600(f).

104. 38 C.F.R. §§ 3.1600(f), 3.1604(c)-(d).

105. VETERANS BENEFITS MANUAL, *supra* note 3, at 890 (citing VA ADJUDICATION PROCEDURE MANUAL, *supra* note 45, M21-1, pt. III, ¶ 13.35).

ans receiving military retirement pay or a VA pension or compensation at the time of death.<sup>106</sup>

#### 4. *Burial in a National Cemetery and Headstone or Grave Marker*

“Burial benefits in the national cemetery system include the gravesite, a headstone or marker, opening and closing of the grave, and perpetual care.”<sup>107</sup> Those persons eligible for burial in a national cemetery include: veterans who completed the statutory period of service and were discharged under honorable conditions;<sup>108</sup> servicemembers who died on active duty;<sup>109</sup> veterans authorized to receive retirement pay resulting from twenty years of creditable service with a Reserve Component;<sup>110</sup> and the surviving spouse, minor child, or unmarried adult child of any eligible veteran.<sup>111</sup> Those convicted of offense under 38 U.S.C.S. § 6105(a) are not eligible for this benefit even if they are otherwise qualified for it.<sup>112</sup>

#### 5. *Payment for Transport of Remains*

The VA pays for certain costs associated with the transportation of persons eligible for VA burial benefits from the place of death to the

106. See 38 C.F.R. § 3.1600(b)(1)-(2)n (2002).

107. VETERANS BENEFITS MANUAL, *supra* note 3, at 891. Cremated remains may also be stored in a national cemetery under this provision. *Id.*

108. 38 U.S.C.S. § 2402(1).

109. *Id.*

110. *Id.* § 2402(7).

111. This listing of eligible persons is not exhaustive. See *id.* § 2402(5).

112. *Id.* § 2402. The offenses include:

- (1) Sections 894, 904, and 906 of Title 10 (articles 94, 104, and 106 of the Uniform Code of Military Justice);
- (2) Sections 792, 793, 794, 798, 2381, 2382, 2383, 2384, 2385, 2387, 2388, 2389, 2390, and Chapter 105 of Title 18;
- (3) Sections 222, 223, 224, 225, and 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2272, 2273, 2274, 2275, and 2276); and
- (4) Section 4 of the Internal Security Act of 1950 (50 U.S.C. 783).

*Id.*

funeral and gravesite.<sup>113</sup> Covered transportation expenses can include either shipment by common carrier or transportation by hearse.<sup>114</sup>

### 6. *Burial Flags*

The VA furnishes a flag to drape the casket of each of the following deceased: veterans of any war; veterans with a period of service after 31 January 1955; veterans who have served at least one enlistment; veterans discharged or released from active duty for a disability incurred or aggravated in the line of duty; individuals who at the time of death were entitled to military retirement pay; and each deceased person who is buried in a national cemetery.<sup>115</sup> After the veteran's burial, the VA presents the flag to the veteran's next of kin. If the veteran's next-of-kin makes no claim for the flag, the VA may give it to a close friend or associate of the deceased veteran upon request.<sup>116</sup>

### 7. *Military Funeral Honors*

The DOD is responsible for providing military funeral honors for the burial of eligible veterans.<sup>117</sup> A basic military funeral honors ceremony includes a funeral honors detail, presentation of the American flag and the playing of Taps by a bugler, if available, or by electronic recording.<sup>118</sup> Only funeral directors may request funeral honors.<sup>119</sup> Family members desiring military funeral honors should request them through their funeral directors.<sup>120</sup> The VA can also help arrange for honors and veterans service organizations or volunteer groups may help provide honors.<sup>121</sup>

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113. 38 C.F.R. § 3.1606 (2002).

114. *Id.*

115. 38 U.S.C.S. § 2301(a), (e).

116. *Id.* § 2301(b).

117. U.S. DEP'T OF VETERANS' AFFAIRS, FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS 46 (2001) [hereinafter FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS].

118. *Id.* at 45.

119. *Id.* at 46. The DOD maintains a toll-free telephone number for use by funeral directors to request military funeral honors—1 (877) MIL-HONR. *Id.*

120. FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS, *supra* note 117, at 46.

121. *Id.*

## C. Education Benefits

## 1. General

The VA offers several education assistance programs to eligible veterans.<sup>122</sup> A veteran, however, may not simultaneously receive educational benefits under more than one VA program.<sup>123</sup> There are currently two major veterans' education benefit programs, the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP)<sup>124</sup> and the All Volunteer Force Educational Assistance Program, more commonly known as the Montgomery G.I. Bill.<sup>125</sup> A third program, not covered in this survey, provides education benefits to spouses and dependent children of veterans under the Survivors' and Dependents' Educational Assistance Program (DEA).<sup>126</sup>

## 2. Veterans' Education Assistance Program (VEAP)

The VEAP is available to men and women who entered the armed forces between 31 December 1976 and 1 July 1985, to assist them obtain an education they "might not otherwise be able to afford."<sup>127</sup> Further, eligibility is contingent upon the veteran serving at least 181 continuous days

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122. See generally U.S. Dep't of Veterans' Affairs, *Education Benefits*, at <http://www.gibill.va.gov> (last visited Sept. 4, 2003).

123. 38 U.S.C.S. § 3033(a) (1) (LEXIS 2001).

124. *Id.* §§ 3201-3243.

125. *Id.* §§ 3001-3036.

126. 38 C.F.R. § 21.3001-3344 (2001). Entitlement to benefits under the DEA is authorized for spouses and children of veterans who:

- (1) died of a service-connected disability; or
- (2) died while suffering from a total and permanent service-connected disability; or
- (3) have a total and permanent disability arising from a service-connected disability; or
- (4) [are] listed as missing in action or a prisoner of war.

*Id.*

127. 38 U.S.C.S. § 3201.

of military service<sup>128</sup> and receiving a discharge under honorable conditions.<sup>129</sup>

The veteran must use his or her VEAP benefits for enrollment in an approved “program of education”<sup>130</sup> at an “educational institution”<sup>131</sup> as defined under the statute.<sup>132</sup> Presuming the veteran made the maximum required lump sum or monthly contributions under the VEAP,<sup>133</sup> he or she will qualify to receive a maximum of thirty-six monthly benefit payments (or their equivalent in part-time benefits).<sup>134</sup> The amount of the VEAP monthly benefit payment is equal to the sum of the veteran’s total entitlement (veteran’s total VEAP contributions plus DOD matching funds plus DOD additional contributions) divided by thirty-six (months).<sup>135</sup>

The veteran must generally complete the selected program of education within ten years after the veteran’s last discharge or release from active duty.<sup>136</sup> Otherwise, the VA disenrolls the veteran from the program and triggers a forfeiture of benefits.<sup>137</sup> There are limited exceptions to the ten-year disenrollment rule.<sup>138</sup> After disenrollment, the VA may refund forfeited VEAP contributions to the veteran.<sup>139</sup> If the veteran’s poor health causes the disenrollment, the veteran may apply to the VA for a refund of

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128. 38 C.F.R. § 21.5040(b)(iv)(A).

129. *Id.* § 21.5040(b)(iii).

130. 38 U.S.C.S. § 3452(b). “The term ‘program of education’ means any curriculum or any combination of unit courses or subjects pursued at an educational institution generally accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective.” *Id.*

131. *Id.* § 3452(c). “The term ‘educational institution’ means any public or private elementary school, secondary school, vocational school, correspondence school, business school, junior college, teachers’ college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults.” *Id.*

132. *Id.* § 3452.

133. *Id.* § 3222. The maximum participant contribution is \$2,700, made in monthly payments or a lump sum contribution. When the veteran elects to use VEAP benefits, the DOD will match the contributions at a rate of \$2 for every dollar the veteran contributed into the fund. The DOD may also make additional contributions to the fund called “kick-ers,” “to encourage persons to enter or remain in the Armed Forces.” *Id.*

134. *Id.* § 3231(a)(1).

135. 38 C.F.R. § 21.5138 (2001); *see also* U.S. Dep’t of Veterans’ Affairs, *Education Benefits*, at <http://www.gibill.va.gov> (last visited Sept. 4, 2003).

136. 38 U.S.C.S. § 3232.

137. *Id.* § 3232(a)(1). This ten-year period is called the “delimiting period.” *Id.* If the veteran does not completely exhaust his entitlements under the VEAP within the delimiting period, the VA disenrolls the veteran from the program, but the veteran may qualify for a refund of contributions, as discussed below. *Id.*

his contributions to his immediate surviving family, if any, or to his estate.<sup>140</sup>

Veterans who are otherwise eligible to receive VEAP benefits may also receive supplemental monetary assistance to receive tutorial services.<sup>141</sup> To qualify, the veteran must pursue a college education program on at least a half-time basis at an educational institution, and have a “deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.”<sup>142</sup> The VA must determine that the selected tutor is qualified to provide such services, that the tutor charges no more than the customary charge for such assistance, that the tutor provides only individual assistance to the veteran, and that the tutor is not a family member of the veteran.<sup>143</sup> Upon application to the VA, a veteran meeting these qualifications may receive up to \$100 per month not to exceed a total entitlement of \$1200.<sup>144</sup> The VA will not subtract any funds from the veteran’s VEAP account for any amount of tutorial assistance received.<sup>145</sup>

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138. *Id.* § 3232. The ten-year period can be extended due to an intervening disability preventing the veteran from attending school. *Id.* Other exceptions also exist. *See* FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS, *supra* note 117, at 31.

139. *Id.* § 3223. As a general rule, the VA only refunds a veteran’s contributions to the program after disenrollment. If disenrollment occurs after discharge or release from active duty, the VA refunds the veteran’s contributions within sixty days of receipt of an application. The VA will refund DOD matching contributions to the veteran’s VEAP account to the DOD. *Id.*

140. *Id.* § 3224. In the event of a veteran’s death, the VA pays the unused VEAP contributions to the following surviving persons, in the following order:

- (1) The veteran’s surviving spouse;
- (2) The veteran’s surviving child or children, equally;
- (3) The veteran’s surviving parent or parents, equally;
- (4) The veteran’s estate.

*Id.*

141. 38 C.F.R. § 21.5141 (2001).

142. *Id.* § 21.4236(a). The “deficiency indispensable to the satisfactory pursuit of an approved program of education” must be certified to the VA by the educational institution. *Id.*

143. *Id.* § 21.4236(b).

144. *Id.* § 21.4236(c).

145. *Id.* § 21.4236(d).

### 3. *Montgomery GI Bill (MGIB)*

The MGIB is available to men and women who entered the Armed Forces after 30 June 1985 and honorably served a minimum of two or three years of active duty service.<sup>146</sup> In order to receive benefits under the MGIB, the veteran must have either a high school diploma (or equivalent certificate) or academic credit equivalent to twelve semester hours in a college education program before completing his or her service obligation.<sup>147</sup>

Upon completion of twelve mandatory monthly \$100 contributions under the MGIB,<sup>148</sup> the service member qualifies to receive a maximum of thirty-six monthly benefit payments (or their equivalent in part-time benefits).<sup>149</sup> For veterans honorably serving a three-year service obligation, the amount of educational payments under the MGIB for fiscal year 2003 is \$900 per month if the veteran attends school on a full time basis.<sup>150</sup> For a veteran honorably serving a two-year service obligation, the amount of educational payments for fiscal year 2003 is \$732 per month for full time attendance.<sup>151</sup> The VA provides veterans inflation protection for MGIB education benefits through annual COLA increases based on the CPI.<sup>152</sup> Additionally, the VA can authorize increased educational payments of up to \$950 per month for those veterans who enlist in a critical shortage specialty or skill recognized by the DOD.<sup>153</sup>

The veteran must generally complete the selected program of education within ten years after the veteran's last discharge or release from active duty.<sup>154</sup> Veterans who had not exhausted their educational benefits under the VEAP program on 31 December 1989, however, may also be

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146. 38 U.S.C.S. § 3011(a)(1)(A) (LEXIS 2003). Higher benefits are payable to veterans serving a three year commitment. *Id.*

147. *Id.* § 3011(a)(2).

148. *Id.* § 3011(b)-(c). The maximum contribution under the MGIB is a \$1200 non-refundable contribution by the service member and an additional contribution of up to \$600, for a total of \$1800. *Id.*

149. *Id.* § 3013(a)(1).

150. *Id.* § 3015(a)(1). For fiscal year 2004, the benefit is \$985 per month for full-time attendance. *Id.*

151. *Id.* § 3015(b)(1). For fiscal year 2004, the benefit is \$800 per month for full-time attendance. *Id.*

152. *Id.* § 3015(h). The COLA supplement is equal to the annual percentage increase of the CPI for the twelve-month period ending on 30 June each year. *Id.*

153. *Id.* § 3015(d)(1). These additional funds are commonly known as "kickers." This Code provision does not authorize COLA supplements for kicker payments. *Id.*

154. *Id.* § 3031(a).

entitled to MGIB benefits.<sup>155</sup> Such a veteran may establish eligibility for MGIB benefits if he meets certain criteria. First, he must have served three continuous years of active duty in the Armed Forces after 30 June 1985, or else have been discharged under honorable conditions for a medical disability, hardship, or for convenience of the government (provided the individual completed at least thirty months of active duty).<sup>156</sup> Second, the veteran must have either a high school diploma (or equivalent certificate) or academic credit for twelve semester hours in a college education program before 1 January 1990.<sup>157</sup> Finally, the veteran must receive an honorable discharge from active duty.<sup>158</sup>

Veterans on active duty on 9 October 1996 who have funds remaining in their VEAP accounts may also be eligible for conversion to the MGIB program.<sup>159</sup> To be eligible, the veteran must have elected the MGIB and deposited \$1200 by 9 October 1997.<sup>160</sup>

#### D. Home Loan Guarantee

The VA Home Loan Guarantee program is a well-known and commonly used VA benefit. VA loan guarantees are made to eligible service members and veterans to assist them with the purchase of a home under terms favorable to both the borrower and lender.<sup>161</sup> In every VA home loan, the VA guarantees part of the loan, enabling the veteran to obtain a competitive mortgage with a comparably low interest rate and no down payment.<sup>162</sup> The VA loan guarantee protects the lender from default for up

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155. 38 C.F.R. § 21.7044 (2001).

156. *Id.* § 21.7044(a)(4).

157. *Id.* § 21.7044(a)(3), (b)(3).

158. *Id.* § 21.7044(a)(5), (b)(6).

159. *See* 38 U.S.C.S. § 3018 (LEXIS 2003).

160. *Id.* § 3018C.

161. *See generally* U.S. Dep't of Veterans' Affairs, *Home Loan Guarantee Services* (Sept. 4, 2003), at <http://www.homeloans.va.gov>.

162. FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS, *supra* note 117, at 34.

to the amount of the guarantee.<sup>163</sup> As a result, veterans are more likely to qualify for home mortgages with the VA's backing against default.<sup>164</sup>

To determine eligibility for a guaranteed VA home loan, the VA reviews when the veteran served on active duty, how long the veteran served, and the type of discharge the veteran received.<sup>165</sup> A veteran must receive an honorable discharge in order to qualify for benefits under this program.<sup>166</sup> Under the eligibility statute, evidence of an honorable discharge is sufficient to apply for a home loan.<sup>167</sup>

Veterans with honorable service during World War II, the Korean Conflict, or the Vietnam Era, or with ninety days or more of total service and service under honorable conditions, are eligible for the VA home loan program.<sup>168</sup> Generally, veterans who served honorably between September 1980 and July 1990 may be subject to a twenty-four month service requirement for eligibility.<sup>169</sup> Persian Gulf War veterans who honorably

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163. *Id.* at 34.

164. The policy of the VA home loan guarantee is to "enable veterans to obtain loans and to obtain them with the least risk of loss upon foreclosure, to both the veteran and the Veterans' Administration as guarantor of the veteran's indebtedness." *United States v. Shimer*, 367 U.S. 374, 383 (1961).

165. *See* 38 U.S.C.S. § 3702(a).

166. *Id.* § 3702(c).

167. *Id.* Any veteran who does not have a discharge certificate, or who received a discharge other than honorable, may apply to the VA for a certificate of eligibility. *Id.*

168. *Id.* § 3702(a)(2)(A). Congress established the periods of wartime for purposes of establishing entitlement to VA benefits. To become eligible for wartime service, the VA does not require actual service in a combat zone. The VA only requires that the veteran served during the designated wartime period. For VA home loan guarantee eligibility, periods of wartime service include the following conflicts:

- (1) World War II—December 7, 1941, through December 31, 1946, extended to July 25, 1947, where continuous with active duty on or before December 31, 1946;
- (2) Korean Conflict—June 27, 1950, through January 31, 1955;
- (3) Vietnam Era—August 5, 1964, through May 7, 1975, and February 28, 1961, through May 7, 1975, for veterans who served in the Republic of Vietnam during that period;
- (4) Persian Gulf War—August 2, 1990, through a date to be prescribed by Presidential proclamation of war.

38 C.F.R. § 3.2 (2001). VETERANS BENEFITS MANUAL, *supra* note 3, at 35-36.

169. 38 U.S.C.S. § 5303A(b)(1). Veterans who fall within this category must have served at least "24 months of continuous active duty, or the full period for which such person was called or ordered to active duty." *Id.*

served on active duty for ninety days or more at any time during the war are also eligible.<sup>170</sup> Peacetime veterans who served honorably for a period of more than 180 days after 25 July 1947 also qualify.<sup>171</sup> Current active duty members are eligible after serving on continuous active duty for ninety days.<sup>172</sup>

The VA guarantees veterans an entitlement of up to \$60,000 for purchasing homes with mortgage loans over \$144,000.<sup>173</sup> Smaller entitlements are also available and vary with the total loan amount.<sup>174</sup> There are no restrictions on the loan amounts, as long as the loans do not exceed the reasonable value of the property.<sup>175</sup> A veteran who has previously received a VA loan may have a remaining entitlement for a second home purchase.<sup>176</sup> A new purchaser may assume a VA loan, but the VA will not restore the selling veteran's entitlement unless the purchasing veteran agrees to use his entitlement for the purchase.<sup>177</sup>

#### E. Life Insurance

The DOD oversees two insurance programs on behalf of service members and veterans—Servicemembers' Group Life Insurance (SGLI)<sup>178</sup> and Veterans' Group Life Insurance (VGLI).<sup>179</sup> The SGLI is

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170. *Id.* § 3702(a)(2)(D).

171. *Id.* § 3702(a)(2)(c).

172. FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS, *supra* note 117, at 36. "Until the Gulf War era is ended by law or Presidential Proclamation, persons on active duty are eligible after serving on continuous active duty for 90 days." *Id.*

173. 38 U.S.C.S. § 3703(a)(1)(A)(i)(IV).

174. *Id.* § 3703(a)(1)(A)(i).

175. FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS, *supra* note 117, at 37. The veteran must also certify that he intends to live in the home secured by the VA-guaranteed loan. *Id.* The maximum allowable term on any VA guaranteed home loan is thirty years and thirty-two days. *Id.*

*see* U.S. Dep't of Veterans' Affairs, *Home Loan Guaranty Services—Fact Sheet on VA Guaranteed Loans* (June 18, 2001), at <http://www.homeloans.va.gov/factsheet.htm>. "There is no maximum VA loan but lenders will generally limit VA loans to \$240,000." *Id.*

176. *Id.* at 37. The available amount is the difference between the veteran's total entitlement and the amount of entitlement previously used. *Id.*

177. *Id.*

178. 38 U.S.C.S. §§ 1965-1980.

179. *Id.* § 1977.

open to active duty members and reservists of the Armed Forces.<sup>180</sup> The VGLI is available to veterans released from active duty.<sup>181</sup>

### 1. SGLI

Active duty members of the armed forces are presumed insurable at the time of entry upon active duty. Therefore, service members are automatically insured for \$250,000 group term coverage under the SGLI.<sup>182</sup> Service members may elect the SGLI coverage in a lesser amount or decline coverage completely.<sup>183</sup> Should a service member elect a lesser amount of the SGLI coverage, however, the service member may be required to prove his insurability before receiving the requested increase in the amount of coverage.<sup>184</sup> The Defense Finance and Accounting Service (DFAS) automatically deducts SGLI premiums from service members' pay.<sup>185</sup> The SGLI provides insurance coverage during active duty and for a 120-day period following separation from service.<sup>186</sup>

### 2. VGLI

The SGLI may be converted to the VGLI, which is renewable five-year group term coverage of up to \$250,000.<sup>187</sup> The VGLI is available to those veterans with SGLI coverage upon release from active duty, and who apply for VGLI within 120 days of separating from active duty.<sup>188</sup> After 120 days, veterans may receive VGLI coverage within one year after termination of the veteran's SGLI policy only upon submission of evidence of insurability and the required premium.<sup>189</sup> Note, however, that totally

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180. *Id.* § 1967(a).

181. *Id.* § 1977; see U.S. Dep't of Veterans' Affairs, VA Form 29-8283, Claim for Death Benefits (July 1994). Beneficiaries making claims should mail them to SGLI, 212 Washington Street, Newark, N.J. 07102-2999, or call 1-800-419-1473.

182. 38 U.S.C.S. § 1967.

183. *Id.* § 1967(a).

184. See Dep't of Veterans' Affairs, *Life Insurance Program—SGLI Frequently Asked Questions* (Mar. 4, 2002), at <http://www.insurance.va.gov/sglivgli/sglivgli.htm>.

185. FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS, *supra* note 117, at 41.

186. 38 U.S.C.S. § 1968(a)(1)(A).

187. *Id.* § 1977(b).

188. 38 C.F.R. § 9.2(b)(1) (2001).

189. FEDERAL BENEFITS FOR VETERANS AND DEPENDENTS, *supra* note 117, at 41.

disabled veterans with SGLI coverage at retirement have up to one year to purchase the VGLI while remaining totally disabled.<sup>190</sup>

The primary argument for converting an SGLI policy to VGLI within 120 days of retirement is that the VGLI will guarantee the insurability of the veteran.<sup>191</sup> This benefit is particularly significant in cases in which the retiring veteran is otherwise uninsurable because of pre-existing illness, disease, or injury suffered while serving on active duty.<sup>192</sup>

#### IV. Conclusion

Judge advocates should possess a working understanding of the variety of the DOD and VA benefits associated with military retirement. The ability to advise clients in this area of the law equips legal assistance attorneys to provide a value-added service to military members nearing retirement, retired veterans, and family members. This survey of retirement benefits is a tool for judge advocates to successfully answer simple questions about retirement benefits, as well as a good starting point for more in-depth research.

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190. *Id.* There is no “evidence of insurability” requirement for totally disabled veterans who apply for VGLI within one year of retirement. *Id.*

191. See U.S. Dep’t of Veterans’ Affairs, *Life Insurance Program—VGLI Frequently Asked Questions* (Jan. 9, 2002), at <http://www.insurance.va.gov/sglivgli/vgli%20faq.htm#1>.

192. *Id.*