

Military Cultural Competency Manual for Attorneys

**A Guide for *Pro Bono* Service Provided to Military
Members, Veterans, and their Families**

Funded by:



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Military Cultural Competency Manual for Attorneys

1. Introduction

1.1. Purpose of this manual. Indiana Legal Services Military Assistance Project prepared this manual through an impact grant from the Indianapolis Bar Foundation. This manual is intended to provide information to promote cultural competency of attorneys who serve veterans, military members, and their families. Additionally, this manual should serve as a reference for attorneys who are representing this population and covers a whole range of topics from pay and retirement to veterans' benefits.

The military is unlike any other career and the demands of military life create a unique set of pressures on service members and their families. For most people, their job is what they do; in the military, it more deeply defines who they are. For families, military life offers a sense of community with clearly defined rules and expectations.

While this manual provides information of a variety of topics, there may be some terms that are unfamiliar. The Department of Defense (DoD) web site provides a dictionary of military terms: <https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf>

1.2. Demographics. Veterans represent approximately 7% of Indiana's population. There are approximately 550,000 veterans in Indiana.¹ The largest concentration of over 50,000 veterans is in Marion County.²

1.2.1. Women. Of the veteran population in Indiana, female veterans represent approximately 7.6% (31,169).³ However, as of February 2018, women constituted 158,090—or 19.8 percent—of all personnel serving in the six DoD Reserve and Guard forces.⁴ Women number 1,067—or 17.4 percent—of all personnel serving in the Coast Guard Reserve.⁵ Female veterans often find themselves caught in a double bind when discussing their service because they aren't combat veterans.⁶ Even though most males do not serve in direct combat, characterizing service in this way poses a particular challenge for female veterans.⁷ These women already face the obstacle that many, including male veterans from previous generations, do not think of women as veterans at all.⁸ So when asking your client if they are a veteran, *it is best to ask if they ever served in the military.*

¹ *Indiana Department of Veterans' Affairs*, THE AMERICAN LEGION, <https://www.legion.org/veteransbenefits/indiana> (last visited Mar. 30, 2020)

² *Veteran Population*, VA.GOV, https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Indiana.pdf (last visited Mar. 30, 2020)

³ *Veteran Population*, *supra* note 2

⁴ Lory Manning, *Women in the Military: Where They Stand*, 17, <https://www.servicewomen.org/wp-content/uploads/2019/04/SWAN-Where-we-stand-2019-0416revised.pdf> (last visited Mar. 19, 2020)

⁵ Manning, *supra* note 4

⁶ Andrea N. Goldstein, *Women Are the Most Visible Servicemembers, and the Most Invisible Veterans*,

<https://www.cnas.org/publications/reports/women-are-the-most-visible-soldiers-and-the-most-invisible-veterans> (last visited Mar. 31, 2020)

⁷ Goldstein, *supra* note 6

⁸ Goldstein, *supra* note 6

- 1.2.2. Age.** The vast majority of Hoosier veterans are older. Approximately 46% (190,000) of Indiana’s veterans are 65-yrs old and older; approximately 46.9% (193,000) are between 35-yrs old and 64-yrs old; and approximately 9.5% (42,000) are under 35-yrs old.⁹
- 1.2.3. Race/Ethnicity.** The majority, roughly 88%, of Hoosier veterans is white; roughly 8% are African American, 2.5% are Hispanic or Latino, 0.5% are Native American, and 0.25% are Asian. The remaining 0.75% are two or more races.¹⁰
- 1.2.4. Veteran Unemployment.** The veteran demographic hit hardest by unemployment has been young veterans who served in the Armed Forces after Sept. 2001. The unemployment rate for veterans who served on active duty in the U.S. Armed Forces at any time since September 2001—a group referred to as Gulf War-era II veterans—was 3.5 percent in 2019.¹¹ The jobless rate for all veterans declined in 2019 to 3.1 percent.¹² Over the next five years, an estimated 250,000 service members will leave the military each year.¹³
- 1.2.5. Veteran Homelessness.** Veteran homelessness has declined significantly over the past 10 years. As of January 2019, the Department of Housing and Urban Development estimates there were 37,085 veterans experiencing homelessness compared to 73,367 in 2009.¹⁴ Department of Housing and Urban Development estimated that veterans represent a little over 8% of the homeless population.¹⁵ Between 2009 and 2019, homelessness among veterans has declined by almost 50%.¹⁶ Nonetheless, female veterans and younger veterans are currently more than three times as likely to be homeless as their nonveteran counterparts.¹⁷
- 1.2.6. Veteran Suicides.** Suicide is the 10th leading cause of death in the United States and Veteran suicide is a national concern.¹⁸ The annual number of Veteran suicides has exceeded 6,000 every year since 2008.¹⁹ In 2017, VA researchers estimated

⁹ *Veteran Population*, *supra* note 2

¹⁰ *Veteran Population*, *supra* note 2

¹¹ *Employment Situation of Veterans – 2019*, US DEPARTMENT OF LABOR: Bureau of Labor Statistics, <https://www.bls.gov/news.release/pdf/vet.pdf> (last visited Mar. 30, 2020)

¹² *Employment Situation of Veterans – 2019*, *supra* note 11

¹³ John Boyle ET AL, *The Veterans Metric Initiative*, The Henry M. Jackson Foundation for the Advancement of Military Medicine, https://www.hjf.org/sites/default/files/2019-05/tvmi_fact_sheet_1.pdf (last visited Mar. 20, 2020)

¹⁴ Meghan Henry ET AL, *2019 Annual Homeless Assessment Report to Congress*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT: OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT, 54, <https://files.hudexchange.info/resources/documents/2019-AHAR-Part-1.pdf>. (last visited Mar. 20, 2020)

¹⁵ Henry, *supra* note 14

¹⁶ Henry, *supra* note 14

¹⁷ Jamison Fargo ET AL, *Prevalence and Risk of Homelessness Among US Veterans*, National Center on Homelessness Among Veterans, 4, https://repository.upenn.edu/cgi/viewcontent.cgi?article=1161&context=spp_papers (last visited Mar. 19, 2020)

¹⁸ *VA National Suicide Data Report 2005–2016*, VA.GOV, Office of Mental Health and Suicide Prevention, 1, https://www.mentalhealth.va.gov/docs/data-sheets/OMHSP_National_Suicide_Data_Report_2005-2016_508.pdf (last visited Mar. 23, 2020)

¹⁹ *2019 National Veteran Suicide Prevention Annual Report*, VA.GOV, Office of Mental Health and Suicide Prevention, 8, https://www.mentalhealth.va.gov/docs/data-sheets/2019/2019_National_Veteran_Suicide_Prevention_Annual_Report_508.pdf (last visited Mar. 31, 2020)

that 16.8 veterans commit suicide per day.²⁰ Veterans ages 18–34 had the highest suicide rate in 2017 at 44.5 per 100,000.²¹ The suicide rate for Veterans ages 18-34 has risen by 76% from 2005 to 2017.²² The absolute number of suicides was highest among Veterans 55–74 years old.²³ This group accounted for 38% of all Veteran deaths by suicide in 2017.²⁴ The veteran suicide rate for women veterans is 2.2 times higher than non-veteran women.²⁵ In addition to demographics, factors such as insomnia, depression, anxiety, sexual victimization, gun ownership and substance use disorders also appear to contribute to suicide risk among service members and veterans.²⁶ Older veterans may also be coping with aging, stress or lingering effects stemming from their military service that have never been addressed, while many recently discharged veterans have trouble with their relationships or their transitions back to civilian life.²⁷

1.3. Eras in which Hoosier Veterans have served. Veterans have served in peacetime, wartime, and during conflicts. The era or conflict in which a veteran served may impact certain federal and Indiana benefits that they are eligible for. The following highlights the recent wars and conflicts in which Hoosier veterans have served:

- **World War II (1941-1945).** Over 16 million total service members; over 400,000 deaths; and over 670,000 wounded.²⁸
- **Korean War (1950-1953).** Over 1.7M total service members served in theater; over 36,000 deaths; and over 103,000 wounded.²⁹
- **Vietnam War (1961-1975) (military advisors 1950 - 1961).** Over 3.4 million total service members served in theater; over 58,000 deaths; and over 153,000 wounded.³⁰
- **Lebanon Conflict (1982-1984).** 256 deaths.³¹
- **Grenada Conflict (1983).** 19 deaths and 119 wounded.³²
- **Panama Conflict (1989).** 23 deaths and 320 wounded.³³
- **Operation Desert Shield/ Desert Storm (1990-91).** A little under 700,000 service members served in theater; 383 deaths; 458 wounded.³⁴

²⁰ 2019 National Veteran Suicide Prevention Annual Report, *supra* note 19, at 9

²¹ 2019 National Veteran Suicide Prevention Annual Report, *supra* note 19, at 14

²² 2019 National Veteran Suicide Prevention Annual Report, *supra* note 19

²³ 2019 National Veteran Suicide Prevention Annual Report, *supra* note 19

²⁴ 2019 National Veteran Suicide Prevention Annual Report, *supra* note 19

²⁵ 2019 National Veteran Suicide Prevention Annual Report, *supra* note 19, at 16

²⁶ Amy Novotney, *Stopping Military and Veteran Suicides*, AMERICAN PSYCHOLOGICAL ASSOCIATION (Jan. 1, 2020) <https://www.apa.org/monitor/2020/01/ce-corner-suicide> (last visited Mar. 31, 2020)

²⁷ Novotney, *supra* note 26

²⁸ *America's Wars: U.S. Casualties and Veterans*, INFOPLEASE, <https://www.infoplease.com/us/american-wars/americas-wars-us-casualties-and-veterans> (last visited Mar. 30, 2020)

²⁹ *America's Wars*, *supra* note 28

³⁰ *America's Wars*, *supra* note 28

³¹ *Terrorist Bombing of the Marine Barracks, Beirut Lebanon*, ARLINGTON NATIONAL CEMETERY.NET, <http://www.arlingtoncemetery.net/terror.htm> (last visited Mar. 30, 2020)

³² Ronald H. Cole, *Operation Urgent Fury*, DTIC.MIL, (1997), 6, https://www.jcs.mil/Portals/36/Documents/History/Monographs/Urgent_Fury.pdf (last visited Mar. 31, 2020)

³³ *US Military Operations: Casualty Breakdown*, GLOBAL SECURITY.ORG, <https://www.globalsecurity.org/military/ops/casualties.htm> (last visited Mar. 30, 2020)

³⁴ *U.S. Military Operations Casualty Breakdown*, *supra* note 33

- **Somalia (1993).** 43 deaths and 153 wounded.³⁵
- **Bosnia (1993-95).** 12 deaths and 6 wounded.³⁶
- **Kosovo (1998-99).** 20 deaths and 2 wounded.³⁷
- **The Current Conflicts.**
 - Afghanistan & other locations: Operation Enduring Freedom (OEF)/ Operation New Dawn (OND) (2001-present).
 - Iraq: Operation Iraqi Freedom (OIF) (2003-2011).
 - 2.8 million have served in either Afghanistan or Iraq.³⁸
 - 7,024 Deaths & 53,219 Wounded (as of 19 Mar 2020).³⁹

Note that we are currently involved in the Global War on Terror that, for purposes of some federal benefits for veterans, has been ongoing since Operation Desert Shield/ Desert Storm in 1991 – and will continue until the President declares that we are no longer involved in this war.⁴⁰

1.4. Post-traumatic Stress Disorder (PTSD). Post-traumatic stress disorder is a mental health disorder that can occur when someone goes through a traumatic event like combat, assault, disaster, or even an accident.⁴¹ It is not clear why people develop PTSD, but people with PTSD have also been found to have other problems as well like depression, drinking or drug problems, difficulty with employment, and feelings of hopelessness and shame. Out of 100 people, 7 or 8 will have PTSD at some point in their lives.⁴² About 5.2 million adults have PTSD during a given year and women are twice as likely than men to develop PTSD.⁴³ There is a greater chance of veterans experiencing PTSD. About 30% of the men and women who have spent time in a war zone experience PTSD and about 20 –25% have had partial PTSD at some point in their lives.⁴⁴ But only 50% percent of those that have PTSD actually report it.

- **Vietnam Veterans** – 30% of veterans from this war era suffer from PTSD or 30 out of 100 Vietnam Veterans.⁴⁵
- **Gulf War (Desert Storm)** – 12% of veterans or 12 out of 100 veterans.⁴⁶
- **Iraq and Afghanistan (Operations Iraqi and Enduring Freedom)** – about 11 to 20% of veterans or 11-20 out of 100 veterans.⁴⁷

³⁵ U.S. Military Operations Casualty Breakdown, *supra* note 33

³⁶ U.S. Casualties of War, MILITARY ORDER OF THE PURPLE HEART (Sep. 20, 2009), <http://www.mophdepartmentpa.org/United%20States%20Casualties%20of%20War.pdf>

³⁷ U.S. Casualties of War, *supra* note 36

³⁸ Boyle ET AL, *supra* note 13

³⁹ U.S. Military Casualties - OCO Casualty Summary by Casualty Type, U.S. DEPT. OF DEFENSE, Defense Casualty Analysis System, https://dcas.dmdc.osd.mil/dcas/pages/report_sum_reason.xhtml (last visited Mar. 30, 2020)

⁴⁰ Gulf War Veterans, VA.GOV, <https://www.benefits.va.gov/persona/veteran-gulfwar.asp> (last visited Apr. 9, 2020)

⁴¹ PTSD Basics, VA.GOV., PTSD: National Center for PTSD, https://www.ptsd.va.gov/understand/what/ptsd_basics.asp (last visited Mar. 20, 2020)

⁴² How Common is PTSD in Adults?, VA.GOV, PTSD: National Center for PTSD, https://www.ptsd.va.gov/understand/common/common_adults.asp (last visited Mar 20, 2020).

⁴³ How Common is PTSD in Adults?, *supra* note 42

⁴⁴ PTSD Frequently Asked Questions, MILITARY.COM, <http://www.military.com/benefits/veterans-health-care/ptsd-frequently-asked-questions.html>. (last visited Mar. 20, 2020).

⁴⁵ PTSD: National Center, https://www.ptsd.va.gov/understand/common/common_veterans.asp (last visited Mar. 20, 2020).

⁴⁶ PTSD: National Center, *supra* note 45

⁴⁷ PTSD: National Center, *supra* note 45

To file a claim for service-connected disability, a veteran must complete a formal request claim. Information about this application process can be obtained by any Benefits Officer at any VA medical center, clinic, or regional office.

- 1.5. Traumatic Brain Injury.** Traumatic Brain Injury or TBI is a hit or jolt to the head or a penetrating head injury that disrupts the function of the brain.⁴⁸ It is difficult to recognize, diagnose, and treat. TBI has been a silent “signature” wound in the wars in Iraq and Afghanistan.⁴⁹ Severe TBI can leave a person incapacitated, but even mild TBI also called a concussion, can develop into symptoms such as headaches, balance problems, hearing problems, lack of self-control, ringing in the ears, memory loss, and problems with sleep.⁵⁰ Recovery from this type of injury can take years.⁵¹ Approximately 80% of TBI diagnoses are associated with head injuries that occurred from blasting or other activities not directly combat related.⁵² It is estimated that 413,858 Active Duty Servicemembers have been diagnosed with some level of TBI from 2001 through 2019.⁵³ It is believed that 20 percent of Iraq and veterans (300K) have some level of TBI.⁵⁴ The problem with getting more accurate numbers of TBI injuries is that Soldiers are not reporting their injuries to stay on duty and avoid being perceived as weak.⁵⁵ Soldiers also fear that their unit leaders would treat them differently or the condition will stop them from getting jobs once they get out of service.⁵⁶ Veterans do not need a disability rating, or have reported the incident at the time, or to have other documentation that TBI occurred in order to receive TBI related treatment.⁵⁷ There is no time limit for eligibility meaning a veteran can seek help many years after discharge.⁵⁸
- 1.6. Military Sexual Trauma.** Military Sexual Trauma (MST) is defined as “a psychological trauma . . . resulting from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the Veteran was serving on active duty or active duty for training.”⁵⁹ As many as 1 in 4 women and 1 in 100 men have told their VA healthcare provider that they experienced sexual trauma in the military.⁶⁰ Exposure to this type of trauma can lead into PTSD or another mental disorder.⁶¹ Some problems associated with MST are disturbing memories or nightmares, physical

⁴⁸ *Where Soldiers Come From*, PBS.ORG (Nov. 10, 2011), <http://archive.pov.org/wheresoldierscomefrom/traumatic-brain-injury/> (last visited Mar. 31, 2020)

⁴⁹ Lisa K. Lindquist MD ET AL, *Traumatic Brain Injury in Iraq and Afghanistan Veterans: New Results from a National Random Sample Study*, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (Jan. 25, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5501743/>

⁵⁰ *Where Soldiers Come From*, *supra* note 48

⁵¹ *Where Soldiers Come From*, *supra* note 48

⁵² *Where Soldiers Come From*, *supra* note 48

⁵³ *DoD Worldwide Numbers for TBI*, DEFENSE AND VETERANS BRAIN INJURY CENTER (DVBIC), <https://dvbic.dcoe.mil/dod-worldwide-numbers-tbi> (last visited Mar. 31, 2020)

⁵⁴ Lizette Alvarez, *War Veterans' Concussions Are Often Overlooked*, NEW YORK TIMES (Aug. 25, 2008),

<https://www.nytimes.com/2008/08/26/us/26tbi.html>

⁵⁵ Dave Phillips and Thomas Gibbons-Neff, *Brain Injuries Are Common in Battle. The Military Has No Reliable Test for Them*, NEW YORK TIMES (Feb. 15, 2020), <https://www.nytimes.com/2020/02/15/us/brain-injuries-military.html>.

⁵⁶ *Where Soldiers Come From*, *supra* note 48

⁵⁷ *Eligibility for VA Benefits*, VA.GOV, <https://www.va.gov/disability/eligibility/> (last visited Mar. 31, 2020)

⁵⁸ *Eligibility for VA Benefits*, *supra* note 57

⁵⁹ *Military Sexual Trauma (MST)*, VA.GOV (May 2015), 1, https://www.mentalhealth.va.gov/docs/mst_general_factsheet.pdf

⁶⁰ *Military Sexual Trauma (MST)*, *supra* note 59

⁶¹ *Military Sexual Trauma (MST)*, *supra* note 59, at 2

health problems, feelings of isolation, problems with alcohol and drugs, and problems with anger or irritability.⁶²

1.7. Veterans' Receiving VA Benefits. The benefits available to a veteran depends on when they served, their length of service, whether they served on active duty, reserves, or National Guard, whether they have an injury or illness that occurred while they were serving, and the type of discharge they received. Veterans' benefits, both state and federal, are discussed in Section 11, Veterans' benefits.

1.7.1. Advocacy & Outreach Needs. According to a 2010 VA Survey, only 41% of veterans have an understanding of VA services and programs.⁶³ Thus, for many veterans, simply providing them with the information regarding benefit eligibility and providing instructions on how to access those benefits could improve their quality of life and income.

1.7.2. Service-Connected Disability Compensation. If a service member is injured or becomes ill while serving on active duty, they are eligible to receive service-connected disability compensation through the Department of Veterans Affairs.⁶⁴ Service-connected disabilities are rated at 0% to 100%, in 10% increments, depending on the severity of the disability.⁶⁵ Compensation is paid starting at 10% and additional compensation for dependents is paid starting at 30%. As of 2020, approximately 21% of Hoosier veterans have a service-connected disability rating.⁶⁶ Of those veterans, 5% have a 0% rating, 37% have a 10% or 20% rating, 17% have a 30% or 40% rating, 12% have a 50% or 60% rating, 24% have a 70% or higher rating, and 5% do not have a rating reported.⁶⁷

Currently, disability claims are on the rise. Many claims are from returning Iraq and Afghanistan war veterans. Because of medical advancements, service members involved in the current conflicts are surviving wounds that service members from previous eras did not. The "signature" wound of the current conflicts is Traumatic Brain Injury (TBI).⁶⁸ Further, many veterans from the current conflicts, like previous conflicts, suffer from Post-Traumatic Stress Disorder (PTSD) and major depression. Thus, much of the rise in claims can be attributed to veterans from the current conflict. However, some of the rise in claims can be attributed to certain illnesses recently being linked to Agent Orange and Vietnam veterans submitting claims because of this. And as our veterans age, some injuries or illnesses from military

⁶² *Military Sexual Trauma (MST)*, *supra* note 59, at 2

⁶³ *2010 National Survey of Veterans: Understanding and Knowledge of VA Benefits and Services*, VA.GOV (Nov. 2011), https://www.va.gov/vetdata/docs/SpecialReports/2010NSV_Awareness_FINAL.pdf

⁶⁴ *Disability Compensation*, VA.GOV, https://www.va.gov/opa/publications/benefits_book/benefits_chap02.asp (last visited Apr. 2, 2020)

⁶⁵ *Compensation*, VA.GOV, <https://www.benefits.va.gov/COMPENSATION/types-compensation.asp> (last visited Apr. 2, 2020)

⁶⁶ *Service- Connected Disability-Rating Status and Ratings for Civilian Veterans 18 Years and Over*, US CENSUS BUREAU AMERICAN FACT FINDER (2013-2018), <https://data.census.gov/cedsci/table?q=B21100%3A%20SERVICE-CONNECTED%20DISABILITY-RATING%20STATUS%20AND%20RATINGS%20FOR%20CIVILIAN%20VETERANS%2018%20YEARS%20AND%20OVER&hidePreview=true&tid=ACSDT5Y2018.B21100>

⁶⁷ *Service-Connected*, *supra* note 66

⁶⁸ Lindquist, *supra* note 49

service, such as hearing loss or tinnitus, are only now beginning to manifest for our older veterans.

Many veterans struggle with filing and proving their claims, especially without representation. In 2005, the VA Inspector General reported that veterans who were represented receive on average \$6225 more in annual compensation than those who are not represented.⁶⁹ In this same report, the VA IG reported that Indiana ranked in the bottom six states with regard to the average amount of compensation paid to our veterans.⁷⁰

While there are many factors that may contribute to Hoosier veterans receiving lower disability than veterans from other states, lack of representation might be a contributing factor. Attorneys and veterans service officers (with some exceptions) must be accredited with the VA to assist veterans with their VA claims. As of March of 2020, there were 173 accredited attorneys, 207 Veteran Service Organizations and 10 Claims Agents in Indiana.⁷¹ While some of these attorneys represent veterans on a regular basis, there are many accredited attorneys who maintain their VA-accreditation without ever handling a VA case. These non-attorneys are veterans' service officers with the counties or with veterans' organizations who advocate for veterans on a regular basis. Thus, with approximately 410,000 Hoosier veterans, a little over 75,000 who are currently receiving compensation, and the rise in disability claims, it ***seems that Indiana has a shortage of VA-accredited advocates.***

1.8. Veterans' Legal Needs. Generally, the legal needs of low-income Hoosier veterans, service members, and their families are similar to the legal needs of low-income Hoosiers.

1.8.1. General Legal Needs of Low-income Hoosier Veterans, Military Members, and Their Families. Legal assistance can improve the income and quality of life:

- Access to Benefits
- Health Care
- Education
- Housing
- Employment
- Family
- Consumer

1.8.2. VA's Survey of Unmet Needs of Homeless/Near-homeless Veterans. The VA conducts a periodic survey in which it measures the unmet needs of homeless,

⁶⁹ *Review of State Variances in VA Disability Compensation Payments*, Veteran Affairs Office of Inspector General, 05-00765-137, (May 19,2005), <https://www.va.gov/oig/52/reports/2005/VAOIG-05-00765-137.pdf>

⁷⁰ *Review of State Variances in VA Disability Compensation Payments*, *supra* note 69

⁷¹ A search of VA-accredited attorneys can be done online at: <http://www.va.gov/ogc/apps/accreditation/>.

nearly homeless, and recently homeless veterans across the country. In 2010, of the top 20 unmet needs in the VA's most recent survey, 7 involve legal services:

- Legal Assistance for Child Support Issues
- Legal Assistance for Outstanding Warrants/Fines
- Legal Assistance to Help Restore a Driver's License
- Guardianships (financial)
- SSI/SSD Process
- Military Discharge Upgrade
- VA Disability / Pension⁷²

⁷² VA Programs for Homeless Veterans, VA.GOV (Jan. 2018), <https://www.va.gov/HOMELESS/docs/Homeless-Programs-General-Fact-Sheet-JAN-2018.pdf>

2. Military Terminology

- 2.1. Introduction.** The US Armed Forces is made up of the Army, Air Force, Navy, Marines (technically part of the Navy), and Coast Guard.⁷³ Additionally, military members may serve on active duty or in a reserve component, as an enlisted member, commissioned officer or a warrant officer.⁷⁴ The following terminology is provided to familiarize you with these basic concepts.
- 2.2. Active Duty.** Active Duty has at least two different meanings. First, it refers to personnel who are in the “Regular” military, not the reserves or the National Guard, and are considered Active Duty Personnel.⁷⁵ Second, if a member of the Reserves or National Guard is activated to serve, they are serving “active duty.”⁷⁶ Active duty, and the length of time a military member serves on active duty, is important because most veteran’s benefits accrue during active duty service.⁷⁷
- 2.3. Reserves.** Every branch of the military has a reserve component.⁷⁸ Reservists serve a minimum of one weekend a month on duty for “drill” and two weeks a year in training.⁷⁹ When a reservist serves, they earn points that are applied towards retirement.⁸⁰ A reservist must earn at least 50 points a year for that year to be counted as a “good year” towards retirement.⁸¹ For every weekend, or “drill,” a reservist receives one point for each half day.⁸² Reservists earn either four or five points for a drill weekend, depending on their unit’s drill schedule (some units begin their drill weekend on Friday night so that their drill weekend is five drill periods/half-days).⁸³ For each day of active duty, including the two weeks for the year, a reservist receives one point.⁸⁴ Reservists may also be called to active duty for longer than two weeks.⁸⁵
- 2.4. National Guard.** The National Guard is similar to the Reserves. National Guard members have the same requirements with regard to the point system.⁸⁶ But the National Guard is different than the reserves. First, the National Guard has two commanders-in-chief: one is the President, and the other is the Governor of the State.⁸⁷ If a National Guard member is called to active duty by the President, then the time on active duty is considered “federal” active duty and federal benefits accrue –

⁷³ *Our Forces*, US DEPT OF DEFENSE, <https://www.defense.gov/Our-Story/Our-Forces/> (last visited Mar. 31, 2020).

⁷⁴ *Join the Military*, USA.GOV (December 4, 2019), <https://www.usa.gov/join-military>

⁷⁵ *Active Duty vs. Reserve or National Guard*, VA.GOV (Apr. 6, 2012) https://www.va.gov/vetsinworkplace/docs/em_activereserve.html

⁷⁶ *Active Duty vs. Reserve or National Guard*, *supra* note 75

⁷⁷ *Your Benefits: Active Guard Reserve*, VA.GOV, <https://www.benefits.va.gov/guardreserve/active-reserve.asp> (last visited Mar. 31, 2020)

⁷⁸ *Active Duty vs. Reserve or National Guard*, *supra* note 75

⁷⁹ *About the Army*, GOARMY.COM, <https://www.goarmy.com/about/serve-in-the-army/serve-your-way/army-reserve.html>, (last visited Mar 31, 2020)

⁸⁰ *How to Calculate Reserve or Guard Retirement Points*, MILITARY BENEFITS.COM, <https://militarybenefits.info/calculate-reserve-guard-points/> (last visited Apr. 1, 2020)

⁸¹ *How to Calculate Reserve or Guard Retirement Points*, *supra* note 80

⁸² *Guard and Reserve Retirement*, MILITARY.COM, <https://www.military.com/benefits/military-pay/reserve-and-guard-pay/military-reserve-component-retirement-overview.html> (last visited Apr. 1, 2020)

⁸³ *How to Calculate Reserve or Guard Retirement Points*, *supra* note 80

⁸⁴ *Guard and Reserve Retirement*, *supra* note 82

⁸⁵ *About the Army*, *supra* note 79

⁸⁶ *Guard and Reserve Retirement*, *supra* note 82

⁸⁷ *About Us*, NATIONAL GUARD, <https://www.nationalguard.mil/About-the-Guard/Army-National-Guard/About-Us/> (last visited Apr. 1, 2020)

including VA benefits.⁸⁸ But if the Guard Member is called to active duty by the Governor to attend to a “state” emergency, then federal benefits do not accrue.⁸⁹ Second, not all branches of the military have a National Guard component.⁹⁰ Instead, there is only the Army National Guard and the Air Force National Guard.⁹¹

- 2.5. Active Guard Reserves (AGR).** The AGR is a program that places Army Guard and Reservists and Air Force Guard and Reservists on federal active duty status for a period of 180 days or more to provide full-time support to the Guard or Reserve unit.⁹² AGRs assist with organizing, administering, recruiting, instructing, and training the Guard or Reserve component.⁹³
- 2.6. Navy Reserve Full-Time Support (FTS).** Like AGR, FTSs serve full-time in a reserve component and are considered “active duty.”⁹⁴
- 2.7. Marine Corps Active Reserve (AR).** This is the Marine Corps equivalent of the AGR.⁹⁵
- 2.8. Coast Guard Reserve Program Administrators (RPAs).** This is the Coast Guard’s equivalent of the AGR.⁹⁶
- 2.9. Inactive Reserves.** Also known as the Inactive Ready Reserve or the Individual Ready Reserve (IRR). This is a force of former military personnel that serve as an emergency backup force of last resort.⁹⁷ While most military recruits sign up for active or Reserve component duty for four years, their enlistment contracts obligate them to a total service agreement of eight years.⁹⁸ Troops who end their service short of eight years of service transition into the Individual Ready Reserves.⁹⁹ While in the inactive reserves, a service member may be recalled to serve active duty.¹⁰⁰ While recall is rare, it has happened twice since the beginning of the first Gulf War (1991). In 1991,

⁸⁸ *Eligibility for VA Benefits*, VA.GOV, https://www.va.gov/opa/publications/benefits_book/benefits_chap09.asp (last visited Apr. 1 2020)

⁸⁹ *Eligibility for VA Benefits*, *supra* note 88

⁹⁰ *Active Duty vs. Reserve or National Guard*, *supra* note 75

⁹¹ *Active Duty vs. Reserve or National Guard*, *supra* note 75

⁹² *Guard Tours*, NATIONAL GUARD, <https://www.nationalguard.mil/About-the-Guard/Army-National-Guard/Resources/Soldier-Resources/Guard-Tours/> (last visited Apr. 1, 2020)

⁹³ *Guard Tours*, *supra* note 92

⁹⁴ *Welcome to the FTS Officer Community*, NAVY PERSONNEL COMMAND, <https://www.public.navy.mil/bupers-npc/officer/communitymanagers/reserve/fts/Pages/default.aspx> (last visited Apr. 1, 2020)

⁹⁵ Lance Cpl. David Flynn, *Active Reserve Program Offers Options for Marines*, MARINE CORPS RECRUITING COMMAND (Mar. 4, 2011)

<https://www.mcrc.marines.mil/News/Article/519204/active-reserve-program-offers-options-for-marines/>

⁹⁶ Diana Sherbs, *OSMS and You: Reserve Program Administrator*, COAST GUARD ALL HANDS ARCHIVE (July 29, 2015),

<https://allhands.coastguard.dodlive.mil/2015/07/29/osms-and-you-reserve-program-administrator/>

⁹⁷ Andrew Tilghman, *Bringing the Individual Ready Reserve into the “Total Force,”* MILITARYTIMES.COM (Oct. 26, 2015),

<https://www.militarytimes.com/2015/10/26/bringing-the-individual-ready-reserve-into-the-total-force/>

⁹⁸ Tilghman, *supra* note 97

⁹⁹ Tilghman, *supra* note 97

¹⁰⁰ Tilghman, *supra* note 97

20,000 IRR members were recalled to support Operation Desert Storm.¹⁰¹ And in 2004, 5,600 IRR members were recalled to support US forces in Iraq.¹⁰²

- 2.10. Retired Reserves.** This is made up of service members who retired from either active duty or from the Guard/Reserves. Retired active duty members who have served over 20 years, but less than 30 years active duty are placed in the retired reserves.¹⁰³ Once they complete 30 years of total service, they are fully retired.¹⁰⁴ Reservists and Guard members remain in the retired reserve until they reach the age of 60, at which time they may start collecting their retirement pay.¹⁰⁵ Like the Ready Reserves, the Retired Reserves may be recalled to active duty.¹⁰⁶ But they will not be called up until all of the Ready Reserves in their career field have been recalled.¹⁰⁷ Members who retire may elect to not join the retired reserve but their retirement pay will be reduced.¹⁰⁸
- 2.11. Veteran.** Generally, a veteran is a person who served in the military and was discharged under other than dishonorable conditions.¹⁰⁹ But, in the context of veteran's benefits, there are minimum time-in-service requirements or time periods (wartime).¹¹⁰ In addition, some benefits (GI Bill and many Indiana benefits) require no less than an honorable discharge.¹¹¹
- 2.12. Commissioned Officer.** Commissioned officers are in pay grades O-1 to O-10 and W-2 to W-5 (see Warrant Officer below). The commissioned ranks are the highest in the military.¹¹² These officers hold presidential commissions and are confirmed at their ranks by the Senate.¹¹³ Army, Air Force and Marine Corps officers are called company grade officers in the paygrades of O-1 to O-3, field grade officers in paygrades O-4 to O-6 and general officers in paygrades O-7 and higher.¹¹⁴ The equivalent officer groupings in the Navy are called junior grade, mid-grade and flag.¹¹⁵ Officers usually must have a Bachelor's degree.¹¹⁶ While there are some officers who receive a commission without a degree, they are required to earn one before they can be

¹⁰¹ *Desert Shield/Desert Storm Employment or Reserve Component: Extract of Lessons Learned*, THE UNITED STATES NAVAL WAR COLLEGE, Operations Department, 29, <https://www.globalsecurity.org/military/library/report/1995/p162.pdf> (last visited Apr. 2, 2020)

¹⁰² *5,600 Ex-GIs Face Call Up*, CBS NEWS (July 4, 2004), <https://www.cbsnews.com/news/5600-ex-gis-face-call-up/>

¹⁰³ *2012 Insider's Guide to the Guard & Reserve*, MILITARYTIMES.COM, <https://ec.militarytimes.com/guard-reserve-handbook/joining-up/status/> (last visited Apr. 9, 2020)

¹⁰⁴ *2012 Insider's Guide to the Guard & Reserve*, *supra* note 103

¹⁰⁵ *Military Retirement: Background and Recent Developments*, CONGRESSIONAL RESEARCH SERVICE (Updated July 12, 2019), 15, <https://fas.org/sgp/crs/misc/RL34751.pdf> (last visited Apr. 9, 2020)

¹⁰⁶ *Reserve Component and Personnel Issues: Questions and Answers*, CONGRESSIONAL RESEARCH SERVICE (Updated Oct. 4, 2018), 3, <https://fas.org/sgp/crs/natsec/RL30802.pdf> (last visited Apr. 9, 2020)

¹⁰⁷ *Defense Primer: Reserve Forces*, CONGRESSIONAL RESEARCH SERVICE, (Updated Jan. 6, 2020), <https://fas.org/sgp/crs/natsec/IF10540.pdf> (last visited Apr. 9, 2020)

¹⁰⁸ *Retired Reserve -vs- Discharge*, UNITED STATES ARMY HUMAN RESOURCES COMMAND (Feb. 10, 2020), <https://www.hrc.army.mil/content/Retired%20Reserve%20-vs-%20Discharge>

¹⁰⁹ 38 U.S.C. § 101 (2) (2012)

¹¹⁰ Scott D. Szymendera, *Who is a "Veteran?" – Basic Eligibility for Veterans Benefits*, CONGRESSIONAL RESEARCH SERVICE (Updated May 25, 2016), 2, <https://fas.org/sgp/crs/misc/R42324.pdf> (last visited Apr. 9, 2020)

¹¹¹ *Applying for Benefits and Your Character of Discharge*, VA.GOV, https://www.benefits.va.gov/benefits/character_of_discharge.asp (last visited Apr. 2, 2020)

¹¹² *Army Officer Ranks*, MILITARY.COM, military.com/army/officer-ranks.html (last visited Apr. 10, 2020)

¹¹³ *Army Officer Ranks*, *supra* note 112

¹¹⁴ *U.S. Military Rank Insignia*, US DEPARTMENT OF DEFENSE, <https://www.defense.gov/Resources/Insignias/> (last visited Apr. 10, 2020)

¹¹⁵ *U.S. Military Rank Insignia*, *supra* note 114

¹¹⁶ *Becoming an Officer*, TODAY'S MILITARY, <https://www.todaymilitary.com/joining-eligibility/becoming-military-officer> (last visited Apr. 2, 2020)

promoted to O-4.¹¹⁷ Commissioning sources are military academies, Reserve Officer Training Corps (ROTC), and Officer Candidate Schools.¹¹⁸ However, professionals, such as scientists, doctors, nurses, attorneys, and clergy, may be directly commissioned without attending a commissioning program.¹¹⁹

2.13. Enlisted Service Member. Enlisted service members make up about 82% of the Armed Forces and are in pay grades E-1 to E-9 and W-1 (see Warrant Officer below).¹²⁰ Enlisted personnel rank below all officers.¹²¹ Junior enlisted personnel (pay grades E-1 to E-4) typically work in small units across the Department of Defense during their first enlistment term (usually four years).¹²² Junior enlisted personnel make up about 53% of the enlisted workforce.¹²³

2.14. Non-commissioned Officer (NCO). NCOs are part of the enlisted ranks.¹²⁴ They are in pay grades E-4 to E-9 for the Army, Navy, Marines, and Coast Guard and in pay grades E-5 to E-9 for the Air Force.¹²⁵ The NCO corps is referred to as “the backbone” of the armed services.¹²⁶ They are the leaders who are primarily responsible for seeing that the unit’s mission is carried out.¹²⁷ Commissioned officers delegate their authority to the NCOs.¹²⁸ Leadership responsibility increases for servicemembers that are junior NCOs (E-4 or E-5 to E-6).¹²⁹ Senior NCO leadership (E-7 to E-9) is an essential force multiplier in individual and unit training, quality of life issues, training events, exercises and mission rehearsals, real-world joint operations, and sustaining a warrior ethos through Service cultures.¹³⁰

2.15. Warrant Officer. While pay grade W-1 is considered enlisted, pay grades W-2 to W-5 are considered commissioned officers and are referred to as Chief Warrant Officers (or CWs).¹³¹ The term “warrant” refers to the special order that grants the rank.¹³² All military branches, except the Air Force, have warrant officers.¹³³ Warrant Officers are

¹¹⁷ Michael R. Thirtle, *Educational Benefits and Officer-Commissioning Opportunities Available to U.S. Military Servicemembers*, RAND CORPORATION, 67, (2001), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a512073.pdf>

¹¹⁸ Thirtle, *supra* note 117, at 8

¹¹⁹ *Becoming an Officer*, *supra* note 116

¹²⁰ *Defense Primer: Military Enlisted Personnel*, CONGRESSIONAL RESEARCH SERVICE (Dec. 26, 2019), <https://fas.org/sgp/crs/natsec/IF10684.pdf> (last visited Apr. 9, 2020)

¹²¹ *Defense Primer: Military Enlisted Personnel*, *supra* note 120

¹²² *Defense Primer: Military Enlisted Personnel*, *supra* note 120

¹²³ *Defense Primer: Military Enlisted Personnel*, *supra* note 120

¹²⁴ *U.S. Military Rank Insignia*, *supra* note 114

¹²⁵ *U.S. Military Rank Insignia*, *supra* note 114

¹²⁶ Chief Master Sergeant Curtis L. Brownhill, USAF (Ret.) ET AL, *The Noncommissioned and Petty Officer Backbone of the Armed Forces*, NATIONAL DEFENSE UNIVERSITY PRESS (2013), <https://www.jcs.mil/Portals/36/Documents/Publications/ncbackbone.pdf>

¹²⁷ Brownhill, *supra* note 126, at 14

¹²⁸ Dan Elder, *The Officer/Noncommissioned Officer Relationship*, NCO GUIDE (Mar. 31, 2015), <http://ncoguide.net/the-officernoncommissioned-officer-relationship/> (last visited Apr. 10, 2020)

¹²⁹ *U.S. Military Rank Insignia*, *supra* note 114

¹³⁰ *The Joint Command Senior Enlisted Leader Second Edition*, DEPLOYABLE TRAINING DIVISION JOINT STAFF J7 (July 2017), 1, https://www.jcs.mil/Portals/36/Documents/Doctrine/fp/csel_fp.pdf (last visited Apr. 10, 2020)

¹³¹ *U.S. Military Rank Insignia*, *supra* note 114

¹³² Historical Approach to Warrant Officer Classifications, NAVAL HISTORY AND HERITAGE COMMAND, <https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/h/historical-approach-to-warrant-officer-classifications.html> (last visited Apr. 10, 2020)

¹³³ *U.S. Military Rank Insignia*, *supra* note 114

higher in rank than NCOs but are lower in rank compared to commissioned officers.¹³⁴ Warrant Officers acquire their authority from the same source as commissioned officers, but they are considered specialists, compared to commissioned officers, who are considered generalists.¹³⁵ Throughout their careers, Warrant Officers specialize in a technical area like intelligence, aviation, or military police.¹³⁶

2.16. Career Field or Specialty. While every service member graduates from some form of their branch's basic training, where a servicemembers is headed thereafter depends on their military training in a specific career field or specialty.¹³⁷ Each branch of service calls this something different:

- The Army and the Marines call it MOS (Military Occupation Specialty).¹³⁸
- The Air Force calls it AFSC (Air Force Specialty Code).¹³⁹
- The Navy Enlisted Occupational Classification System (NEOCS) consists of two sets of codes: (1) the enlisted rating structure and (2) the Navy Enlisted Classification (NEC) structure.¹⁴⁰ Rating identifies the career field at a high level, such as "hospitalman"; and the NEC (Navy Enlisted Classification) to identify the seaman's specialty, such as "radiology specialist."

Career fields that are routinely understaffed are considered "chronically critical."¹⁴¹ Service members who are in these career fields receive enlistment or re-enlistment bonuses, as well as other benefits.¹⁴²

¹³⁴ Michelle Dwyer, *The Difference Between a Navy and Army Warrant Officer*, CHRON, <https://work.chron.com/difference-between-navy-army-warrant-officer-24658.html> (last visited Apr. 10, 2020)

¹³⁵ *U.S. Army Ranks & Insignias*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/army-ranks/> (last visited Apr. 10, 2020)

¹³⁶ *Army Warrant Officers*, GOARMY.COM, <https://www.goarmy.com/careers-and-jobs/current-and-prior-service/advance-your-career/warrant-officer.html> (last visited Apr. 10, 2020)

¹³⁷ *Military Jobs: Your Future Career in the Armed Forces*, MILITARY ONE SOURCE (Apr. 22, 2019), <https://www.militaryonesource.mil/military-life-cycle/new-to-the-military/getting-settled/your-future-career-in-the-armed-forces> (last visited Apr. 10, 2020)

¹³⁸ *Your Military Job Can Depend on Your ASVAB Test Score*, MILITARY.COM, <https://www.military.com/join-armed-forces/asvab/asvab-scores-and-military-jobs.html> (last visited Apr. 10, 2020)

¹³⁹ *DoD Military Service Information & Military Occupational Specialty (MOS) Frequently Asked Questions*, VA.GOV, <https://www.myhealth.va.gov/mhv-portal-web/dod-military-service-information-faqs> (last visited Apr. 10, 2020)

¹⁴⁰ *Manual of Navy Enlisted Manpower and Personnel Classifications and Occupations Standards Volume 1*, UNITED STATES NAVY (Jan. 2020), 1, https://www.public.navy.mil/bupers-npc/reference/nec/NEOCSVol1/Documents/JAN%2020_OCCSTD_Manual,CH-81jp.pdf; see also *Manual of Navy Enlisted Manpower and Personnel Classifications and Occupations Standards Volume 2*, UNITED STATES NAVY (Jan. 2020), 1, [https://www.public.navy.mil/bupers-npc/reference/nec/NECOSVolII/Documents/NEC%20Manual,Jan20\(rev3\).pdf](https://www.public.navy.mil/bupers-npc/reference/nec/NECOSVolII/Documents/NEC%20Manual,Jan20(rev3).pdf) (last visited Apr. 10, 2020)

¹⁴¹ *Recruitment, Reenlistment Bonuses & More*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/recruitment-reenlistment-bonuses/> (last visited Apr. 10, 2020)

¹⁴² *Recruitment, Reenlistment Bonuses & More*, *supra* note 141

3. Military Pay

3.1. Pay Grades. Pay grades are used to determine wages and benefits based on a service member's rank.¹⁴³ While each branch has a different title, pay grades are administrative classifications used primarily to standardize compensation across the military services.¹⁴⁴ For instance, an E-3 is called a Private First Class in the Army, a Seaman in the Navy and Coast Guard, an Airman First Class in the Air Force, and a Lance Corporal in the Marines.¹⁴⁵ Pay grades are divided into three groups:

- Officer, which begins with O. Officers in pay grades O-1 to O-3 with more than four years in enlisted or warrant officer grades are given the pay grade of O-1E, O-2E, and O-3E. The "E" designation gives them increased wages and recognizes their prior-enlisted service. The "E" designation is dropped at O-4.
- Warrant Officer, which begins with W.
- Enlisted, which begins with E.¹⁴⁶

Pay is determined not only by a service member's rank, but also a service member's years of service.¹⁴⁷ Pay Grades are used to determine a service member's "basic pay" and some "allowances."¹⁴⁸

3.2. Basic Pay. Basic pay is the base pay amount for military members before any special allowances (Basic Allowance for Housing (BAH), Cost-of Living (COLA), clothing allowance, bonuses, special pay) are added.¹⁴⁹ Military members must pay federal tax on their pay, unless they are serving in a combat zone.¹⁵⁰ State tax on a military member's income depends on the military member's domicile that they declare while serving in the military, members of the armed forces do not lose their domicile merely by joining the service and moving about from state to state or abroad in response to military orders.¹⁵¹ Some states exempt all military pay, to see what tax breaks each state offers for military members please visit:

<https://www.military.com/money/personal-finance/taxes/state-tax-information.html>

Currently, Indiana allows a deduction for military income of the actual amount of all military income received (i.e. military pay, retirement pay, and/or survivor's benefits) or \$5000, whichever is less.¹⁵² Also, if the military member is exempt from paying federal taxes on military income, as for income earned while in a combat zone, then the

¹⁴³ *Military Pay 101: Basic Pay, Allowances, and S&I Pay*, MILITARY ONE SOURCE (Apr. 9, 2020), <https://www.militaryonesource.mil/military-life-cycle/new-to-the-military/getting-settled/military-pay-101> (last visited Apr. 10, 2020)

¹⁴⁴ *U.S. Military Rank Insignia*, *supra* note 114

¹⁴⁵ *U.S. Military Rank Insignia*, *supra* note 114

¹⁴⁶ *U.S. Military Rank Insignia*, *supra* note 114

¹⁴⁷ *Military Pay 101*, *supra* note 143

¹⁴⁸ *Military Pay 101*, *supra* note 143

¹⁴⁹ *Basic Pay*, MILITARY.COM, <https://www.military.com/benefits/military-pay/basic-pay> (last visited Apr. 10, 2020)

¹⁵⁰ *Exclusion for Combat Service*, IRS.GOV, <https://www.irs.gov/individuals/military/tax-exclusion-for-combat-service> (Apr. 10, 2020)

¹⁵¹ *Determining a Military Member's State of Domicile*, EGLIN AIR FORCE BASE,

<https://www.eglin.af.mil/Portals/56/documents/Legal/domicile%20and%20legal%20residency.pdf?ver=2018-05-01-140459-957> (last visited Apr. 10, 2020)

¹⁵² *National Guard and Reserve Component Members Deduction*, IN.GOV, <https://www.in.gov/dor/4735.htm#military> (last visited Mar. 20, 2020)

income is also exempt from Indiana taxes; but exempt income is not eligible for the Indiana deduction.¹⁵³

The following charts are the military pay charts for 2020. Note that there are pay charts for Enlisted, Officer, and Warrant Officer for both full-time active duty and reserve/Guard drill weekend pay. The Basic Pay Chart provides the monthly basic pay, though military members are paid on the 1st and the 15th of each month. The Drill Weekend Pay Chart is based on 4 drill periods (or half-days), instead of 5 drill periods. The Defense Finance and Accounting Service (DFAS) is responsible for military pay. For more information on military pay, visit <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html>

¹⁵³ *National Guard and Reserve Component Members Deduction, supra* note 152

2020 MONTHLY BASIC PAY TABLES

EFFECTIVE 1 JANUARY 2020

2020 Basic Pay Chart – < 2 – 18 years

Pay Grade	YEARS OF SERVICE										
	<2	>2	3	4	6	8	10	12	14	16	18
O-10	See Note 1										
O-9	See Note 1										
O-8	10999.50	11360.40	11599.50	11666.10	11964.60	12462.90	12579.00	13052.10	13188.30	13596.00	14186.10
O-7	9140.10	9564.60	9761.10	9917.40	10200.00	10479.60	10802.70	11124.60	11447.70	12462.90	13319.70
O-6	6931.20 See Note 2	7614.60	8114.40	8114.40	8145.30	8494.50	8540.70	8540.70	9025.80	9884.10	10387.50
O-5	5778.00	6509.10	6959.40	7044.30	7325.70	7493.70	7863.60	8135.40	8486.10	9022.50	9277.50
O-4	4985.40	5770.80	6156.30	6241.80	6599.10	6982.80	7460.40	7831.80	8090.80	8238.30	8324.10
O-3	4383.30	4968.60	5362.50	5847.30	6127.80	6435.00	6633.90	7131.30	7131.30	7131.30	7131.30
O-2	3787.50	4313.40	4967.70	5135.70	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30
O-1	3287.10	3421.80	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40
O-3E	See Note 3			5847.30	6127.80	6435.00	6633.90	6960.60	7236.30	7395.00	7610.70
O-2E	See Note 3			5135.70	5241.30	5408.10	5689.80	5907.60	6069.60	6069.60	6069.60
O-1E	See Note 3			4136.40	4416.90	4580.10	4747.20	4911.00	5135.70	5135.70	5135.70
W-5											
W-4	4530.00	4872.60	5012.40	5150.10	5387.10	5621.70	5859.30	6216.00	6529.20	6827.10	7071.30
W-3	4137.00	4309.20	4486.20	4544.10	4728.90	5093.70	5473.20	5652.00	5859.00	6071.70	6455.10
W-2	3660.60	4006.80	4113.30	4186.50	4423.80	4792.80	4975.80	5155.50	5375.70	5547.90	5703.60
W-1	3213.00	3559.20	3651.90	3848.40	4080.60	4423.20	4582.80	4806.60	5026.50	5199.60	5358.60
E-9	See Note 4						5472.90	5596.80	5753.40	5936.70	6123.00
E-8						4480.20	4678.20	4800.90	4947.60	5107.20	5394.60
E-7	3114.30	3399.00	3529.50	3701.40	3836.10	4067.40	4197.90	4428.90	4621.50	4752.60	4892.40
E-6	2693.70	2964.30	3095.10	3222.30	3354.90	3653.10	3769.80	3994.80	4063.50	4113.60	4172.10
E-5	2467.50	2634.00	2761.20	2891.40	3094.50	3306.30	3480.90	3501.90	3501.90	3501.90	3501.90
E-4	2262.60	2378.40	2507.10	2634.60	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50
E-3	2042.70	2171.10	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80
E-2	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50
E-1 > 4	1733.10 See Note 5	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10
E-1 < 4	1602.30 See Note 6										

NOTES:

1. Basic pay rate for Academy Cadets/Midshipmen and ROTC members/applicants is \$1,150.50.
2. Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2020, which is \$16,441.80 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. § 161(c)).
3. Basic pay for O-6 and below is limited by Level V of the Executive Schedule in effect during Calendar Year 2020 which is: \$13,341.60.
4. Creditable service to be taken into account for purposes of this table is active service as an enlisted member or as a warrant officer or as both an enlisted member and a warrant officer, in the case of a commissioned officer on active duty who is paid from funds appropriated for active-duty personnel; or a commissioned officer on active Guard and Reserve duty. Effective November 24, 2003, creditable service to be taken into account for purposes of this table in the case of a commissioned officer is service as an enlisted member or as a warrant officer, or as both an enlisted member and a warrant officer, for which more than 1,460 points have been credited to the officer for the purposes of title 10, U.S.C. § 12732(a)(2). a commissioned officer on active Guard and Reserve duty. Effective November 24, 2003, creditable service to be taken into account for purposes of this table in the case of a commissioned
5. For the Sergeant Major of the Army Master Chief Petty Officer of the Navy, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, or Senior Enlisted Advisor of the JCS, basic pay for 2020 is: \$8,844.30.
6. Applies to personnel who have served 4 months or more on active duty.
7. Applies to personnel who have served less than 4 months on active duty.¹⁵⁴

¹⁵⁴ *Military Pay Tables & information*, DEFENSE FINANCE AND ACCOUNTING SERVICES, <https://www.dfas.mil/militarymembers/payentitlements/Pay-Tables.html> (last visited Apr. 15, 2020)

2020 Basic Pay Chart – 20– 40 years

Pay Grade	Years of Service										
	20	22	24	26	28	30	32	34	36	38	40
O-10	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80
O-9	15546.00	15770.70	16094.10	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80	16441.80
O-8	14730.00	15093.30	15093.30	15093.30	15093.30	15471.30	15471.30	15857.40	15857.40	15857.40	15857.40
O-7	13319.70	13319.70	13319.70	13888.10	13888.10	13888.10	13656.00	13656.00	13656.00	13656.00	13656.00
O-6	10890.90	11177.40	11467.80	12030.00	12030.00	12270.30	12270.30	12270.30	12270.30	12270.30	12270.30
O-5	9530.10	9816.60	9816.60	9816.60	9816.60	9816.60	9816.60	9816.60	9816.60	9816.60	9816.60
O-4	8324.10	8324.10	8324.10	8324.10	8324.10	8324.10	8324.10	8324.10	8324.10	8324.10	8324.10
O-3	7131.30	7131.30	7131.30	7131.30	7131.30	7131.30	7131.30	7131.30	7131.30	7131.30	7131.30
O-2	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30	5241.30
O-1	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40	4136.40
O-3E	7610.70	7610.70	7610.70	7610.70	7610.70	7610.70	7610.70	7610.70	7610.70	7610.70	7610.70
O-2E	6069.60	6069.60	6069.60	6069.60	6069.60	6069.60	6069.60	6069.60	6069.60	6069.60	6069.60
O-1E	5135.70	5135.70	5135.70	5135.70	5135.70	5135.70	5135.70	5135.70	5135.70	5135.70	5135.70
W-5	8054.70	8463.00	8767.50	9104.10	9104.10	9560.10	9560.10	10037.40	10037.40	10540.20	10540.20
W-4	7309.20	7658.40	7945.20	8272.80	8272.80	8437.80	8437.80	8437.80	8437.80	8437.80	8437.80
W-3	6713.70	6868.20	7032.60	7256.70	7256.70	7256.70	7256.70	7256.70	7256.70	7256.70	7256.70
W-2	5890.20	6012.90	6109.80	6109.80	6109.80	6109.80	6109.80	6109.80	6109.80	6109.80	6109.80
W-1	5552.10	5552.10	5552.10	5552.10	5552.10	5552.10	5552.10	5552.10	5552.10	5552.10	5552.10
E-9	6419.40	6671.40	6935.10	7340.10	7340.10	7706.40	7706.40	8092.20	8092.20	8497.50	8497.50
E-8	5540.10	5787.90	5925.60	6264.00	6264.00	6389.70	6389.70	6389.70	6389.70	6389.70	6389.70
E-7	4946.40	5128.50	5226.00	5597.40	5597.40	5597.40	5597.40	5597.40	5597.40	5597.40	5597.40
E-6	4172.10	4172.10	4172.10	4172.10	4172.10	4172.10	4172.10	4172.10	4172.10	4172.10	4172.10
E-5	3501.90	3501.90	3501.90	3501.90	3501.90	3501.90	3501.90	3501.90	3501.90	3501.90	3501.90
E-4	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50	2746.50
E-3	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80	2302.80
E-2	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50	1942.50
E-1	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10	1733.10

2020 Military Reserve/Guard Drill Pay – < 2 - 18 years

(4 drill periods / half days)

Pay Grade	YEARS OF SERVICE										
	<2	>2	3	4	6	8	10	12	14	16	18
O-7	1218.68	1275.28	1301.48	1322.32	1360.00	1397.28	1440.36	1483.28	1526.36	1661.72	1775.96
O-6	924.16	1015.28	1081.92	1081.92	1086.04	1132.60	1138.76	1138.76	1203.44	1317.88	1385.00
O-5	770.40	867.88	927.92	939.24	976.76	999.16	1048.48	1084.72	1131.48	1203.00	1237.00
O-4	664.72	769.44	820.84	832.24	879.88	931.04	994.72	1044.24	1078.64	1098.44	1109.88
O-3	584.44	662.48	715.00	779.64	817.04	858.00	884.52	928.08	950.84	950.84	950.84
O-2	505.00	575.12	662.36	684.76	698.84	698.84	698.84	698.84	698.84	698.84	698.84
O-1	438.28	456.24	551.52	551.52	551.52	551.52	551.52	551.52	551.52	551.52	551.52
O-3E				779.64	817.04	858.00	884.52	928.08	964.84	986.00	1014.76
O-2E				684.76	698.84	721.08	758.64	787.68	809.28	809.28	809.28
O-1E				551.52	588.92	610.68	632.96	654.80	684.76	684.76	684.76
W-5											
W-4	604.00	649.68	668.32	686.68	718.28	749.56	781.24	828.80	870.56	910.28	942.84
W-3	551.60	574.56	598.16	605.88	630.52	679.16	729.76	753.60	781.20	809.56	860.68
W-2	488.08	534.24	548.44	558.20	598.84	639.04	663.44	687.40	716.76	739.72	760.48
W-1	428.04	474.56	486.92	513.12	544.08	589.76	611.04	640.88	670.20	693.28	714.48
E-9							729.72	746.24	767.12	791.56	816.40
E-8						597.36	623.76	640.12	659.68	680.96	719.28
E-7	415.24	453.20	470.60	493.52	511.48	542.32	559.72	590.52	616.20	633.68	652.32
E-6	359.16	395.24	412.68	439.64	447.32	487.08	502.64	532.64	541.80	548.48	556.28
E-5	329.00	351.20	368.16	385.52	412.60	440.84	464.12	466.92	466.92	466.92	466.92
E-4	301.68	317.12	334.28	351.28	366.20	366.20	366.20	366.20	366.20	366.20	366.20
E-3	272.36	289.48	307.04	307.04	307.04	307.04	307.04	307.04	307.04	307.04	307.04
E-2	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00
E-1	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08

2020 Military Reserve/Guard Drill Pay – 20 - 40 years

Pay Grade	Years of Service										
	20	22	24	26	28	30	32	34	36	38	40
O-7	1775.96	1775.96	1775.96	1785.08	1785.08	1820.80	1820.80	1820.80	1820.80	1820.80	1820.80
O-6	1452.12	1490.32	1529.04	1604.00	1604.00	1636.04	1636.04	1636.04	1636.04	1636.04	1636.04
O-5	1270.68	1308.88	1308.88	1308.88	1308.88	1308.88	1308.88	1308.88	1308.88	1308.88	1308.88
O-4	1109.88	1109.88	1109.88	1109.88	1109.88	1109.88	1109.88	1109.88	1109.88	1109.88	1109.88
O-3	950.84	950.84	950.84	950.84	950.84	950.84	950.84	950.84	950.84	950.84	950.84
O-2	698.84	698.84	698.84	698.84	698.84	698.84	698.84	698.84	698.84	698.84	698.84
O-1	551.52	551.52	551.52	551.52	551.52	551.52	551.52	551.52	551.52	551.52	551.52
O-3E	1014.76	1014.76	1014.76	1014.76	1014.76	1014.76	1014.76	1014.76	1014.76	1014.76	1014.76
O-2E	809.28	809.28	809.28	809.28	809.28	809.28	809.28	809.28	809.28	809.28	809.28
O-1E	684.76	684.76	684.76	684.76	684.76	684.76	684.76	684.76	684.76	684.76	684.76
W-5	1073.96	1128.40	1169.00	1213.88	1213.88	1274.68	1274.68	1338.32	1338.32	1405.36	1405.36
W-4	974.56	1021.12	1059.36	1103.04	1103.04	1125.04	1125.04	1125.04	1125.04	1125.04	1125.04
W-3	895.16	915.76	937.68	967.56	967.56	967.56	967.56	967.56	967.56	967.56	967.56
W-2	785.36	801.72	814.64	814.64	814.64	814.64	814.64	814.64	814.64	814.64	814.64
W-1	740.28	740.28	740.28	740.28	740.28	740.28	740.28	740.28	740.28	740.28	740.28
E-9	855.92	889.52	924.68	978.68	978.68	1027.52	1027.52	1078.96	1078.96	1133.00	1133.00
E-8	738.68	771.72	790.08	835.20	835.20	851.96	851.96	851.96	851.96	851.96	851.96
E-7	659.52	683.80	696.80	746.32	746.32	746.32	746.32	746.32	746.32	746.32	746.32
E-6	556.28	556.28	556.28	556.28	556.28	556.28	556.28	556.28	556.28	556.28	556.28
E-5	466.92	466.92	466.92	466.92	466.92	466.92	466.92	466.92	466.92	466.92	466.92
E-4	366.20	366.20	366.20	366.20	366.20	366.20	366.20	366.20	366.20	366.20	366.20
E-3	307.04	307.04	307.04	307.04	307.04	307.04	307.04	307.04	307.04	307.04	307.04
E-2	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00	259.00
E-1	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08	231.08

(4 drill periods / half days)

3.3. Allowances. Basic Pay is only part of a service member's pay. There are also allowances that provide compensation for certain expenses. For instance, if a military member is not living in the barracks, then he or she would receive a Basic Allowance for Housing (BAH) and a Basic Allowance for Subsistence (BAS), or separate rations. Most Allowances are not subject to income tax.¹⁵⁵ The most common Allowances are:

3.3.1. Basic Allowance for Housing (BAH) / Overseas Housing Allowance (OHA).

There are different types and amounts of BAH / OHA, depending on the service member's location, pay grade, and whether he or she has dependents.¹⁵⁶

3.3.1.1. BAH/ OHA With / Without Dependents. A service member who is stationed within the US and does not live in government housing receives BAH.¹⁵⁷ A service member who is stationed overseas and does not live in government housing received OHA.¹⁵⁸ There are also separate BAH and OHA rates for service members who have dependents.¹⁵⁹ If a service member is overseas on an "unaccompanied" tour of duty, the service member may receive not only OHA, but also BAH at the "with dependents" rate for his or her family who are living in the US.¹⁶⁰ If a service member lives off base and is the non-custodial parent, he or she is still considered to be "with dependents: and will still receive BAH at the "with dependent" rate.¹⁶¹

3.3.1.2. Partial BAH. A service member who does not have dependents and lives in government quarters receives a partial-rate BAH based on the service member's pay grade.¹⁶² It is intended to partially compensate service members for living in the barracks or on a ship, because these quarters are usually below DOD standards for single members who live off base and receive BAH.¹⁶³

3.3.1.3. BAH Differential. BAH Differential is intended for service members who live in government quarters, but he or she is ordered to pay child support.¹⁶⁴ However, if the monthly child support payments are less than the BAH Differential, then the service member is not entitled to this Allowance.¹⁶⁵

3.3.1.4. BAH / OHA Tables. Because BAH / OHA are based on locale, pay grade, and dependency status, the rates vary. To find the BAH rate for a particular service

¹⁵⁵ *Allowances*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Pay/Allowances/> (last visited Apr. 13, 2020)

¹⁵⁶ *Basic Allowance for Housing (BAH)*, DEFENSE TRAVEL MANAGEMENT OFFICE, <https://www.defensetravel.dod.mil/site/bah.cfm> (last visited Apr. 13, 2020)

¹⁵⁷ *Basic Allowance for Housing (BAH)*, *supra* note 156

¹⁵⁸ *Overseas Housing Allowance (OHA)*, DEFENSE TRAVEL MANAGEMENT OFFICE, <https://www.defensetravel.dod.mil/site/oha.cfm> (last visited Apr. 13, 2020)

¹⁵⁹ *Different Types of BAH*, MILITARY COMPENSATION, https://militarypay.defense.gov/Pay/Allowances/BAH_Types/ (last visited Apr. 13, 2020)

¹⁶⁰ *Basic Allowance for Housing (BAH)*, MYARMYBENEFITS, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Basic-Allowance-for-Housing-\(BAH\)?serv=122](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Basic-Allowance-for-Housing-(BAH)?serv=122) (last visited Apr. 13, 2020)

¹⁶¹ *Different Types of BAH*, *supra* note 159

¹⁶² *Different Types of BAH*, *supra* note 159

¹⁶³ DoD Financial Management Regulation 7000.14-R, Volume 7A, Chapter 26-35, https://comptroller.defense.gov/Portals/45/documents/fmr/current/07a/07a_26.pdf (last visited Apr. 13, 2020)

¹⁶⁴ *Different Types of BAH*, *supra* note 159

¹⁶⁵ *Different Types of BAH*, *supra* note 159

member, visit the BAH Calculator at <http://www.defensetravel.dod.mil/site/bahCalc.cfm>. To find the OHA rate for a particular service member, visit the OHA Calculator at <http://www.defensetravel.dod.mil/site/ohaCalc.cfm>.

3.3.2. Cost of Living Allowance (COLA). This Allowance is intended to offset the higher cost of living in some geographic locations.¹⁶⁶ The rate is based on not only the geographic location, but also the service member's pay grade, time in service, and dependency status.¹⁶⁷ There are two different types of COLA: CONUS COLA¹⁶⁸ and OCONUS¹⁶⁹ (or overseas) COLA. To find the CONUS COLA rate for a particular service member, visit the CONUS COLA calculator at <http://www.defensetravel.dod.mil/site/conusCalc.cfm>. To find the OCONUS COLA rate for a particular service member, visit the Overseas COLA calculator at <http://www.defensetravel.dod.mil/site/colaCalc.cfm>.

3.3.3. Subsistence Allowances. Subsistence Allowances are intended to pay for the service member's meals. There are two types of Subsistence Allowances:

3.3.3.1 Basic Allowance for Subsistence (BAS). This Allowance is based on the history of the military providing lodging and rations as a benefit of military service.¹⁷⁰ This Allowance is not intended to offset the cost of meals for family members.¹⁷¹ There are only two different BAS rates: Enlisted members receive \$372.71 per month and Officers receive \$256.68 for 2020.¹⁷² All service members receive BAS and if they eat in the mess hall, they must pay for their meals.¹⁷³

3.3.3.2 Family Subsistence Supplemental Allowance (FSSA). This Allowance was created to supplement a service member's BAS to prevent the need for benefits under the Supplemental Nutrition Assistance Program (SNAP).¹⁷⁴ Each service branch sets its own guidelines for FSSA, but the Allowance may not be more

¹⁶⁶ 2018 CONUS Cost of Living Allowance Rates, DEFENSE TRAVEL MANAGEMENT OFFICE, <https://www.defensetravel.dod.mil/site/cola.cfm> (last visited Apr. 13, 2020)

¹⁶⁷ DOD Releases 2020 CONUS COLA Rates, US DEPARTMENT OF DEFENSE (Dec. 20, 2019), <https://www.defense.gov/Newsroom/Releases/Release/Article/2045268/dod-releases-2020-conus-cola-rates/>

¹⁶⁸ CONUS is the military term for the "contiguous US." Sometimes the "CON" is referred to as "continental." CONUS includes all of the states, except for Alaska and Hawaii.

¹⁶⁹ OCONUS is the military term for "outside continental US," and includes Alaska, Hawaii, and US territories, as well as other countries.

¹⁷⁰ Understanding How Basic Allowance for Subsistence Works, MILITARY.COM (Dec. 22, 2010), <https://www.military.com/paycheck-chronicles/2010/12/22/understanding-basic-allowance-for-subsistence>

¹⁷¹ Basic Allowance for Subsistence (BAS), MILITARY COMPENSATION, <https://militarypay.defense.gov/PAY/ALLOWANCES/bas.aspx> (last visited Apr. 13, 2020)

¹⁷² Basic Allowance for Subsistence (BAS), *supra* note 171

¹⁷³ 2020 BAS (Basic Allowance for Subsistence) Rates, MILITARYBENEFITS.INFO, <https://militarybenefits.info/2020-bas-basic-allowance-for-subsistence-rates/> (last visited Apr. 13, 2020)

¹⁷⁴ Family Subsistence Supplemental Allowance (FSSA) Overview, MILCONNECT, <https://milconnect.dmdc.osd.mil/milconnect/help/milconnect.htm#topics/fssa.htm> (last visited Apr. 13, 2020)

than \$1,100 per month.¹⁷⁵ The amount of the FSSA is intended to bring the service member's income up to 130% of poverty.¹⁷⁶

3.3.4 Special and Incentive Pay. Service members may be entitled to Special Pay, depending on their duty assignment.¹⁷⁷ There are more than 60 varieties of Special Pay, this includes popular special pay categories such as Combat Pay, Flight Pay, Hazardous Duty Pay, and Family Separation Pay.¹⁷⁸ Usually, Special Pay is intended to be “incentive” pay and is based on different factors, depending on occupation specialties or critical skill areas.¹⁷⁹ Special Pay can be based on:

- Pay grade (Submarine Duty Pay, Sea Pay)
- Flat monthly rate, regardless of pay grade (Family Separation Allowance, Hazardous Duty Non-Aircrew Pay)
- Branch of service (Clothing Allowance)
- Medical Specialty/Board Certification¹⁸⁰

¹⁷⁵ *Family Subsistence Supplemental Allowance (FSSA) Overview*, *supra* note 174

¹⁷⁶ *Family Subsistence Supplemental Allowance*, THE MILITARY WALLET, <https://themilitarywallet.com/family-supplemental-subsistence-allowance/> (last visited Apr. 13, 2020)

¹⁷⁷ *Special Pay Overview*, MILITARY.COM, military.com/benefits/military-pay/special-pay/special-pay-overview.html (last visited Apr. 13, 2020)

¹⁷⁸ *Special and Incentive Pay*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Pay/Special-and-Incentive-Pays/> (last visited Apr. 13, 2020)

¹⁷⁹ *Special and Incentive Pay*, *supra* note 178

¹⁸⁰ *Special and Incentive Pay Index, Title 37, Chapter 5, Subchapter I - S&I pays currently for active duty members*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Pay/Special-and-Incentive-Pays/Index/> (last visited Apr. 13, 2020)

4. Leave and Earnings Statement (LES)

4.1. Introduction. The LES is the service member's pay stub.¹⁸¹ All branches of the military, including the Reserves and National Guard use the LES; but there are some differences between the regular branches and the Reserves/National Guard about what information is on the LES. The LES may be provided to the service member either as a hard copy or online via a system called MyPay (<https://mypay.dfas.mil/#/>). To view the LES online, the service member must enter his or her login ID and password or, if the servicemember is in possession of a Common Access Card (CAC), the Smart Card Login feature.

DEFENSE FINANCE AND ACCOUNTING SERVICE MILITARY LEAVE AND EARNINGS STATEMENT																										
ID	NAME (LAST, FIRST, MI)				SOC. SEC. NO.	GRADE	PAY DATE	YRS SVC	ETS	BRANCH	ADSN/DSSN	PERIOD COVERED														
1				2		3	4	5	6	7	8	9														
ENTITLEMENTS				DEDUCTIONS				ALLOTMENTS				SUMMARY														
TYPE		AMOUNT		TYPE		AMOUNT		TYPE		AMOUNT		+ AMT FWD				13										
A B C D E F G H I J K L M N O	10				11				12				- TOT ENT				14									
													- TOT DED				15									
													- TOT ALMT				16									
													= NET AMT				17									
													- CR.FWD				18									
													= EOM PAY				19									
													DIEMS		RET PLAN											
	TOTAL				20				21				22				23		24							
	LEAVE		BF BAL	ERND	USED	CR. BAL	ETS BAL	LV LOST	LV PAID	USE/LOSE	FED TAXES		WAGE PERIOD	WAGE YTD	M/S	EX	ADD'L TAX	TAX YTD								
			25	26	27	28	29	30	31	32	33		34	35	36	37	38									
FICA TAXES		WAGE PERIOD		SOC WAGE YTD		SOC TAX YTD		MED WAGE YTD		MED TAX YTD		STATE TAXES		ST	WAGE PERIOD	WAGE YTD	M/S	EX	TAX YTD							
		39		40		41		42		43		44		45	46	47	48	49								
PAY DATA		BAQ TYPE	BAQ DEPN	VHA ZIP	RENT AMT	SHARE	STAT	JFTR	DEPN	2D JFTR	BAS TYPE	CHARITY YTD		TPC	PACIDN											
		50	51	52	53	54	55	56	57	58	59	60		61	62											
Thrift Savings Plan (TSP)		BASE PAY RATE		BASE PAY CURRENT		SPEC PAY RATE		SPEC PAY CURRENT		INC PAY RATE		INC PAY CURRENT		BONUS PAY RATE		BONUS PAY CURRENT										
		63		64		65		66		67		68		69		70										
		CURRENTLY NOT USED				TSP YTD DEDUCTIONS				DEFERRED				EXEMPT				CURRENTLY NOT USED								
		71				72				73				74				75								
REMARKS		YTD ENTITLE				YTD DEDUCT																				
		76				77				78																

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4.2. Fields 1-9 – Identification Information

- **Field 1 – NAME.** The member's name in last, first, middle initial format.
- **Field 2 – SOC. SEC. NO.** The member's Social Security Number.
- **Field 3 – GRADE.** The member's current pay grade.
- **Field 4 – PAY DATE.** The date the member entered active duty for pay purposes in YYMMDD format. This is the same as the Pay Entry Base Date (PEBD).
- **Field 5 – YRS SVC.** In two digits, the actual years of creditable service.

¹⁸¹ How to Request Form 702, MILITARYBENEFITS.INFO, <https://militarybenefits.info/how-to-request-form-702-les/> (last visited Apr. 13, 2020)

- **Field 6 – ETS.** The Expiration Term of Service in YYMMDD format. This is the Expiration of Active Obligated Service (EAOS). This date does not include the service member’s commitment to the IRR.
- **Field 7 – BRANCH.** The branch of service (Army, Navy, Air Force, Marines) OR program (Reserves or National Guard).
- **Field 8 – ADSN/DSSN.** The Disbursing Station Symbol Number used to identify each disbursing office.
- **Field 9 – PERIOD COVERED.**
 - **For Regular Active Duty:** This is the period covered by the individual LES. Normally, it is for one calendar month. If this is a separation LES, the separation date will appear in this field.
 - **For Reserves and National Guard:** This field will identify the “Check Date.”

4.3 Fields 10-24 – Entitlements, Deductions, Allotments, Totals, Summary, and Retirement Plan

- **Field 10 – ENTITLEMENTS.** Each entitlement, including basic pay and allowances, being paid is listed here. There is enough space for 15 entitlements. If there are more than 15 entitlements, the overflow is printed in the remarks block.
- **Field 11 – DEDUCTIONS.** Each deduction is listed here. Deductions include taxes, Servicemembers’ Group Life Insurance (SGLI) premium, Mid-month pay (if the LES is for the end of the month pay), dependent dental plan premium, and debt payments. If there are any “Miscellaneous Deductions,” a description of the deduction is provided in the Remarks block. For instance, child support would be listed as a miscellaneous deduction and the remarks section would identify that the amount paid was for child support (and the amount paid year to date). There is enough space for 15 deductions. If there are more than 15 deductions, the overflow is printed in the remarks block.
- **Field 12 – ALLOTMENTS.**
 - **For Regular Active Duty:** Each allotment is listed here. Allotments include discretionary and non-discretionary allotments for savings and/or checking accounts, insurance, bonds, etc. A service member can establish up to 6 discretionary allotments, but there can be no more than 15 allotments per month. If a member has more than one of the same type of allotment, the only way to differentiate between them is the dollar amount.
 - **For Reserves and National Guard:** Allotments are not allowed. But for AGR, allotments will be listed in Field 11, Deductions.
- **Field 13 – +AMT FWD.** The amount of all unpaid pay and allowances due from the prior LES.
- **Field 14 – + TOT ENT.** The total of all entitlements listed and should match the figure from Field 20.
- **Field 15 – - TOT DED.** The total of all deductions listed and should match the figure from Field 21.
- **Field 16 – - TOT ALMT.** The total of all allotments listed and should match the figure from Field 22.

- **Field 17 – = NET AMT.** The amount of all unpaid pay and allowances, plus total entitlements, minus deductions and allotments due on the current LES.
- **Field 18 – - CR FWD.** The amount of all unpaid pay and allowances due to reflect on the next LES as the +AMT FWD.
- **Field 19 – = EOM PAY.** The amount of the payment to be paid to the member on payday.
- **Fields 20 - 22 – TOTAL.** The total amounts for the entitlements, deductions and allotments respectively.

4.4. Fields 25-32 – Leave (or vacation days) Information.

- **Field 25 – BF BAL.** The “brought forward” leave balance. The balance is the accrued leave amount from either the beginning of the fiscal year, when active duty began, or the day after the member was paid Lump-Sum Leave (LSL). Service members may sell back up to 60 days of leave over their career.
- **Field 26 – ERND.** The cumulative amount of leave earned in the current fiscal year or current term of enlistment if the member reenlisted or extended since the beginning of the fiscal year. Normally, a service member earns 2.5 days of leave each month.
- **Field 27 – USED.** The cumulative amount of leave used in the current fiscal year or current term of enlistment if member reenlisted or extended since the beginning of the fiscal year.
- **Field 28 – CR BAL.** The current leave balance as of the end of the period covered by the LES.
- **Field 29 – ETS BAL.** The projected leave balance to the member’s Expiration Term of Service (ETS).
- **Field 30 – LV LOST.** The number of days of leave that has been lost. Any accrued leave amounts over 60 days (75 days until September 30, 2013) is lost at the end of the fiscal year. But if a service member serves on active duty for a continuous period of at least 120 days in an area in which they are entitled to special pay for duty subject to hostile fire or imminent danger, he or she may accumulate up to 120 days over the 60 days (or 75 days until September 30, 2013). The service member has three years (or four years if the leave was accrued between October 1, 2008 and September 30, 2013) to use the additional 120 days of leave before he or she will lose it.
- **Field 31 – LV PAID.** The number of days of leave paid to date.
- **Field 32 – USE/LOSE.** The projected number of days of leave that will be lost if not taken in the current fiscal year on a monthly basis. The number of days of leave in this block will decrease when the service member takes leave.

4.5. Fields 33-38 – Federal Income Tax Withholding (FITW) Information.

- **Field 33 – WAGE PERIOD.** The amount of money earned this LES period that is subject to Federal Income Tax Withholding (FITW).
- **Field 34 – WAGE YTD.** The money earned year-to-date that is subject to FITW.
- **Field 35 – M/S.** The marital status used to compute the FITW.

- **Field 36 – EX.** The number of exemptions used to compute the FITW.
- **Field 37 – ADD’L TAX.** The member-specified additional dollar amount to be withheld in addition to the amount computed by the Marital Status and Exemptions.
- **Field 38 – TAX YTD.** The cumulative total of FITW withheld throughout the calendar year.

4.6. Fields 39-43 – Federal Insurance Contributions Act (FICA) information.

- **Field 39 – WAGE PERIOD.** The amount of money earned this LES period that is subject to FICA.
- **Field 40 – SOC WAGE YTD.** The wages earned year-to-date that are subject to FICA.
- **Field 41 – SOC TAX YTD.** Cumulative total of FICA withheld throughout the calendar year.
- **Field 42 – MED WAGE YTD.** The wages earned year-to-date that are subject to Medicare.
- **Field 43 – MED TAX YTD.** Cumulative total of Medicare taxes paid year-to-date.

4.7. Fields 44-49 – State Income Tax Withholding (SITW) Information.

- **Field 44 – ST.** The two-digit postal abbreviation for the state the member elected.
- **Field 45 – WAGE PERIOD.** The amount of money earned this LES period that is subject to State Income Tax Withholding (SITW).
- **Field 46 – WAGE YTD.** The money earned year-to-date that is subject to SITW.
- **Field 47 – M/S.** The marital status used to compute the SITW.
- **Field 48 – EX.** The number of exemptions used to compute the SITW.
- **Field 49 – TAX YTD.** The cumulative total of SITW withheld throughout the calendar year.

4.8. Fields 50-62 – Additional Pay Data.

- **Field 50 – BAQ TYPE.** The type of Basic Allowance for Housing or Overseas Housing Allowance (formerly called Basic Allowance for Quarters or BAQ) being paid (“with dependents,” “without dependents,” or “partial”).
- **Field 51 – BAQ DEPN.** The type of dependent that the service member has for BAH/OVA purposes. The dependent type may be in plain English or identified by a code. The codes are:
 - I - Member married to member/own right
 - R - Own right
 - A - Spouse
 - C - Child
 - W - Member married to member, child under 21
 - G - Grandfathered
 - D - Parent
 - K - Ward of the court
 - L - Parents in Law
 - S - Student (age 21-22)

- T - Handicapped child over age 21
- **Field 52 – VHA ZIP.** The zip code used in the computation of BAH/OVA (formerly, this was called Variable Housing Allowance or VHA and supplemented BAQ).
- **Field 53 – RENT AMT.** The amount of rent paid for housing if applicable.
- **Field 54 – SHARE.** The number of people with which the member shares housing costs.
- **Field 55 – STAT.** The service member’s tour status; i.e., accompanied or unaccompanied (by a dependent). If a service member has dependents but is stationed at a base without his or her dependents, then the status is “unaccompanied” and the service member is entitled to a housing allowance for the dependents.
- **Field 56 – JFTR.** The Joint Federal Travel Regulation (JFTR) code based on the location of the member for Cost of Living Allowance (COLA) purposes.
- **Field 57 – DEPNS.** The number of dependents the member has for BAH/OVA purposes.
- **Field 58 – 2D JFTR.** The JFTR code based on the location of the member’s dependents for COLA purposes.
- **Field 59 – BAS TYPE.** An alpha code that indicates the type of Basic Allowance for Subsistence (BAS) the member is receiving, if applicable. This field will be blank for officers.
 - B - Separate Rations
 - C – TDY (temporary duty) /PCS (permanent change of station) /Proceed Time (Proceed time is a period of time not chargeable as leave, delay, or allowed travel time. It is granted for the purpose of facilitating necessary personal arrangements inherent in certain permanent change of station (PCS) orders.)
 - H - Rations-in-kind not available
 - K - Rations under emergency conditions
- **Field 60 – CHARITY YTD.** The cumulative amount of charitable contributions for the calendar year.
- **Field 61 – TPC.**
 - ***For Regular Active Duty:*** This field is not used.
 - ***For Reserves and National Guard:*** This field identifies the Training Program Code (or type of service) that the service member is under:
 - A – Normal pay status code for a regular service member on regular duty.
 - C – Funeral Honors duty.
 - M – Annual training over 30 days.
 - N – Death.
 - O – Training for Health Professionals Scholarship Program (HPSP), Reserve Officers’ Training Corps (ROTC), and Special Active Duty for Training (ADT) (School) over 30 days.
 - T – ADT (school) over 29 days.
 - U – Undergraduate pilot training, in-grade pilot, navigator and advance flying training.

- X – Stipend Tour of HPSP (Health Professions Scholarship Program) participants and subsistence for ROTC participants.
- Z – Administrative and support training (except recruiting).
- **Field 62 – PACIDN.** The activity Unit Identification Code (UIC)

4.9. Fields 63-75 – Thrift Savings Plan (TSP) Information. NOTE: TSP is similar to a 401(k) and is discussed in Section 7).

- **Field 63 – BASE PAY RATE.** The percentage of base pay elected for TSP contributions.
- **Field 64 – BASE PAY CURRENT.** Reserved for future use.
- **Field 65 – SPECIAL PAY RATE.** The percentage of Specialty Pay elected for TSP contribution.
- **Field 66 – SPECIAL PAY CURRENT.** Reserved for future use.
- **Field 67 – INCENTIVE PAY RATE.** Percentage of Incentive Pay elected for TSP contribution.
- **Field 68 – INCENTIVE PAY CURRENT.** Reserved for future use.
- **Field 69 – BONUS PAY RATE.** The percentage of Bonus Pay elected towards TSP contribution.
- **Field 70 – BONUS PAY CURRENT.** Reserved for future use.
- **Field 71 –** Reserved for future use.
- **Field 72 – TSP YTD DEDUCTION (TSP YEAR-TO-DATE DEDUCTION).** Dollar amount of TSP contributions deducted for the year.
- **Field 73 – DEFERRED.** Total dollar amount of TSP contributions that are deferred for tax purposes.
- **Field 74 – EXEMPT.** Dollar amount of TSP contributions that are reported as tax exempt to the Internal Revenue Service (IRS).
- **Field 75 –** Reserved for future use.

4.10. Fields 76-78 – Remarks and Miscellaneous Information.

- **Field 76 – REMARKS.** This area is used to provide the service member with general notices from varying levels of command, as well as the literal explanation of starts, stops, and changes to pay items in the entries within the “ENTITLEMENTS,” “DEDUCTIONS,” and “ALLOTMENTS” fields.
- **Field 77 – YTD ENTITLE.** The cumulative total of all entitlements for the calendar year.
- **Field 78 – YTD DEDUCT.** The cumulative total of all deductions for the calendar year.¹⁸²

¹⁸² *How to Navigate Your LES*, MILITARYTIMES.COM (Feb. 15, 2016), <https://www.militarytimes.com/native/navy-federal/2016/02/15/how-to-navigate-your-les/>

5. Military Retirement & Pension

5.1. Overview. A military retirement provides a pension and benefits to a service member who has served 20 years or more in the military.¹⁸³ The retirement benefits depend on when the service member entered the military, how many years they served, and whether they retired from Active Duty or from the Reserves or National Guard.¹⁸⁴ Prior to 2018, if a service member leaves the military before 20 years, then they are not eligible for a military retirement (unless the branch of service is offering an “early out” retirement or they were medically retired).¹⁸⁵ However, since 2018, new recruits are automatically under the “blended” retirement program, which allows service members to keep a portion of their retirement savings in a Thrift Saving Plan (TSP).¹⁸⁶ The TSP is intended to provide retirement income and is similar to a 401(k).¹⁸⁷ If a service member is injured while serving, they may be offered a medical retirement.¹⁸⁸ All active duty members and Reserves or National Guard members on active duty of all eras were eligible to participate in the Thrift Savings Plan (TSP) but the opt in period for the Blended Retirement System closed on Dec. 31, 2018.¹⁸⁹ For more information on the TSP, see Section 7, Thrift Savings Plan.

5.2. Regular Active Duty Retirement. Active component personnel are eligible for retirement (i.e., vested) after completing 20 years of service; they begin collecting their retirement immediately.¹⁹⁰ Thus, an active duty service member who entered the military when they were 17-years old may begin collecting their retirement as early as 37-years old. There are four different retirement programs, depending on when the service member initially entered the military: “Final Pay,” “High 36,” “Career Status Bonus (CSB)/REDUX,” and “Blended Retirement.”¹⁹¹ Regardless of which program a service member is eligible for, they may retire after 20 years and receive a percentage of their basic pay.¹⁹² Further, service members receive a Cost of Living Adjustment (COLA) every year, though this amount varies depending on which program they are eligible for.¹⁹³

5.2.1. Final Pay. Service members who entered the military before September 8, 1980 are eligible for the Final Pay retirement program.¹⁹⁴ Under the Final Pay program, a

¹⁸³ *Military Pay and Pensions*, USA.GOV, <https://www.usa.gov/military-pay> (last visited Apr. 13, 2020)

¹⁸⁴ *Military Retirement: Background and Recent Developments*, *supra* note 105 at 1

¹⁸⁵ *Military Retirement: Background and Recent Developments*, *supra* note 105 at 1

¹⁸⁶ *The Uniformed Services Blended Retirement System*, US DEPARTMENT OF DEFENSE, 2, <https://militarypay.defense.gov/Portals/3/Documents/BlendedRetirementDocuments/BRS%20Frequently%20Asked%20Questions%2003282018.pdf?ve=r=2018-03-28-235150-797> (last visited Apr. 13, 2020)

¹⁸⁷ *The Uniformed Services Blended Retirement System*, *supra* note 186 at 8

¹⁸⁸ Karen Jowers, *Retirement Guide: Army Officer Wonders if Injuries Affect Retirement Decision*, MILITARYTIMES.COM (Dec. 19, 2017), <https://www.militarytimes.com/pay-benefits/military-retirement/2017/12/19/retirement-guide-army-officer-wants-to-serve-20-but-injuries-cast-doubt/>

¹⁸⁹ *The Uniformed Services Blended Retirement System*, *supra* note 186 at 2

¹⁹⁰ *Military Retirement: Background and Recent Developments*, *supra* note 105 at 1

¹⁹¹ *Retired Pay*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Pay/Retirement/> (last visited Apr. 13, 2020)

¹⁹² *Retired Pay*, *supra* note 191

¹⁹³ *Retirement Cost of Living Adjustments (COLA)*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Pay/Retirement/Cola.aspx> (last visited Apr. 13, 2020)

¹⁹⁴ *Retired Pay*, *supra* note 191

pension is based on the retiree's final monthly base pay multiplied by 2.5% for every year of their service.¹⁹⁵ The total percentage is called the "multiplier."¹⁹⁶ Thus, for 20 years of service, a retiree will collect 50% of their basic pay.¹⁹⁷ A retiree under the Final Pay program receives a COLA increase that is based on the Consumer Price Index (CPI) each year.¹⁹⁸

5.2.2. High 36. Service members who entered the military between September 8, 1980 and August 1986 are eligible for the High 36 retirement program.¹⁹⁹ Additionally, service members who entered the military after August 1986 may choose either the High 36 retirement program or the Career Status Bonus (CSB)/REDUX program.²⁰⁰ Under the High 36 program, a pension is based on the average of the highest 36 months of basic pay.²⁰¹ Like the Final Pay program, the service member earns 2.5% of their basic pay for each year of service.²⁰² A retiree under the High 36 program receives a COLA increase that is based on the Consumer Price Index (CPI) each year.²⁰³

5.2.3. Career Status Bonus (CSB) / REDUX. Service members who entered the military after August 1986 are eligible for the CSB/REDUX retirement program or the High 36 retirement program.²⁰⁴ When a service member reaches their 15th year of service, they must choose their retirement program and if they choose the CSB/REDUX program, they receive a bonus of \$30,000 (roughly \$21,000 after taxes).²⁰⁵ Under the CSB/REDUX, a pension is based on the average of the highest 36 months of basic pay like the High 36.²⁰⁶ But, unlike the Final Pay and High 36 programs, a service member earns 2% of their basic pay for the first 20 years of service and earns 3.5% of their basic pay for every year they serve past 20 years.²⁰⁷ Thus, under this program, a service member who retires with 20 years of service is entitled to a pension of 40% of their basic pay.²⁰⁸ A retiree under the CSB/REDUX program receives a COLA increase that is based on the Consumer Price Index (CPI) minus 1% each year.²⁰⁹ But when a retiree reaches 62-years old, their COLA and the multiplier (the percentage for each year of service) is readjusted so that they get the same pay as a retiree on the Final Pay or High 36 programs.²¹⁰

¹⁹⁵ *Computing Retired Military Pay*, MILITARY.COM, <https://www.military.com/benefits/military-pay/computing-retired-military-pay.html> (last visited Apr. 13, 2020)

¹⁹⁶ *Retired Pay*, *supra* note 191

¹⁹⁷ *Retired Pay*, *supra* note 191

¹⁹⁸ *Retired Pay*, *supra* note 191

¹⁹⁹ *Retired Pay*, *supra* note 191

²⁰⁰ *CSB/REDUX*, DEFENSE FINANCE AND ACCOUNTING SERVICE, <https://www.dfas.mil/retiredmilitary/plan/estimate/csbredux.html> (last visited Apr. 13, 2020)

²⁰¹ *Retired Pay*, *supra* note 191

²⁰² *Retired Pay*, *supra* note 191

²⁰³ *Retired Pay*, *supra* note 191

²⁰⁴ *CSB/REDUX*, *supra* note 200

²⁰⁵ *Attachment 5, Department of Defense Factsheet on Career Status Bonus*, 22, <https://www.jber.jb.mil/Portals/144/Services-Resources/personnel/career-development/Career-Development-CSB%20Program-Guidance.pdf> (last visited Apr. 13, 2020)

²⁰⁶ *Attachment 5*, *supra* note 205

²⁰⁷ *Attachment 5*, *supra* note 205

²⁰⁸ *Attachment 5*, *supra* note 205

²⁰⁹ *Attachment 5*, *supra* note 205

²¹⁰ *Attachment 5*, *supra* note 205 at 23

5.2.4. Blended Retirement System. The 2016 National Defense Authorization Act provided for a new retirement system that provides automatic and matching Thrift Savings Plan contributions, a mid-career compensation incentive, and monthly retired pay annuity.²¹¹ New recruits entering the military after January 1, 2018 are enrolled automatically into this program.²¹² All active duty members and Reserves or National Guard members on active duty of all eras were eligible to participate in the Thrift Savings Plan (TSP) but the opt in period for the Blended Retirement System closed on Dec. 31, 2018.²¹³

Under the Blended Retirement System, the DoD will automatically contribute 1% of the service members' basic pay into their TSP after 60 days of service.²¹⁴ Then, after three years of service, DoD will match up to 4% of the service members' contribution to their TSP.²¹⁵ Additionally, beginning at three years of service, the TSP is fully vested.²¹⁶ So even if a service member does not serve the full 20 years, he or she will have retirement savings from military service.²¹⁷ For more information on TSPs, see Section 7, Thrift Savings Plan (TSP).

After 12 years of service, service members will receive a cash payment if they opt to stay in the military and perform additional obligated service, usually for a minimum of three more years.²¹⁸ Active duty Service members (including Active Guard Reserve (AGR)/Full Time Support (FTS)) personnel may be eligible for a continuation pay multiplier of 2.5 to 13 times their monthly basic pay.²¹⁹ Members of the National Guard or Reserve in a drilling status may be eligible to receive a multiplier of 0.5 to 6 times their monthly basic pay (as if serving on active-duty).²²⁰

After completing 20 years of military service, service members will be eligible for retired pay annuity.²²¹ The amount of retired pay is calculated by multiplying 2% by number of years served multiplied by the retired base pay.²²² Retired base pay is calculated by averaging the highest 36 months of basic pay.²²³

5.2.5 Lump Sum Payment. Under the BRS, Service members may be eligible to elect to

²¹¹ *A Guide to the Unformed Services Blended Retirement System*, OFFICE OF FINANCIAL READINESS, 5, <https://www.woundedwarrior.marines.mil/Portals/213/Docs/Handbooks/A%20Guide%20to%20the%20Uniformed%20Services%20BR.pdf?ver=2018-01-03-160445-350> (last visited Apr. 13, 2020)

²¹² *The Uniformed Services Blended Retirement System*, *supra* note 186 at 2

²¹³ *Defense Department Successfully Closes Blended Retirement System Opt-In Window*, US DEPARTMENT OF DEFENSE (Jan. 14, 2019), <https://www.defense.gov/Newsroom/Releases/Release/Article/1731168/defense-department-successfully-closes-blended-retirement-system-opt-in-window/>

²¹⁴ *Frequently Asked Questions Regarding the New Blended Retirement System*, US DEPARTMENT OF DEFENSE, 5, <https://militarypay.defense.gov/Portals/3/Documents/BlendedRetirementDocuments/BRS%20Frequently%20Asked%20Questions%205.01.2017.pdf> (last visited Apr. 14, 2020)

²¹⁵ *Frequently Asked Questions Regarding the New Blended Retirement System*, *supra* note 214 at 6

²¹⁶ *A Guide to the Unformed Services Blended Retirement System*, *supra* note 211 at 15

²¹⁷ *A Guide to the Unformed Services Blended Retirement System*, *supra* note 211 at 7

²¹⁸ *A Guide to the Unformed Services Blended Retirement System*, *supra* note 211 at 17

²¹⁹ *Continuation Pay*, MYARMYBENEFITS, <https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Continuation-Pay?serv=125> (last visited Apr. 14, 2020)

²²⁰ *Continuation Pay*, *supra* note 219

²²¹ *Military Retirement: Background and Recent Developments*, *supra* note 105 at 6

²²² *Military Retirement: Background and Recent Developments*, *supra* note 105 at 6

²²³ *Military Retirement: Background and Recent Developments*, *supra* note 105 at 6

receive a discounted portion of their retired pay up front. The decision to elect a lump sum at retirement is entirely up to the service member. If the service member does not choose the lump sum option, they receive their full retired pay upon eligibility. If they opt for a lump sum, they will need to decide if they want 25 percent or 50 percent of your future retirement payments at retirement. They may receive one lump sum payment or annual equal payments — once a year for up to four years. Monthly retired pay reverts to the full amount at full Social Security retirement age, which is age 67 for most individuals.

- *National Guard and Reserve.* If the service member chooses the lump sum they must notify their military branch no less than 90 days before receipt of retired pay.
- *Key aspects/Trade-offs.* When the service member takes either 25 or 50 percent in a lump sum, their monthly paycheck will then be 75 or 50 percent of the full value of their monthly retired pay until they reach full Social Security age, which is age 67 for most individuals.
- *Cost.* The lump sum of 25 or 50 percent is discounted to the present value based on an annual DoD discount rate published in June of each year. Note that a lifetime of equal, personal monthly payments is usually worth more.²²⁴

5.2.6 Eligibility for Continuation Pay.

- *Active Duty.* This one-time payout is to Active Duty Servicemembers (including Active Guard Reserve (AGR)/Full Time Support (FTS)) personnel who can enter into an agreement to perform additional obligated service; these servicemembers may be eligible for a continuation pay multiplier of 2.5 to 13 times their monthly basic pay.²²⁵
- *National Guard or Reserve.* These Servicemembers are also eligible for continuation pay. Eligible service members must be in a pay status and be able to enter into an agreement to perform additional obligated service. Servicemembers may receive from 0.5 to 6 times the monthly basic pay of a member of the same pay grade, as if serving on active duty.²²⁶

5.3. Reserves & National Guard Retirement. Reservists and National Guard members who complete at least 20 “qualifying” years of service are eligible for retired pay when they reach the age of 60.²²⁷ But for service members who served 90 consecutive days or more for war or a national emergency after January 28, 2008, they may begin collecting their retirement pay earlier.²²⁸ Under these circumstances, the service member is eligible for retired pay 90 days earlier for each 90 consecutive days

²²⁴ *A Guide to the Unformed Services Blended Retirement System*, *supra* note 211 at 17

²²⁵ *Continuation Pay*, *supra* note 219

²²⁶ *Continuation Pay*, *supra* note 219

²²⁷ *Reserve Retirement*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Pay/Retirement/Reserve.aspx> (last visited Apr. 14, 2020)

²²⁸ *Reduced Age Retirement*, UNITED STATES ARMY HUMAN RESOURCES COMMAND (Jan. 7, 2020),

<https://www.hrc.army.mil/content/REDUCED%20AGE%20RETIREMENT>

served.²²⁹ In effect, if a service member served a year of active duty after January 28, 2008, they may begin collecting their retired pay when they reach the age of 59, instead of 60. Reservists and National Guard members are eligible for either the Final Pay, the High 36 retirement programs, and the Blended Retirement System, though the amount of their pay is based on a “point system.”²³⁰ Reserve and National Guard Servicemembers were eligible to opt in for the Blended Retirement System if they were in drilling or active Service, in a paid status on Dec. 17, 2017, and had less than 4,320 retirement points.²³¹ The opt-in period for most service members closed Dec. 31, 2018.²³² All troops, including Reservists and Guardsmen, entering the service in 2018 were automatically enrolled into the Blended Retirement System.²³³

5.3.1. The Point System. Points towards retirement are earned based on time served.

Points are awarded based on the following:

- One point for each day of active service. Active service is either active duty or active duty for training (the yearly two weeks of service or training at a school). If a Reservist or National Guard member served in the regular active duty military before joining the unit, they earn one point for each day they served in the regular active duty military.
- 15 points for each year of membership in a Reserve Component (Reserve and National Guard).
- One point for each four-hour period on a drill weekend (also called unit training assembly or UTA). But this cannot be more than 2 points per day.
- One point for each day in which a member is in a funeral honors duty status.
- Satisfactory completion of accredited correspondence courses (for the service member’s career specialty) at one point for each three credit hours earned.

The maximum number of points that a service member may earn per year is 365 (or 366 in a leap year). Points may be either “inactive” or “active.” Inactive points are earned for drill weekends, funeral honors, and correspondence courses. The number of inactive points that may be applied towards retirement pay is capped at:

- 60 inactive points per year for years before September 23, 1996.
- 75 inactive points per year for years ending on or after September 23, 1996 and before October 30, 2000.
- 90 inactive points per year for years ending on or after October 30, 2000 and before October 20, 2007.²³⁴
- 130 inactive points per year for years ending on or after October 20, 2007.²³⁵

²²⁹ *Reduced Age Retirement*, *supra* note 228

²³⁰ *Guard and Reserve Retirement*, MILITARY.COM, <https://www.military.com/benefits/military-pay/reserve-and-guard-pay/military-reserve-component-retirement-overview.html> (last visited Apr. 15, 2020)

²³¹ *The Uniformed Services Blended Retirement System*, *supra* note 186

²³² *Defense Department Successfully Closes Blended Retirement System Opt-In Window*, *supra* note 213

²³³ *The Uniformed Services Blended Retirement System*, *supra* note 186

²³⁴ *Guard and Reserve Retirement*, *supra* note 230

²³⁵ *Understanding Guard and Reserve Points – How to Earn Points, and How they Affect Your Retirement*, THE MILITARY WALLET, <https://themilitarywallet.com/guard-reserve-points/> (last visited Apr. 15, 2020)

5.3.2. Qualifying Year. A “qualifying” year towards retirement is one in which the service member has earned at least 50 points. If a service member does not earn at least 50 points in a year, the time still counts toward total time in service (for pay purposes) but does not count towards a qualifying year for retirement. And points earned in a non-qualifying year still count as total points when computing retirement pay. A year begins on the date that the service member entered the Reserves or National Guard.²³⁶

5.3.3. 20-Year Letter. Within one year of reaching eligibility for retirement, a service member receives notice of their upcoming eligibility. At that point, the service member may:

- Remain in the unit and continue to accrue time in service and points towards retirement.
- Transfer to the Retired Reserve. Under the Retired Reserve, a service member’s service will continue and pay raises, for retired pay purposes under the Blended Retirement System and High 36 program, will continue to accrue.²³⁷
- Request a discharge. If a service member chooses a discharge, instead of the Retired Reserve, future pay raises will not accrue.²³⁸

5.3.4. Determining Reserve Retired Pay. At 60-years old, a Reserve or National Guard retiree become eligible to receive retired pay.²³⁹ The Reserve/National Guard retirement program includes the “Blended Retirement System”, “Final Pay” and the “High 36” programs – which mirror the Active Duty programs.²⁴⁰ Like the Active Duty retirement programs, the date that a Reservist or National Guard member initially entered the military, even if the member entered active duty before joining the Reserves or National Guard, determines which retirement program the member is eligible for. To determine retired pay:

5.3.4.1. Step 1: Determine the Basic Pay amount to use in the calculations. If the service member was in the Retired Reserves, then they can use the basic pay chart that is current at the time their retirement pay begins. If the service member chose to be discharged, then their retirement pay is based on the pay charts that were current when they were still serving.

- **Final Pay.** If the service member is under the Final Pay program (first entered the military before September 8, 1980), then the beginning number is the final basic monthly pay for an active duty member with the same rank and the same number of years of service.
- **High 36.** If the service member is under the High 36 program (first entered the service on or after September 8, 1980), then determine the highest paid 36

²³⁶ 2012 *Insider’s Guide to the Guard & Reserve*, MILITARYTIMES.COM, <https://ec.militarytimes.com/guard-reserve-handbook/retirement/basic-plans/> (last visited Apr. 15, 2020)

²³⁷ *Frequently Asked Questions Regarding the New Blended Retirement System*, *supra* note 214 at 7

²³⁸ 2012 *Insider’s Guide to the Guard & Reserve*, *supra* note 236

²³⁹ *Guard and Reserve Retirement*, *supra* note 230

²⁴⁰ *Reserve Retirement*, *supra* note 227

months based on an active duty member with the same rank and the same number of years of service. Then, calculate the average.

- **Blended Retirement System.** If the service member is under the Blended Retirement System, follow the High 36 instructions to determine the basic pay amount to use in the calculations.

5.3.4.2. Step 2: Convert the retirement points to years of full-time service. Divide the creditable retirement points by 360.

5.3.4.3. Step 3: Calculate the percentage of Basic Pay that the service member is entitled to. Divide the number found in Step 2 by .025 (or 2.5% for each year of service if the service member is under the Final Pay or High 36 program) or by .02 (for 2% for each year of service if the service member is under the Blended Retirement program). If this calculation results in a number higher than .75 (or 75%), then .75 should be used in the calculation in Step 4 (because retired pay is maxed out at 75%).

5.3.4.4. Step 4: Determine monthly retirement pay. Multiply the basic pay (the number that was found in Step 1) by the percentage of basic pay that the service member is entitled to (the number that was found in Step 3).

Retirement Programs Summary

Program	Basis	Multiplier	COLA	Bonus
Final Pay	Last month's Basic Pay	2.5% for each year of service	Consumer Price Index	No
High 36	Average of the Highest 36 months Basic Pay	2.5% for each year of service	Consumer Price Index	No
CSB / REDUX	Average of the Highest 36 months Basic Pay	2% for each year of service for the first 20 years of service; 3.5% for each year of service over 20 years	Consumer Price Index minus 1%	Yes, \$30K at 15 th year if service member chooses this program
Blended Retirement	Average of the Highest 36 months Basic Pay	2% for each year of service	Consumer Price Index	Yes, 2 ½ months basic pay for active duty and ½ month pay for National Guard / Reserves at 12 th year of Service. Plus TSP 1% of base pay and up to 4% matching funds provided by DoD, vested at 3 years.

Please visit: <https://militarypay.defense.gov/Calculators.aspx> to calculate a Servicemember's retirement pay with personalized inputs.

6. Medical Discharge & Retirement

6.1. Overview. When a military member has a medical condition (including mental health conditions) which renders them unfit to perform their required duties, they may be separated (or retired) from the military for medical reasons.²⁴¹ The process to determine medical fitness for continued duty involves two boards: the Medical Evaluation Board (MEB) and the Physical Evaluation Board (PEB).²⁴²

While most MEB/PEB actions occur when a military member goes to a Medical Treatment Facility (MTF) for medical care, commanders may, at any time, refer military members to the MTF for a mandatory medical examination, when they believe the member is unable to perform his or her military duties because of a medical condition.²⁴³ If warranted, this examination may require the member's medical condition to be reviewed by a MEB.²⁴⁴ If the MEB finds that the member's medical condition falls below medical retention standards, then the member's medical file is forwarded to a PEB.²⁴⁵

6.2. Medical Evaluation Board (MEB). If a service member has physical or mental health problems that are incompatible with military duty or that disqualify them from world-wide deployment for more than 12 months, a Medical Evaluation Board (MEB) is required.²⁴⁶ The results of the MTF examination, not the individual or the command, initiate a MEB.²⁴⁷ The MEB consists of at least two active duty physicians (not involved in the care of the military member) who review the medical file and decide whether the individual should be returned to duty, or should be separated, using published medical standards for continued military service.²⁴⁸

6.3. Physical Evaluation Board (PEB). If the MEB determines that the member has a medical condition which is incompatible with continued military service, they refer the case to a Physical Evaluation Board (PEB).²⁴⁹ The PEB is a formal fitness-for-duty and disability determination that may recommend one of the following:

- Return the member to duty (with or without assignment limitations, and with or without medical re-training)
- Place the member on the temporary disabled/retired list (TDRL)
- Separate the member from active duty, or
- Medically retire the member

²⁴¹ Rod Powers, *Facts on Military Medical Separation and Retirement*, THEBALANCECAREERS.COM, <https://www.thebalancecareers.com/military-disability-medical-separations-and-retirements-3356969> (last visited Apr. 15, 2020)

²⁴² Powers, *supra* note 241

²⁴³ Powers, *supra* note 241

²⁴⁴ Powers, *supra* note 241

²⁴⁵ Powers, *supra* note 241

²⁴⁶ Powers, *supra* note 241

²⁴⁷ Powers, *supra* note 241

²⁴⁸ *Medical and Physical Evaluation Boards (MEB/PEB)*, ARMY RECOVERY CARE PROGRAM, <https://wct.army.mil/modules/soldier/s6-medicalBoards.html> (last visited Apr. 15, 2020)

²⁴⁹ *Medical and Physical Evaluation Boards (MEB/PEB)*, *supra* note 248

The PEB determines whether the medical condition keeps the member from reasonably performing the duties of his or her specific office, grade, rank, or rating.²⁵⁰ Inability to perform the duties of office, grade, rank, or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of unfitness.²⁵¹ Deployability, however, may be used as a consideration in determining fitness.²⁵² These recommendations are forwarded to a central medical board and can be appealed by the member, who may have legal counsel at these hearings.²⁵³

- 6.4. Central Medical Board Review Disposition.** Four factors determine whether disposition is fit for duty, separation, permanent retirement, or temporary retirement:
- (1) Whether the member can perform in their MOS/AFSC/Rating (job);
 - (2) The disability rating percentage;
 - (3) The stability of the disabling condition; and
 - (4) Years of Active Service (active duty days) in the case of pre-existing conditions.²⁵⁴

The Central Medical Board may recommend the following dispositions:

- 6.4.1. Fit for Duty.** The member is judged to be fit when they can reasonably perform the duties of their grade and military job.²⁵⁵ If the member is medically unfit to perform the duties of their current job, the PEB may recommend medical re-training into a job he or she will be medically qualified to perform.²⁵⁶
- 6.4.2. Disability Rating Percentage.** Once a determination of physical unfitness is made, the PEB is required by law to rate the disability using the Department of Veterans Affairs (VA) Schedule for Rating Disabilities. Ratings can range from 0 to 100 percent rising in increments of 10.²⁵⁷
- 6.4.3. Separation without Benefits.** Separation without benefits occurs if:
- The disability that makes the member unfit existed before he or she entered the service, the disability was not permanently aggravated by military service, and the member has less than 8 years of Active Service (active duty days); or
 - The disability was incurred while the member was absent without leave or while engaging in an act of misconduct or willful negligence.

²⁵⁰ Powers, *supra* note 241

²⁵¹ DoD Instruction 1332.38, E.3.P3.4.1.3, *Physical Disability Examination*, (Nov. 14, 1996), 32, https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/i133238_111496/i133238p.pdf

²⁵² DoD Instruction 1332.38, *supra* note 251

²⁵³ Powers, *supra* note 241

²⁵⁴ *Army Physical Disability Evaluation System*, CARL R. DARNALL ARMY MEDICAL CENTER, (Apr. 11, 2007), 3-4, https://www.crdamc.amedd.army.mil/wtb/files/Army_Physical_Disability_Evaluation_System.pdf

²⁵⁵ *Army Physical Disability Evaluation System*, *supra* note 254

²⁵⁶ Powers, *supra* note 241

²⁵⁷ Powers, *supra* note 241

If the member has more than 8 years of Active Service, he or she may be medically retired (if eligible) or medically separated with severance pay, even if the condition was pre-existing or hereditary.²⁵⁸

- 6.4.4. Separation with Severance Pay.** Separation with disability severance pay occurs if the member is found unfit, has less than 20 years of service, and has a disability rating of less than 30%. Disability severance pay equals 2 months basic pay for each year of service not to exceed 12 years (a maximum of 24 months basic pay). The member may also be eligible to apply for monthly disability compensation from the VA, if the VA determines the disability is "service-connected."²⁵⁹ But if the member receives VA compensation, the severance pay will be recouped from the monthly compensation before the veteran begins receiving monthly payments.²⁶⁰
- 6.4.5. Permanent Disability Retirement.** Permanent disability retirement occurs if the member is found unfit, the disability is determined permanent and stable and rated at a minimum of 30%, or the member has 20 years of military service (For Reserve Component members, this means at least 7200 retirement points).²⁶¹ The member may also be eligible to apply for monthly disability compensation from the VA, if the VA determines the disability is "service-connected."²⁶² If the member has not served 20 years and has a disability rating less than 50%, he or she can only collect either the retirement pay or the VA compensation.²⁶³
- 6.4.6. Temporary Disability Retirement.** Temporary disability retirement occurs if the member is found unfit and entitled to permanent disability retirement except that the disability is not stable for rating purposes.²⁶⁴ "Stable for rating purposes" refers to whether the condition will change within the next five years so as to warrant a different disability rating.²⁶⁵ However, stability does not include latent impairment – what might happen in the future.²⁶⁶ When placed on the **Temporary Disability Retirement List (TDRL)**, the law requires the member to undergo a periodic medical reexamination within 18 months at a minimum followed by PEB evaluation.²⁶⁷ The member may be kept on the TDRL or a final determination may

²⁵⁸ Powers, *supra* note 241

²⁵⁹ Powers, *supra* note 241

²⁶⁰ M21-1, Part III, Subpart v, Chapter 4, Section B - Recoupment of Separation Benefits, VA.GOV, https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000014245/M21-1,-Part-III,-Subpart-v,-Chapter-4,-Section-B---Recoupment-of-Separation-Benefits#3 (last visited Apr. 16, 2020)

²⁶¹ *Wounded, Ill, and/or Injured Compensation and Benefits Handbook*, US DEPARTMENT OF DEFENSE, 32-33, https://warriorcare.dodlive.mil/files/2019/06/DoD_Compensation_and_Benefits_Handbook.pdf (last visited Apr. 16, 2020)

²⁶² *Wounded, Ill, and/or Injured Compensation and Benefits Handbook*, *supra* note 261 at 64

²⁶³ *Military Disability Retirement*, MILITARY.COM, <https://www.military.com/benefits/military-pay/military-disability-retirement.html> (last visited Apr. 16, 2020)

²⁶⁴ Powers, *supra* note 241

²⁶⁵ *Legal Services During the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) Processes*, UNITED STATES ARMY JUDGE ADVOCATE GENERAL CORPS (Feb. 20, 2014), 3, [https://www.jagcnet.army.mil/8525803E00486FB5/0/08635DDAFF125D39852580B500424B8A/%24FILE/Legal%20Services%20During%20IDES%20\(20%20Feb%202015\).pdf](https://www.jagcnet.army.mil/8525803E00486FB5/0/08635DDAFF125D39852580B500424B8A/%24FILE/Legal%20Services%20During%20IDES%20(20%20Feb%202015).pdf)

²⁶⁶ *Legal Services During the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB) Processes*, *supra* note 265

²⁶⁷ Powers, *supra* note 241

be made.²⁶⁸ While the law provides for a maximum of 5 years on the TDRL, there is no entitlement to be retained for the entire period.²⁶⁹

6.5. Medical Retirement Pay Computation. For permanent or temporary disability retirement, compensation is based on the higher of two computations:

- Disability rating times *retired base pay*; or
- 2.5 x years of service x *retired base pay*.

Members on the TDRL receive no less than 50% of their retired pay base.

The ***retired base pay*** follows the same rules discussed in Section 4, Military Retirement & Pension. Thus, the computation of *retired base pay* depends upon when the member entered the service, and for reserve members, the law under which they were retired. For those members who entered prior to 8 September 1980, retired base pay is the highest basic pay received (See Final Pay in Section 4, Military Retirement & Pension). For those who entered after 7 September 1980, it is the average of the highest 36 months of basic pay (See High 36 in Section 4, Military Retirement & Pension). For those who are under the Blended Retirement program, it is the same as the High 36 program, or the average of highest 36 Months of basic pay.²⁷⁰

6.6. Differences Between Military Disability Ratings and VA Disability Ratings.

Although both the DOD and the VA use the Department of Veterans Affairs' Schedule for Rating Disabilities, there are some differences between the military disability ratings and the VA disability rates. Thus, disability ratings may vary between the two. The military only rates medical conditions that make a service member physically unfit and compensates for the loss of a military career.²⁷¹ The VA may rate any service-connected impairment, regardless of whether the disability would make them unfit for duty and compensates for the loss of civilian employability.²⁷² Additionally, the military's ratings are permanent upon final disposition while the VA ratings may fluctuate with time, depending upon the progress of the condition.²⁷³ Finally, the amount of the military's disability compensation is affected by years of service and basic pay, while VA compensation is a flat amount based upon the disability percentage rating.²⁷⁴

²⁶⁸ Powers, *supra* note 241

²⁶⁹ Powers, *supra* note 241

²⁷⁰ Powers, *supra* note 241

²⁷¹ Rod Powers, *Military Medical Retirement versus VA Disability*, DUMMIES, <https://www.dummies.com/personal-finance/veterans-benefits/military-medical-retirement-versus-va-disability/> (last visited Apr. 16, 2020)

²⁷² Powers, *supra* note 241

²⁷³ *Veterans Affairs Schedule for Rating Disabilities (VASRD)*, MYARMYBENEFITS, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Veterans-Affairs-Schedule-for-Rating-Disabilities-\(VASRD\)?serv=128](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Veterans-Affairs-Schedule-for-Rating-Disabilities-(VASRD)?serv=128) (last visited Apr. 16, 2020)

²⁷⁴ *Veterans Affairs Schedule for Rating Disabilities (VASRD)*, *supra* note 273

7. Thrift Savings Plan (TSP)

7.1. Overview. The Thrift Savings Plan (TSP) is a retirement savings and investment plan for Federal employees and military service members, including the Ready Reserve.²⁷⁵ It is intended to provide retirement income; thus, it offers the same types of savings and tax benefits that many private corporations offer their employees under 401(k) plans.²⁷⁶

The TSP is a defined contribution plan, meaning that the retirement income that a member receives from his or her TSP account will depend on how much he or she put into the account during working years and the earnings accumulated over that time.²⁷⁷

7.2. Contributions to the Thrift Saving Plan. A service member may elect to contribute any percentage (1 to 100) of his or her *basic pay*.²⁷⁸ However, the annual dollar total cannot exceed the Internal Revenue Code limit, which is \$19,500 for 2020.²⁷⁹ If a service member contributes to the TSP from his or her basic pay, he or she may also contribute from 1 percent to 100 percent of any incentive pay or special pay (including bonus pay), up to the limits established by the Internal Revenue Code.²⁸⁰ The amounts contributed to the TSP appear on the service member's LES (for information about the LES, see Section 4).

7.3. Matching Contributions. Matching contributions depends on whether the service member is under the Blended Retirement program or an older retirement program.²⁸¹

7.4. Under the Blended Retirement Program. The 2016 National Defense Authorization Act provided for a new retirement system that provides automatic and matching Thrift Savings Plan contributions, as well as a mid-career compensation incentive, and monthly retired pay annuity.²⁸² New recruits entering the military after January 1, 2018 will be enrolled automatically into this program.²⁸³ Service members who entered the military after December 31, 2005, but before January 1, 2018 had the choice to enroll in the new system or remain in their current retirement system.²⁸⁴ The opt-in period for most service members closed Dec. 31, 2018.²⁸⁵ All troops, including Reservists and Guardsmen, entering the service in 2018 were automatically enrolled into the Blended Retirement System.²⁸⁶

²⁷⁵ *What is the Thrift Savings Plan (TSP)?*, THRIFT SAVINGS PLAN, <https://www.tsp.gov/PlanParticipation/AboutTheTSP/index.html> (last visited Apr. 16, 2020)

²⁷⁶ *Thrift Savings Plan (TSP)*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Benefits/Thrift-Savings-Plan/> (last visited Apr. 16, 2020)

²⁷⁷ *What is the Thrift Savings Plan (TSP)?*, *supra* note 275

²⁷⁸ *Thrift Savings Plan Bulletin for TSP Representatives*, THRIFT SAVINGS PLAN, 3, <https://www.tsp.gov/PDF/bulletins/05-17.pdf> (last visited Apr. 16, 2020)

²⁷⁹ *Contributions Limits*, THRIFT SAVINGS PLAN, <https://www.tsp.gov/PlanParticipation/EligibilityAndContributions/contributionLimits.html> (last visited Apr. 16, 2020)

²⁸⁰ *Types of Contributions*, THRIFT SAVINGS PLAN, <https://www.tsp.gov/PlanParticipation/EligibilityAndContributions/typesOfContributions.html> (last visited Apr. 16, 2020)

²⁸¹ *Summary of Thrift Savings Plan*, THRIFT SAVINGS PLAN, 1, <https://www.tsp.gov/PDF/formspubs/tspbk08.pdf> (last visited Apr. 16, 2020)

²⁸² *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211

²⁸³ *The Uniformed Services Blended Retirement System*, *supra* note 186 at 2

²⁸⁴ *The Uniformed Services Blended Retirement System*, *supra* note 186 at 2

²⁸⁵ *Defense Department Successfully Closes Blended Retirement System Opt-In Window*, *supra* note 213

²⁸⁶ *The Uniformed Services Blended Retirement System*, *supra* note 186 at 2

7.4.1 Automatic Contributions to TSP under Blended Retirement System. Under the Blended Retirement System, the DoD will automatically contribute 1% of the service members' basic pay into their TSP after 60 days of service.²⁸⁷ Servicemembers who entered the military after December 31, 2005, but before January 1, 2018 and opted in the Blended Retirement system received Service Matching Contributions immediately regardless of their respective years of service.²⁸⁸ After three years of service, DoD will match up to 4% of the service members' contribution to their TSP.²⁸⁹ Additionally, beginning at three years of service, the TSP is fully vested.²⁹⁰ So even if a service member does not serve the full 20 years, he or she will have retirement savings from military service.²⁹¹ For more information on the Blended Retirement Program, see Section 5, Military Retirement & Pension.

7.4.2 Continuation Pay. Uniformed Servicemembers covered by BRS are eligible to receive continuation pay, a one-time, midcareer bonus payment, in exchange for an agreement to perform additional obligated service.²⁹² The military branch will determine the commitment, but it must be a minimum of three years.²⁹³ Continuation pay is payable between the completion of eight years of service, but before the completion of 12 years of service from the service member's Pay Entry Base Date.²⁹⁴ It may be paid at any time during this period as determined by the military branch.²⁹⁵ This one-time bonus payment is in addition to any other career field-specific incentives or retention bonuses that the service member may receive or otherwise be eligible to receive.²⁹⁶

7.5. Under All Other Retirement Programs. The Secretary of each service branch determines whether it will provide matching contributions to the service member's TSP.²⁹⁷ Typically, service members who agree to serve in critical career fields on active duty for 6 years or more may be eligible for matching funds.²⁹⁸ The matching contributions apply only to amounts contributed from basic pay and not from any incentive pay or special pay.²⁹⁹ Thus, if a service member does not contribute basic pay to the TSP, they will not be eligible to receive matching contributions.³⁰⁰ Matching contributions apply to the first 5 percent of pay that is contributed each pay period.³⁰¹ These contributions are matched dollar-for-dollar on the first 3 percent of pay contributed and 50 cents on the dollar for the next 2 percent of pay.³⁰²

²⁸⁷ *Uniformed Services Blended Retirement System*, *supra* note 186 at 9

²⁸⁸ *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 9

²⁸⁹ *The Uniformed Services Blended Retirement System*, *supra* note 186 at 2

²⁹⁰ *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 15

²⁹¹ *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 7

²⁹² *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 17

²⁹³ *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 17

²⁹⁴ *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 9

²⁹⁵ *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 17

²⁹⁶ *A Guide to the Uniformed Services Blended Retirement System*, *supra* note 211 at 17

²⁹⁷ *Why Military Members Don't Get Matching Contributions in the Thrift Savings Plan – Unless They Participate in the Blended Retirement System*, THE MILITARY WALLET, <https://themilitarywallet.com/thrift-savings-plan-military-match/> (last visited Apr. 16, 2020)

²⁹⁸ *Why Military Members*, *supra* note 297

²⁹⁹ *Contributions Limits*, *supra* note 279

³⁰⁰ *Establishing Your TSP Account*, THRIFT SAVINGS PLAN, <https://www.tsp.gov/PlanParticipation/EligibilityAndContributions/establishingAccount.html> (last visited Apr. 16, 2020)

³⁰¹ *Types of Contributions*, *supra* note 280

³⁰² *Types of Contributions*, *supra* note 280

8. Military Discharges

8.1. Overview. A military discharge is simply defined as a service member's release from their obligation to continue service in the armed forces.³⁰³ A service member's military discharge affects his or her eligibility for various veterans' benefits.³⁰⁴ It is important to understand the difference between types of discharge, character of discharge, and reason for discharge.

8.1.1. Types of Discharges. There are two types of discharges. The first type of discharge is an Administrative Discharge. Administrative Discharges are characterized as Honorable, General (this was also called Under Honorable Conditions in the past), Other Than Honorable (OTH) (during different eras, OTH was called an Undesirable Discharge or a "Blue" Discharge), Entry-Level Separation, and Clemency (Vietnam deserters ONLY).³⁰⁵ The second type of discharge is called a Punitive Discharge, meaning the discharge was the final outcome of a court-martial. Punitive Discharges are characterized as Bad Conduct, Dishonorable, and Dismissal (Officers ONLY).³⁰⁶

8.1.2. Character of Discharge. The character of discharge may be Honorable, General (Under Honorable Conditions), Other Than Honorable (OTH) (during different eras, OTH was called an Undesirable Discharge or a "Blue" Discharge), Entry-Level Separation, Bad Conduct, and Dishonorable.³⁰⁷

8.1.3. Reason for Discharge. On the veteran's DD 214 Form (Certificate of Release or Discharge from Active Duty), the reason for discharge is called the "narrative reason for discharge."³⁰⁸ This describes the basis for the discharge, such as "completion of required active service," "disability" (disability may also include a percentage to reflect the extent of the disability; see Section 5, Medical Discharge & Retirement), "erroneous enlistment," "hardship," "misconduct," etc.³⁰⁹ For some discharges, such as OTH, the VA will look at the reason for discharge to determine whether the veteran's service is "under dishonorable conditions," which would disqualify the veteran for VA benefits.³¹⁰

8.2. Administrative Discharges.

³⁰³ Ryan Guina, *Types of Military Discharges*, THE MILITARY WALLET, <https://themilitarywallet.com/types-of-military-discharges/> (last visited Apr. 16, 2020)

³⁰⁴ Umar Moulta-Ali & Sidath Viranga Panangala, *Veterans' Benefits: The Impact of Discharges on Basic Eligibility*, CONGRESSSIONAL RESEARCH SERVICE (Mar. 6, 2015), <https://fas.org/sgp/crs/misc/R43928.pdf>

³⁰⁵ *Forms of Military Discharge*, VA.ORG, <https://va.org/forms-of-military-discharge/> (last visited Apr. 17, 2020)

³⁰⁶ *Forms of Military Discharge*, *supra* note 305

³⁰⁷ *DD 214: Understanding Character of Discharge*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/character-of-discharge/> (last visited Apr. 17, 2020)

³⁰⁸ *Top Ten Questions About Military Discharge Upgrades*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/top-ten-questions-about-military-discharge-upgrades/> (last visited Apr. 17, 2020)

³⁰⁹ *Upgrading Your Military Discharge and Changing the Reason for Your Discharge*, SWORDS TO PLOWSHARES, <https://www.swords-to-plowshares.org/wp-content/uploads/Upgrading-Your-Discharge-1.pdf> (last visited Apr. 17, 2020)

³¹⁰ *Claims for VA Benefits and Character of Discharge*, VA.GOV, https://www.benefits.va.gov/BENEFITS/docs/COD_Factsheet.pdf (last visited Apr. 17, 2020)

- 8.2.1. Honorable (HD).** Service members normally receive an Honorable Discharge when they complete their required active duty requirement and meet or exceed the required standards of duty performance and personal conduct.³¹¹ Those receiving an Honorable Discharge generally are entitled to veterans' full rights and benefits.³¹²
- 8.2.2. General (GD) or Under Honorable Conditions (UHC).** A General Discharge is for service members who leave the service under honorable conditions, but their conduct and performance of duty was not so meritorious to warrant an Honorable Discharge.³¹³ Reasons for such characterization are generally preceded by some form of non-judicial conduct.³¹⁴ A General Discharge disqualifies a veteran from receiving GI Bill education benefits, but they are still eligible for other VA benefits.³¹⁵
- 8.2.3. Other than Honorable (OTH), Undesirable (UD) or “Blue” Discharge.** An Other Than Honorable (OTH) Discharge is the most severe form of an administrative discharge.³¹⁶ Recipients of OTH Discharges are generally barred from enlisting into any component of the Armed Forces.³¹⁷ Depending on the reason for discharge, a majority of veterans' benefits may be unavailable.³¹⁸ But the VA determines whether a veteran with an OTH Discharge is eligible for benefits on a case-by-case basis.³¹⁹
- 8.2.4. Entry Level Separation.** ELS is a discharge option available to commanders.³²⁰ It can be given only to service members in entry-level status — within their first 180 days of service.³²¹ An ELS does not qualify as an honorable or general discharge.³²² A member with an ELS is not eligible for veterans' benefits.³²³ But if the member was injured or became ill while serving in the military, they may be eligible for VA health care only for medical treatment related to the in-service injury or illness and service-connected disability.³²⁴
- 8.2.5. Clemency Discharge (Vietnam Era ONLY).** President Ford established a Clemency Discharge for service members who deserted the military to protest or resist the Vietnam War.³²⁵ A Clemency Discharge allows for a deserter to receive a

³¹¹ CPT Bill Wicks, *Leaving on Good Terms: Types of Discharges, Their Consequences*, FORT HOOD SENTINEL (Feb. 16, 2012), http://www.forthoodsentinel.com/news/leaving-on-good-terms-types-of-discharges-their-consequences/article_7a646c48-8852-5ba4-a8d3-d4c01e90c662.html

³¹² CPT Wicks, *supra* note 311

³¹³ CPT Wicks, *supra* note 311

³¹⁴ *Military Discharge in the United States*, VETVERIFY.ORG, 2, https://www.vetverify.org/javafx.faces.resource/images/VOSB-Military-Discharge-Overview.pdf.xhtml?ln=default&v=1_0 (last visited Apr. 17, 2020)

³¹⁵ CPT Wicks, *supra* note 311

³¹⁶ *Military Discharge in the United States*, *supra* note 314 at 3

³¹⁷ *Military Discharge in the United States*, *supra* note 314 at 3

³¹⁸ *Military Discharge in the United States*, *supra* note 314 at 4

³¹⁹ *Claims for VA Benefits and Character of Discharge*, *supra* note 310 at 2-3

³²⁰ Rod Powers, *What is Entry Level Separation (ELS) in the Military?*, THEBALANCECAREERS.COM, <https://www.thebalancecareers.com/entry-level-separations-what-is-an-els-3356960> (last visited Apr. 17, 2020)

³²¹ Powers, *supra* note 320

³²² Powers, *supra* note 320

³²³ Powers, *supra* note 320

³²⁴ *Eligibility for VA Disability Benefits*, *supra* note 57

³²⁵ Andrew Glass, *Ford Issues Partial Amnesty to Vietnam Deserters, Sept. 16, 1974*, POLITICO (Sep. 16, 2018), <https://www.politico.com/story/2018/09/16/ford-amnesty-vietnam-deserters-815747>

Presidential Pardon and have their punitive discharge (Bad Conduct or Dishonorable Discharge) upgraded to a Clemency Discharge.³²⁶ However, a veteran with a Clemency Discharge is not eligible for VA benefits.³²⁷

8.3. Punitive Discharges (issued by a Court-martial).

8.3.1. Bad Conduct. Unlike an Administrative Discharge, a Bad Conduct discharge is a punitive discharge that can only be given to an enlisted service member through a Court-Martial.³²⁸ Virtually all veterans' benefits are forfeited by a bad conduct discharge.³²⁹ But, similar to the OTH discharge, the VA may determine that a veteran is eligible for benefits on a case-by-case basis – only if the BCD was issued by a Special Court-Martial, not a General Court-Martial (See Section 9, Courts-Martial).

8.3.2. Dishonorable. Similar to a Bad Conduct discharge, a Dishonorable discharge is a punitive discharge.³³⁰ A service member may only receive a Dishonorable discharge through a General Court-Martial conviction for offenses like murder, rape and desertion as part of the sentence.³³¹ This characterization of service results in a loss of all veterans' benefits and may make obtaining gainful employment difficult.³³²

8.3.3. Dismissal (Officers ONLY). Officers do not receive a BCD or DD as a punitive discharge. Instead, they receive a “Dismissal.” An officer may only receive a dismissal from a General Court-Martial.³³³

8.4. Eligibility for Benefits Based on Character of Discharge. The following chart identifies what benefits a veteran is eligible for based on his or her discharge characterization. Veterans’ benefits are discussed in Section 11.

KEY			
HON	Honorable (DD Form 256a)	E	Eligible
GEN	General (Under Honorable Conditions, DD Form 257a)	NE	Not Eligible
OTH	Other Than Honorable	TBD	To be Determined by Admin Agency on a case-by-case basis
BCD	Bad Conduct Discharge	DV	Eligibility for these benefits depend upon special disabilities of the veteran
DD	Dishonorable Discharge (General Court-Martial), Dismissal (Officers)		

³²⁶ Glass, *supra* note 325

³²⁷ Glass, *supra* note 325

³²⁸ *Military Discharge in the United States, supra* note 314 at 3

³²⁹ *Military Discharge in the United States, supra* note 314 at 3

³³⁰ *Military Discharge in the United States, supra* note 314 at 3

³³¹ *Military Discharge in the United States, supra* note 314 at 3

³³² *Military Discharge in the United States, supra* note 314 at 3

³³³ *Military Discharge in the United States, supra* note 314 at 4

BENEFIT	HON	GEN	OTH	BCD	DD	AUTHORITY/ REF
DoD BENEFITS						
Payment for Accrued Leave	E	E	NE	NE	NE	37 USC 501-503
Death Gratuity (6 mos pay)	E	E	E	E	NE	10 USC 1480
Wearing of Military Uniform	E	E	NE	NE	NE	10 USC 771a, 772
Admission to Soldier's Home	E	E	NE	NE	NE	24 USC 412
Burial in National Cemeteries	E	E	NE	NE	NE	38 USC 2402
Board for Correction of Military Records	E	E	E	E	E	10 USC 1552
Discharge Review Board	E	E	E	E	NE	10 USC 1553
Transportation to Home	E	E	E	E	E	37 USC 404
Transportation of Dependents and Household Goods to Home	E	E	TBD	TBD	TBD	37 USC 406
TRANSITIONAL BENEFITS & SERVICES (DoD & VA)						
Pre-separation Counseling	E	E	E	E	E	10 USC 1142
Employment Assistance	E	E	E	E	E	10 USC 1143, 1144
Health Benefits	E	E	NE	NE	NE	10 USC 1145
Commissary/Exchange	E	E	NE	NE	NE	10 USC 1146
Military Family Housing	E	E	NE	NE	NE	10 USC 1147
Overseas Relocation Assistance	E	E	E	E	E	10 USC 1148
Excess Leave/Permissive Temporary Duty (TDY)	E	E	NE	NE	NE	10 USC 1149
Preference for Reserves/National Guard	E	E	NE	NE	NE	10 USC 1150
Montgomery G.I. Bill	E	NE	NE	NE	NE	38 USC 3011
VETERANS' BENEFITS FROM THE DEPARTMENT OF VETERAN AFFAIRS (VA)						
Dependency and Indemnity Compensation (Survivor Benefit)	E	E	TBD	TBD	NE	38 USC 1310
Pension for Non-Service Connected Disability or Death	E	E	TBD	TBD	NE	38 USC 1521
Medal of Honor Roll Pension	E	E	TBD	TBD	NE	38 USC 1562
Insurance	E	E	TBD	TBD	TBD	38 USC 1911, 1973
Vocational Rehabilitation (DV)	E	E	TBD	TBD	NE	38 USC 3102, 3103
Educational Assistance	E	E	TBD	TBD	NE	38 USC 3011
Survivors & Dependents Educational Assistance	E	E	TBD	TBD	NE	38 USC 3501-3565
Home and other Loans	E	E	TBD	TBD	NE	38 USC 3702
Hospitalization & Domiciliary Care	E	E	TBD	TBD	NE	38 USC 1710
Medical and Dental Services	E	E	TBD	TBD	NE	38 USC 1712
Prosthetic Appliances (DV)	E	E	TBD	TBD	NE	38 USC 1714
Guide Dogs & Equipment for Blindness (DV)	E	E	TBD	TBD	NE	38 USC 1714

BENEFIT	HON	GEN	OTH	BCD	DD	AUTHORITY/ REF
Special Housing (DV)	E	E	TBD	TBD	NE	38 USC 2101
Automobiles (DV)	E	E	TBD	TBD	NE	38 USC 3901
Funeral and Burial Expenses	E	E	TBD	TBD	NE	38 USC 2302
Burial Flag	E	E	TBD	TBD	NE	38 USC 2301
Burial in National Cemeteries	E	E	TBD	TBD	NE	38 USC 2402
Headstone Marker	E	E	TBD	TBD	NE	38 USC 2306
VETERANS' BENEFITS FROM OTHER FEDERAL AGENCIES						
Preference for Farm Loan (Dept. of Agriculture)	E	E	TBD	TBD	NE	7 USC 1983 (5)
Preference for Farm and other Rural Housing Loans (Dept. of Agriculture)	E	E	TBD	TBD	NE	42 USC 1477
Civil Service Preference (Office of Personal Management)	E	E	NE	NE	NE	5 USC 2108, 3309-3316, 3502, 3504
Civil Service Retirement Credit	E	NE	NE	NE	NE	5 USC 8331, 8332
Job Counseling & Employment Placement	E	E	E	E	NE	38 USC 4211-4215
Unemployment Compensation for Ex-Service Members (Dept. of Labor)	E	E	NE	NE	NE	5 USC 8501, 8521
Naturalization Benefits (Dept. of Justice Immigration & Naturalization Service)	E	E	NE	NE	NE	8 USC 1439, 1440
Old Age, Survivors & Disability Insurance (SSA)	E	E	TBD	TBD	NE	42 USC 417
Job Preference Public Works Projects (Dept. of Commerce)	E	E	TBD	TBD	NE	

9. Courts-Martial

9.1. Overview. Courts-martial are criminal proceedings governed by the Uniform Code of Military Justice (UCMJ), which is the military’s criminal code.³³⁴ Under the UCMJ, there are three different types of courts-martial: summary, special, and general.³³⁵ A special court-martial is considered a “misdemeanor” court and a general court-martial is considered a “felony” court.³³⁶ The differences between these types of courts-martial are: the panel that acts as fact-finder, the rank of the accused, the type of crime committed, and the punishments that may be imposed.³³⁷

9.2. Summary Court-Martial. A summary court-martial is the lowest level of courts martial available.³³⁸ The punishment that may be imposed depends on the rank of the accused.³³⁹ In a summary court-martial, military judges do not preside over these proceedings, there is no right to defense counsel, and the “court” is composed of one commissioned officer, usually a non-lawyer.³⁴⁰ Only enlisted service members accused of noncapital offenses may be tried.³⁴¹ For E-4 and below, the maximum punishment allowed is 1 month confinement, hard labor without confinement for 45 days, restriction for 2 months, or forfeiture of 2/3 pay (a Soldier above the rank of E-4 may not be confined or given hard labor without confinement, or reduced except to the next pay grade).³⁴²

The accused has the absolute right to refuse trial by summary court-martial – in which case, they would be subject to a Special Court-Martial instead.³⁴³ The accused does not have the right to representation by an attorney.³⁴⁴ But the accused may cross-examine witnesses, call witnesses and produce evidence, and testify or remain silent.³⁴⁵

9.3. Special Court-Martial. A special court-martial is often characterized as a misdemeanor court, and may try all persons subject to the UCMJ, including officers and midshipmen.³⁴⁶ A special court-martial consists of a panel of not less than three members and a military judge, or an accused may request to be tried by a military judge alone.³⁴⁷

³³⁴ *The Uniform Code of Military Justice*, MILITARY.COM, <https://www.military.com/join-armed-forces/the-uniform-code-of-military-justice-ucmj.html> (last visited Apr. 17, 2020)

³³⁵ *Courts-Martial Explained*, MILITARY.COM, <https://www.military.com/benefits/military-legal-matters/courts-martial-explained.html> (last visited Apr. 17, 2020)

³³⁶ *The 3 Types of Courts-Martial Explained*, SBG-TV (Dec. 21, 2018), <https://wjla.com/sponsored/spotlight/the-3-types-of-courts-martial-explained>

³³⁷ *Courts-Martial Explained*, *supra* note 335

³³⁸ *Summary Court-Martial Information* U.S. ARMY TRIAL DEFENSE SERVICE DLIFLC & POM Field Office, Region V, https://home.army.mil/monterey/application/files/6415/4955/1549/summary_court_martials_fact_sheet.pdf (last visited Apr. 17, 2020)

³³⁹ *Courts-Martial Explained*, *supra* note 335

³⁴⁰ *Criminal Law Deskbook, Practicing Military Justice, January 2019*, CRIMINAL LAW DEPARTMENT, THE JUDGE ADVOCATE GENERAL’S LEGAL CENTER AND SCHOOL, U.S. ARMY, 9-2, https://www.loc.gov/rr/frd/Military_Law/pdf/Crim-Law-Deskbook_January-2019.pdf

³⁴¹ *Courts-Martial Explained*, *supra* note 335

³⁴² *Criminal Law Deskbook*, *supra* note 340 at 1-14

³⁴³ *Courts-Martial Explained*, *supra* note 335

³⁴⁴ *Courts-Martial Explained*, *supra* note 335

³⁴⁵ *Courts-Martial Explained*, *supra* note 335

³⁴⁶ R. Chuck Mason, *Military Justice: Courts-Martial, an Overview*, CONGRESSIONAL RESEARCH SERVICE (Aug. 12, 2013), 6, <https://fas.org/sgp/crs/natsec/R41739.pdf>

³⁴⁷ Mason, *supra* note 346

A special court-martial may impose any punishment authorized under the Rules for Courts-Martial (R.C.M.1003) except death, dishonorable discharge, dismissal, confinement for more than 1 year, hard labor without confinement for more than 3 months, forfeiture of pay exceeding two-thirds pay per month for up to 1 year; and a bad conduct discharge.³⁴⁸

9.4. General Court-Martial. A general court-martial is often characterized as a felony court, and may try all persons subject to the UCMJ, including officers and midshipmen.³⁴⁹ A general court-martial consists of a panel of not less than five members and a military judge, or an accused may request to be tried by a military judge alone.³⁵⁰ A general court-martial may adjudge any punishment not prohibited by the UCMJ, including death when specifically authorized.³⁵¹

³⁴⁸ Mason, *supra* note 346 at 7

³⁴⁹ *Courts-Martial Explained*, *supra* note 335

³⁵⁰ *Courts-Martial Explained*, *supra* note 335

³⁵¹ *Courts-Martial Explained*, *supra* note 335

10. Discharge Documents (DD Form 214 & NGB Form 22)

10.1. Overview.

10.1.1. DD Form 214. The DD Form 214 is the document issued to military members when they separate, are discharged, or transfer from Active Duty to the reserves.³⁵² The form was modified in 1970. Thus, in the following pages, both versions, before 1970 and after 1970, of the DD Form 214 are discussed.

The DD Form 214 is a complete record of the member's military service and contains information normally needed to verify military service for benefits, retirement, employment and membership in veterans' organizations.³⁵³

Reserve members and National Guard members that serve on federal Active Duty for more than 90 days receive a DD Form 214 every time they complete active duty orders, meaning that the member could have multiple DD Form 214s with different information.³⁵⁴

10.1.2. NGB Form 22. If the member was in the Army or Air National Guard, they receive a discharge document similar to the DD form 214. Most State National Guards issue a NGB Form 22 as the discharge document. The NGB Form 22 is almost identical to the DD Form 214 and the same important information applies. A member receives a NGB Form 22 when they separate from the National Guard.³⁵⁵

10.1.3. Requesting a Copy of a Service Member's Discharge Document(s). If the member needs to request a new copy of the DD Form 214 or the NGB Form 22, they need to submit the Standard Form 180 (SF 180), Request Pertaining to Military Records to the National Archives. The SF 180 can be found at: <http://www.archives.gov/research/order/standard-form-180.pdf>. Instructions for completing and submitting the form can be found at: <http://www.archives.gov/veterans/military-service-records/standard-form-180.html>.

You may also request a copy of your DD 214 by creating an eBenefits account on the VA website. Go to www.ebenefits.va.gov and register. Once the member has a premium account, click on the "Manage Benefits" tab, and go to the Military Personnel File (DPRIS) link to request a copy of the DD 214. If the member served before records were scanned into the system, try <https://www.archives.gov/veterans> and click on the "Request Military Records Online" tab.³⁵⁶

³⁵² *Military Discharge in the United States*, supra note 314 at 5-6

³⁵³ *DD 214, Discharge Papers and Separation Documents*, NATIONAL ARCHIVES, <https://www.archives.gov/personnel-records-center/dd-214> (last visited Apr. 17, 2020)

³⁵⁴ Michael Schuille ET AL, *Service Member Separation Updating the DD Form 214*, 18, https://www.rand.org/content/dam/rand/pubs/research_reports/RR2700/RR2712/RAND_RR2712.pdf (last visited Apr. 17, 2020)

³⁵⁵ *DD214 and the NGB-22*, DD214.COM, https://www.dd214.com/enlist_ngb-22 (last visited Apr. 17, 2020)

³⁵⁶ *Inquiry Routing & Information System (IRIS)*, VA.GOV, https://iris.custhelp.va.gov/app/answers/detail/a_id/3057/~/obtain-a-copy-of-dd-214 (Apr. 17, 2020)

10.2. DD Form 214, After 1970

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY					
1. NAME (Last, First, Middle)		2. DEPARTMENT, COMPONENT AND BRANCH ARMY / RA / SC		3. SOCIAL SECURITY NO.	
4.a. GRADE, RATE OR RANK MAJOR	4.b. PAY GRADE O4	5. DATE OF BIRTH (YYMMDD)		6. RESERVE OBLIG. TERM. DATE Year 00 Month 00 Day 00	
7.a. PLACE OF ENTRY INTO ACTIVE DUTY FORT GORDON, GEORGIA		7.b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known)			
8.a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND WHITE HOUSE COMMUNICATIONS AGCY RR		8.b. STATION WHERE SEPARATED FORT MYER, VIRGINIA			
9. COMMAND TO WHICH TRANSFERRED Na				10. SGLI COVERAGE <input type="checkbox"/> None Amount: \$ 200,000	
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 25/SIGNAL CORPS OFFICER/16 YEARS, 06 MONTHS//NOTHING FOLLOWS		12. RECORD OF SERVICE			
		Year(s)	Month(s)	Day(s)	
		a. Date Entered AD This Period	78	02	24
		b. Separation Date This Period	94	08	31
		c. Net Active Service This Period	16	06	07
		d. Total Prior Active Service	01	09	07
		e. Total Prior Inactive Service	01	05	28
		f. Foreign Service	04	02	00
		g. Sea Service	00	00	00
		h. Effective Date of Pay Grade	89	11	01
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) Defense Meritorious Service Medal//Meritorious Service Medal(1OLC)//Army Commendation Medal//Joint Meritorious Unit Award(1OLC)//National Defense Service Medal//Armed Forces Reserve Medal//Non-Commissioned Officer Professional Development Ribbon//Army Service					
14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) Radio Repair/75//Communication Electronic Staff/78//Signal Officer Basic/78//Nuclear, Biological, Chemical Officer/79//Signal Officer Advanced/81//Electronic Warfare Officer/81//Combined Arms Service Staff School/83//Company Commander's/84//Joint Command Control Communication Staff/91//NOTHING FOLLOWS					
15.a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM		Yes	No	15.b. HIGH SCHOOL GRADUATE OR EQUIVALENT	
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
16. DAYS ACCRUED LEAVE PAID				24 5	
17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
18. REMARKS "Subject to active duty recall by the Secretary of the Army/Item 13 Cont'd- Ribbon//Overseas Service Ribbon//Presidential Service Badge//National Guard Ribbon-Iowa National Guard Recruiting Badge// "Data herein subject to computer matching within DoD or other agencies for verification purposes and determining eligibility and compliance for federal benefits//"Member is retiring as provided by section 4403 of the FY 1993 NDAA (PL 102-484) and may qualify for a recomputation of retired pay at age 62 (Section 4464 of same law)." //NOTHING FOLLOWS					
19.a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code)			19.b. NEAREST RELATIVE (Name and address - include Zip Code)		
20. MEMBER REQUESTS COPY 6 BE SENT TO DIR. OF VET AFFAIRS		Yes	22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature)		
		<input type="checkbox"/>	EDWARD C. TROXELL, DAC GS-11, Ch, Trans Point		
21. SIGNATURE OF MEMBER BEING SEPARATED			<i>[Signature]</i>		
SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)					
23. TYPE OF SEPARATION RETIREMENT		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE			
25. SEPARATION AUTHORITY CH 4, AR 635-100		26. SEPARATION CODE RBE		27. REENTRY CODE NONE	
28. NARRATIVE REASON FOR SEPARATION VOLUNTARY EARLY RETIREMENT					
29. DATES OF TIME LOST DURING THIS PERIOD ONE				30. MEMBER REQUESTS COPY 4 Initials	

DD Form 214, NOV 88

Previous editions are obsolete.

SERVICE 3

10.2.1. Fields 1-22 – Basic Information

- **Field 1 – NAME.** The member's name is last, first, middle format.
- **Field 2 – DEPARTMENT, COMPONENT AND BRANCH.** The branch of service (Army, Navy, Air Force, Marines) OR program (Reserves).
- **Field 3 – SOCIAL SECURITY NO.** The member's social security number.
- **Field 4a – GRADE, RATE OR RANK.** The member's rank at the time of discharge.
- **Field 4b – PAY GRADE.** The member's pay grade at the time of discharge.
- **Field 5 – DATE OF BIRTH.** The member's date of birth in year, month, day format (September 6, 1989 reads 890906).
- **Field 6 – RESERVE OBLIG. TERM DATE.** The date that the member will complete mandatory reserve time.
- **Field 7a – PLACE OF ENTRY INTO ACTIVE DUTY.** The city and state where the member was sworn in.
- **Field 7b – HOME OF RECORD AT TIME OF ENTRY.** The member's home address when they entered the service.
- **Field 8a – LAST DUTY ASSIGNMENT AND MAJOR COMMAND.** The last unit or organization the member was assigned.
- **Field 8b – STATION WHERE SEPARATED.** The duty station that the member was assigned when they were discharged.
- **Field 9 – COMMAND TO WHICH TRANSFERRED.** The location and unit where the member transferred. Will only appear if the member had a transfer to a different unit or command, or has transferred from Active Duty to the Reserves.
- **Field 10 – SGLI COVERAGE.** The amount of Servicemen's Group Life Insurance, if any. SGLI coverage is available in \$50,000 increments up to the maximum of \$400,000.
- **Field 11 – PRIMARY SPECIALTY.** The member's career field or specialty. The Army and the Marines use a Military Occupation Specialty (MOS) number. The Air Force uses the Air Force Specialty Code (AFSC), while the Navy has a Rating and the Navy Enlisted Classification (NEC).
- **Field 12 – RECORD OF SERVICE.** A breakdown of important dates and the member's time within the service in year, month day format (YYMMDD).
 - **12a – DATE ENTERED AD THIS PERIOD.** The date the member began Active Duty.
 - **12b – SEPARATION DATE THIS PERIOD.** The member's date of discharge or separation.
 - **12c – NET ACTIVE SERVICE THIS PERIOD.** The member's total amount of service this period, calculated by subtracting 12a from 12b and deducting any lost time.
 - **12d – TOTAL PRIOR ACTIVE SERVICE.** The member's total amount of active service before the current active service status
 - **12e – TOTAL PRIOR INACTIVE SERVICE.** The member's total time as a reservist before the current active service status.

- **12f – FOREIGN SERVICE.** The member’s amount of time spent in service in a foreign land.
- **12g – SEA SERVICE.** The member’s amount of time spent in service while at sea.
- **12h – EFFECTIVE DATE OF PAY GRADE.** The date the member received their last pay grade.
- **Field 13 – DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED.** The achievements that the member earned during his or her military career (Purple Heart, Good Conduct, Expeditionary Medal, etc.).
- **Field 14 – MILITARY EDUCATION.** All formal training courses that the member completed.
- **Field 15a – MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS’ EDUCATION ASSISTANCE PROGRAM.** Indicates whether or not the member has contributed to Post-Vietnam Era VEAP. Another version of the DD Form 214 separates Field 15 into three categories: COMMISSIONED THROUGH SERVICE ACADEMY, COMMISSIONED THROUGH ROTC SCHOLARSHIP, and ENLISTED UNDER LOAN REPAYMENT PROGRAM. Each of these subfields is followed by a “yes or no” designation.
- **Field 15b. – HIGH SCHOOL GRADUATE OR EQUIVALENT.** Indicates whether the member graduated high school or has a GED.
- **Field 16 – DAYS ACCRUED LEAVE PAID.** The number of paid leave days for which the member received a lump-sum settlement, in the form of regular leave balance (RLB) and saved leave balance (SLB). Neither RLB nor SLB can exceed 60 days.
- **Field 17 – MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION.** Indicates whether the member received dental treatment within 90 days before his or her separation. If no examination was performed, the member has 180 days from the date of discharge to apply for a dental examination with the VA.
- **Field 18 – REMARKS.** This includes any remarks about the member’s service or discharge that are relevant. For example, this section is used to provide additional information that is not provided elsewhere on the form. Military regulations that provide the authority for separation may be listed here. Additionally, if the discharge was because of medical reasons and the member was paid a severance, details of the severance pay is listed here. For more information on severance pay, see Section 6, Medical Discharge & Retirement.
- **Field 19a – MAILING ADDRESS AFTER SEPARATION.** The address where the member intends to permanently reside and receive communications after separation.
- **Field 19b – NEAREST RELATIVE.** The name and mailing address of the member’s nearest relative, if a supplementary address is needed.
- **Field 20 – MEMBER REQUESTS COPY 6 BE SENT TO (STATE) DIRECTOR OF VET AFFAIRS.** Indicates whether the member requested that a copy of their DD form 214 be sent to the Director of Veterans Affairs for the state indicated.

- **Field 21 – SIGNATURE OF MEMBER BEING SEPARATED.** The member’s signature.
- **Field 22 – OFFICIAL AUTHORIZED TO SIGN.** The name, grade, title, and signature of the official authorizing the discharge or transfer.

10.2.2. Fields 23-30 – Special Additional Information. This will only be included if the DD Form 214 is the “undeleted,” or unedited, version.

- **Field 23 – TYPE OF SEPARATION.** The member’s type of separation (Discharged, Released from Active Duty, Retired, etc.).
- **Field 24 – CHARACTER OF SERVICE.** This indicates what type of discharge the member was given (Honorable, General, Other than Honorable, Bad Conduct, Dishonorable).
- **Field 25 – SEPARATION AUTHORITY.** The specific regulation paragraph under which the separation was executed.
- **Field 26 – SEPARATION CODE.** The appropriate separation code (SPD) associated with a particular authority and reason for separation. The codes are presented either alphabetic or numerically (RBD = Retirement over 20 years, FBK = Expiration of Term of Service, 227 = Hardship, 248 = Unsuitability). The meanings to these codes are no longer made public by the military, but meanings have been published online before this change.
- **Field 27 – REENTRY CODE.** The code that identifies whether the member is eligible to reenter the service and under what conditions. Each branch has its own set of codes that or sometimes followed by a letter (RE-1A for the Air Force means that the member cannot reenlist without a signed waiver, while for the Marine Corps the same code allows reenlistment without a waiver). The most common code for reenlistment is RE-1 for all branches.
- **Field 28 – NARRATIVE REASON FOR SEPARATION.** The narrative reason from the member’s separation (Unsuitability, Misconduct, etc.).
- **Field 29 – DATES OF TIME LOST DURING THIS PERIOD.** The member’s amount of time while in the service without proper authority (AWOL, military/civil confinement, etc.).
- **Field 30 – MEMBER REQUESTS COPY 4.** The member initials to indicate whether they wish to receive the special information contained in items 23 through 29 in “undeleted” DD form 214.

10.3. DD Form 214, Before 1970

PERSONAL DATA	1 LAST NAME-FIRST NAME-MIDDLE NAME		2 SERVICE NUMBER		3 SOCIAL SECURITY NUMBER						
	4 DEPARTMENT, COMPONENT AND BRANCH OR CLASS AIR FORCE		5a. GRADE, RATE OR RANK CAPTAIN	6. PAY GRADE 03	6. DATE OF RANK	DAY	MONTH	YEAR			
	7 U S CITIZEN <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		8 PLACE OF BIRTH (City and State or Country)		9. DATE OF BIRTH	DAY	MONTH	YEAR			
SELECTIVE SERVICE DATA	10a. SELECTIVE SERVICE NUMBER Unk		b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE Unk			c. DATE INDUCTED					
						DAY	MONTH	YEAR			
TRANSFER OR DISCHARGE DATA	11 a. TYPE OF TRANSFER OR DISCHARGE RELEASE FROM ACTIVE DUTY		b. STATION OR INSTALLATION AT WHICH EFFECTED Sheppard AFB Wichita Falls, Texas								
	c. REASON AND AUTHORITY AFR 36-12, para 63, (SDN 615)			d. EFFECTIVE DATE	DAY	MONTH	YEAR				
	12 LAST DUTY ASSIGNMENT AND MAJOR COMMAND USAF Regional Hospital, ATC		13 a. CHARACTER OF SERVICE HONORABLE		b. TYPE OF CERTIFICATE ISSUED NA						
	14 DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED ARPC (NARS) 3800 York St, Denver, Colo 80205				15 REENLISTMENT CODE NA						
SERVICE DATA	16 TERMINAL DATE OF RESERVE/UMTS OBLIGATION		17 CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION			b. TERM OF SERVICE (Years)		c. DATE OF ENTRY			
	DAY	MONTH	YEAR	a. SOURCE OF ENTRY: <input type="checkbox"/> ENLISTED (First Enlistment) <input type="checkbox"/> ENLISTED (Prior Service) <input type="checkbox"/> REENLISTED <input checked="" type="checkbox"/> OTHER DP Civ			DAY	MONTH	YEAR		
	18 PRIOR REGULAR ENLISTMENTS NA		19 GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC CAPT		20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State) Los Angeles, Calif						
	21 HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code)			22 STATEMENT OF SERVICE			YEARS	MONTHS	DAYS		
	23a. SPECIALTY NUMBER & TITLE			b. RELATED CIVILIAN OCCUPATION AND D.O.T NUMBER			a. CREDITABLE FOR BASIC PAY PURPOSES				
							(1) NET SERVICE THIS PERIOD			02	00
							(2) OTHER SERVICE			00	07
						(3) TOTAL (Line (1) plus Line (2))			02	07	04
						b. TOTAL ACTIVE SERVICE			02	00	00
						c. FOREIGN AND/OR SEA SERVICE			00	00	00
24 DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED NDSM SAEMR AFQUA											
25 EDUCATION AND TRAINING COMPLETED Off BMT Med 1968											
VA AND EMP. SERVICE DATA	26 a. NON-PAY PERIODS/TIME LOST (Preceding Two Years) No time lost		b. DAYS ACCRUED LEAVE PAID 03		27 a. INSURANCE IN FORCE (NSLI or USGLI) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		b. AMOUNT OF ALLOTMENT \$ NA		c. MONTH ALLOTMENT DISCONTINUED NA		
			28. VA CLAIM NUMBER C- NA		29. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE <input checked="" type="checkbox"/> \$10,000 <input type="checkbox"/> \$5,000 <input type="checkbox"/> NONE						
REMARKS	30 REMARKS (1) College- DDS(Dent). (2) Blood Gp A Pos. (3) NAC, 9 Feb 68, NACC, Fort Holabird, MD. (4) AFRES Grade CAPT (P) (5) En titled to 3 yrs, 8 mos, 15 days IAW para 10102 DODPM.										
AUTHENTICATION	31 PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code)				32. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED						
	33 TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER ,MSGT,USAF Chief, Career Assistance & Counseling Br(CBPO)				34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN						

DD FORM 214

PRECEDING EDITIONS OF THIS FORM ARE OBSOLETE

ARMED FORCES OF THE UNITED STATES
REPORT OF TRANSFER OR DISCHARGE

2

10.3.1. Fields 1-9 – Personal Data.

- **Field 1 – NAME.** The member’s name in last, first, middle format.
- **Field 2 – SERVICE NUMBER.** The member’s identification number with the armed forces. This number is no longer assigned to service members; instead, the social security number is used.
- **Field 3 – SOCIAL SECURITY NUMBER.** The member’s Social Security Number.
- **Field 4 – DEPARTMENT, COMPONENT, AND BRANCH OR CLASS.** The branch of service (Army, Navy, Air Force, Marines) OR program (Reserves).
- **Field 5a – GRADE, RATE OR RANK.** The member’s rank at the time of discharge.
- **Field 5b – PAY GRADE.** The member’s pay grade at the time of discharge.
- **Field 6 – DATE OF RANK.** The date that the member was assigned their rank.
- **Field 7 – U.S. CITIZEN.** This indicates whether the member is a U.S. citizen.
- **Field 8 – PLACE OF BIRTH.** Where the member was born in City, State or Country format.
- **Field 9 – DATE OF BIRTH.** The member’s date of birth.

10.3.2. Fields 10a-c – Selective Service Data.

- **Field 10a – SELECTIVE SERVICE NUMBER.** The member’s selective service number if he is registered with the selective service (Only used when the draft was in effect).
- **Field 10b – SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE, AND ZIP CODE.** This gives the information and location of the member’s local selective service board.
- **Field 10c – DATE INDUCTED.** The date the member reported for military duty and swore in after they were selected by the draft.

10.3.3. Fields 11-15 – Transfer or Discharge Data.

- **Field 11a – TYPE OF TRANSFER OR DISCHARGE.** The member’s transfer or discharge type (typically “Release from Active Duty”).
- **Field 11b – STATE OR INSTALLATION AT WHICH EFFECTED.** The duty station that the member was assigned when they were discharged.
- **Field 11c – REASON AND AUTHORITY.** The reason for the member’s discharge and the specific regulation and paragraph under which the member was discharged.
- **Field 11d – EFFECTIVE DATE.** The date the discharge became effective.
- **Field 12 – LAST DUTY ASSIGNMENT AND MAJOR COMMAND.** The last unit or organization the member was assigned.
- **Field 13a – CHARACTER OF SERVICE.** This indicates what type of discharge the member was given (Honorable, General, Other than Honorable). “Other than Honorable” is used for Other than Honorable/Undesirable, Bad Conduct, and

Dishonorable discharges. If “Other than Honorable” is identified, the DD Form listed in **Field 13b** to determine the member’s actual discharge status.

- **Field 13b – TYPE OF CERTIFICATE ISSUED.** This indicates what discharge certificate accompanies the member’s DD form 214 and details the specific discharge (Ex. DD Form 256 indicates an Honorable Discharge, DD Form 257 indicates a General Under Honorable Conditions Discharge, and DD Form 258 indicates an “Undesirable Discharge”). **[NEED TO LIST BCD DD FORM AND DISHONORABLE DD FORM]**
- **Field 14 – DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED.** The location and unit where the member transferred. This block will be completed only if the member transferred to a different unit or command, or has transferred from Active Duty to the Reserves.
- **Field 15 – REENLISTMENT CODE.** The code that identifies whether the member is eligible to reenter the service and under what conditions. Each branch has its own set of codes that or sometimes followed by a letter (RE-1A for the Air Force means that the member cannot reenlist without a signed waiver, while for the Marine Corps the same code allows reenlistment without a waiver). The most common code for reenlistment is RE-1 for all branches.

10.3.4. Fields 16-25 – Service Data.

- **Field 16 – TERMINAL DATE OF RESERVE/UMT&S OBLIGATION.** The date that the member will complete mandatory reserve time.
- **Field 17a – CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION: SOURCE OF ENTRY.** If the member was not drafted by the selective service, he or she will typically meet one of the three options of “Enlisted (First Enlistment), Enlisted (Prior Service), or Reenlisted” depending on their enlistment type. The box marked “Other” is typically used for officers.
- **Field 17b – TERM OF SERVICE.** The total number of years that the member enlisted for or otherwise committed.
- **Field 17c – DATE OF ENTRY.** The date the member entered the service.
- **Field 18 – PRIOR REGULAR ENLISTMENTS.** This shows any enlistments of the member before this term in service.
- **Field 19 – GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC.** The member’s rank when they entered the service.
- **Field 20 – PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE.** The location where the member entered the service.
- **Field 21 – HOME OF RECORD AT TIME OF ENTRY INTO THE ACTIVE SERVICE.** The member’s home address at the time they enlisted.
- **Field 22a-c – STATEMENT OF SERVICE.** A breakdown of the member’s time in service.

- **22a – CREDITABLE FOR BASIC PAY PURPOSES.** Gives the amount of time in year, month, and day format for the member’s current (1) and prior active service (2).
- **22b – TOTAL ACTIVE SERVICE.** The member’s total amount of time in active service.
- **22c – FOREIGN AND/OR SEA SERVICE.** The amount of time that the member spent overseas.
- **Field 23a – SPECIALTY NUMBER & TITLE.** The member’s career field or specialty. The Army and the Marines use a Military Occupation Specialty (MOS) number. The Air Force uses the Air Force Specialty Code (AFSC), while the Navy has a Rating and the Navy Enlisted Classification (NEC).
- **Field 23b – RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER.** The career field in the civilian world that matches the member’s position in the military. The D.O.T. Number, or Dictionary of Occupational Titles, allows members to match their qualifications with available civilian positions through employment agencies.
- **Field 24 – DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED.** The achievements that the member earned during his or her military career. Some awards that are of special interest for benefits include: The Armed Forces Expeditionary Medal or the Republic of Vietnam Campaign Medal, the Vietnam Service Medal, Purple Heart, or Congressional Medal of Honor.
- **Field 25 – EDUCATION AND TRAINING COMPLETED.** All formal training courses that the member completed.

10.3.5. Fields 26-29 – VA and EMP Service Data.

- **Field 26a – NON-PAY PERIODS/TIME LOST.** The member’s amount of time while in the service without proper authority (AWOL, military/civil confinement, etc.).
- **Field 26b – DAYS ACCRUED LEAVE PAID.** The amount of unused leave at the time of discharge that the military bought back through a lump-sum payment.
- **Field 27a – INSURANCE IN FORCE.** Indicates whether or not the member had government life insurance coverage of either National Service Life Insurance (NSLI) or United States Government Life Insurance (USGLI).
- **Field 27b – AMOUNT OF ALLOTMENT.** If yes, the amount of coverage the member had under the insurance plan.
- **Field 27c – MONTH ALLOTMENT DISCONTINUED.** The month that the member was no longer covered by the plan.
- **Field 28 – VA CLAIM NUMBER.** This shows a claim number if the member had a VA service-connected disability at the time of discharge.
- **Field 29 – SERVICEMEN’S GROUP LIFE INSURANCE COVERAGE.** The amount of Servicemen’s Group Life Insurance Coverage the member had in the options of \$10,000, \$8,000, or none.

10.3.6. Field 30 – Remarks. This includes any remarks about the member’s service or discharge that are relevant. For example, this section is used to provide additional information that is not provided elsewhere on the form. Military regulations that provide the authority for separation may be listed here. Additionally, if the discharge was because of medical reasons and the member was paid a severance, details of the severance pay is listed here. For more information on severance pay, see Section 6, Medical Discharge & Retirement.

10.3.7. Fields 31-34 – Authentication.

- **Field 31 – PERMENANT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE.** The address that the member provides to receive all further correspondence from the military.
- **Field 32 – SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED.** The member’s signature.
- **Field 33 – TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER.** The name and title of the officer that authorized the member’s discharge.
- **Field 34 – SIGNATURE OF OFFICER AUTHORIZED TO SIGN.** The signature of the officer that authorized the discharge.

10.4. NGB Form 22

DEPARTMENTS OF THE ARMY AND THE AIR FORCE NATIONAL GUARD BUREAU REPORT OF SEPARATION AND RECORD OF SERVICE FOR USE OF THIS FORM, SEE NGR (AR) 600-200. THE PROPONENT AGENCY IS NGB-ARP-PE.																	
REPORT OF SEPARATION AND RECORD OF SERVICE IN THE 1 <u>Army</u> NATIONAL GUARD OF <u>INDIANA</u>						AND AS A RESERVE OF THE 2 <u>ARMY</u>											
1. Insert either Army or Air						2. Enlisted personnel only - Insert only Army or Air Force											
1. LAST NAME - FIRST NAME - MIDDLE NAME				2. DEPARTMENT, COMPONENT AND BRANCH ARMY/ARNGUS/INARNG				3. SOCIAL SECURITY NUMBER									
4. DATE OF ENL	YR	MO	DA	5a. RANK	5b. PAY GRADE	6. DATE OF RANK	YR	MO	DA	7. DATE OF BIRTH	YR	MO	DA				
	08	04	28	SPC	E4		10	05	04		89	03	07				
8a. STATION OR INSTALLATION AT WHICH EFFECTED CO A 638TH SPT BN (AVN), LAFAYETTE, IN 47805-9402										8b. EFFECTIVE DATE		YR	MO	DA			
												12	03	23			
9. COMMAND TO WHICH TRANSFERRED NA						10. RECORD OF SERVICE						YRS	MOS	DAYS			
						(a) NET SERVICE THIS PERIOD						03	10	28			
						(b) PRIOR RESERVE COMPONENT SERVICE						00	00	00			
						(c) PRIOR ACTIVE FEDERAL SERVICE						00	00	00			
11. TERMINAL DATE OF RESERVE/MILITARY SERVICE OBLIGATION						YR	MO	DA	(d) TOTAL SERVICE FOR PAY						03	10	28
						NA			(e) TOTAL SERVICE FOR RETIRED PAY						03	10	26
12. MILITARY EDUCATION <i>(Course Title, number of weeks, month, and year completed)</i> Automated Logistical Specialist, 12wks 090327						13. PRIMARY SPECIALTY NUMBER, TITLE AND DATE AWARDED <i>(Additional specialty numbers and titles)</i> P92A10 Automated Logistical Specialist-090327											
14. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED SECONDARY/HIGH SCHOOL 12 YRS (Gr 1-12) COLLEGE 0 YRS						15. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED THIS PERIOD <i>(State Awards may be included)</i> ARMY-SVC-RBN-1//NTL-DEF-SVC-MDL-1//											
16. SERVICEMAN'S GROUP LIFE INSURANCE COV		17. PERSONNEL SECURITY INVESTIGATION				18. REMARKS DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS.//NGB FORM 22 AND NGB FORM 55 WERE MAILED TO SOLDIER'S LAST KNOWN ADDRESS AS SHOWN IN ITEM 18 //ADT THIS PERIOD: 081006-090327 //NOTHING FOLLOWS.											
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO AMT \$ 400,000		a. TYPE ENTNAC initiated but not completed		b. DATE COMPLETED NA													
19. MAILING ADDRESS AFTER SEPARATION <i>(Street, RFD, City, County, State and Zip Code)</i>						20. SIGNATURE OF PERSON BEING SEPARATED SOLDIER NOT AVAILABLE FOR SIGNATURE											
21. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER MR. BENNIE BOLLING, GS07, Human Resources Tech						22. SIGNATURE OF OFFICER AUTHORIZED TO SIGN <i>Bennie M. Bolling</i>											
23. AUTHORITY AND REASON NGR 600-200, 6-36u Failure to obtain required physical per AR 40-501.																	
24. CHARACTER OF SERVICE Honorable				25. TYPE OF CERTIFICATE USED NGB Form 55				26. REENLISTEMENT ELIGIBILITY RE-3									
27. <input type="checkbox"/> REQUEST						<input checked="" type="checkbox"/> DECLINE COPIES OF MY NGB FORM 22						INITIALS _____					

NGB FORM 22
1 Nov 96

(Replaces NGB Form 22, dated 1 Feb 83, which is obsolete)

INDIVIDUAL COPY IF REQUESTED (2)

10.4.1. *Fields 1-27 – Service Information.*

- The first block details the member’s involvement in the National Guard branch (Army or Air Force), state, and reserve branch.
- **Field 1 – LAST NAME – FIRST NAME – MIDDLE NAME.** The member’s last, first and middle name.
- **Field 2 – DEPARTMENT, COMPONENT AND BRANCH.** The member’s department, component, and branch with the National Guard.
- **Field 3 – SOCIAL SECURITY NUMBER.** The member’s social security number.
- **Field 4 – DATE OF ENLISTMENT.** The date the member enlisted with the National Guard.
- **Field 5a – RANK.** The member’s rank at the time of discharge.
- **Field 5b – PAY GRADE.** The member’s pay grade at the time of separation.
- **Field 6 – DATE OF RANK.** The date that the member was assigned their rank.
- **Field 7 – DATE OF BIRTH.** The member’s date of birth in year, month, day format (September 6, 1989 reads 890906).
- **Field 8a – STATION OR INSTALLATION AT WHICH EFFECTED.** The duty station that the member was assigned when they were discharged.
- **Field 8b – EFFECTIVE DATE.** The date the discharge became effective.
- **Field 9 – COMMAND TO WHICH TRANSFERRED.** The location and unit where the member transferred. Will only appear if the member had a transfer to a different unit or command, or has transferred from Active Duty to the Reserves.
- **Field 10 – RECORD OF SERVICE.** The breakdown of the member’s service in year, month, day format (YYMMDD).
 - **10a – NET SERVICE THIS PERIOD.** The member’s total amount of service with the National Guard for this period.
 - **10b – PRIOR RESERVE COMPONENT SERVICE.** The member’s total amount of service with the reserves.
 - **10c – PRIOR ACTIVE FEDERAL SERVICE.** The total amount of time that the member was called upon for federal orders.
 - **10d – TOTAL SERVICE FOR PAY.** The member’s total amount of service for which they were eligible for compensation.
 - **10e – TOTAL SERVICE FOR RETIRED PAY.** The member’s amount of service in which the earned points toward retirement.
- **Field 11 – TERMINAL DATE OF RESERVE/MILITARY SERVICE OBLIGATION.** The date that the member will complete mandatory reserve time.
- **Field 12 – MILITARY EDUCATION.** All formal training courses that the member completed.
- **Field 13 – PRIMARY SPECIALTY NUMBER, TITLE AND DATE AWARDED.** The member’s career field or specialty. The Army National Guard uses a Military Occupation Specialty (MOS) number, while the Air Force National Guard uses the Air Force Specialty Code (AFSC).

- **Field 14 – HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED.** The member’s highest level of education.
- **Field 15 – DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED THIS PERIOD.** The achievements that the member earned during his or her military career (Purple Heart, Good Conduct, Expeditionary Medal, etc.).
- **Field 16 – SERVICEMEN’S GROUP LIFE INSURANCE COVERAGE.** The amount of Servicemen’s Group Life Insurance, if any. SGLI coverage is available in \$50,000 increments up to the maximum of \$400,000.
- **Field 17 – PERSONNEL SECURITY INVESTIGATION.** The type of security investigation conducted, clearance level, and the date it was performed.
- **Field 18 – REMARKS.** This includes any remarks about the member’s service or discharge that are relevant. For example, this section is used to provide additional information that is not provided elsewhere on the form. Military regulations that provide the authority for separation may be listed here. Additionally, if the discharge was because of medical reasons and the member was paid a severance, details of the severance pay is listed here. For more information on severance pay, see Section 6, Medical Discharge & Retirement.
- **Field 19 – MAILING ADDRESS AFTER SEPARATION.** The address where the member intends to permanently reside and receive communications after separation.
- **Field 20 – SIGNATURE OF PERSON BEING SEPARATED.** The member’s signature.
- **Field 21 – TYPED NAME, GRADE, AND TITLE OF AUTHORIZING OFFICER.** The name, grade, and title of the official authorizing the discharge or transfer.
- **Field 22 – SIGNATURE OF OFFICER AUTHORIZED TO SIGN.** The authorizing official’s signature.
- **Field 23 – AUTHORITY AND REASON.** The specific regulation paragraph under which the separation was authorized and why.
- **Field 24 – CHARACTER OF SERVICE.** This indicates what type of discharge the member was given (Honorable, General, Other than Honorable, Bad Conduct, Dishonorable).
- **Field 25 – TYPE OF CERTIFICATE ISSUED.** Based upon the member’s branch of service, this indicates what discharge certificate accompanies the member’s NGB Form 22 and details the specific discharge (Ex. DD Form 256 indicates an Honorable Discharge, DD Form 257 indicates a General Discharge, and DD Form 258 indicates an “Undesirable Discharge”).
- **Field 26 – REENLISTMENT ELIGIBILITY.** The code that identifies whether the member is eligible to reenter the service and under what conditions. Each branch has its own set of codes that or sometimes followed by a letter (RE-1A for the Air Force means that the member cannot reenlist without a signed waiver, while for the Marine Corps the same code allows reenlistment without a waiver). The most common code for reenlistment is RE-1 for all branches.

- **Field 27 – SIGNATURE.** If available for signature, the member has the option to request or decline a copy of the NGB Form 22. If he or she is not present at the time of discharge, the default entry is to decline.

11. **Veterans' Benefits**

11.1. Introduction. According to a survey conducted by the VA, 59% of veterans are unaware of their benefits.³⁵⁷ Many veterans' benefits can improve a veteran or their families' quality of life or increase their income. Thus, in many cases, simply providing a veteran or their family with information about their benefits can potentially improve their life circumstances.

The following provides an overview of US Department of Veterans Affairs, the Indiana Department of Veterans Affairs, how to access military records, and state and federal veterans' benefits that are available. The veterans' benefits in this section are listed by the following categories: Income-Based; Health Care; Education; Housing; Tax Deductions / Exemptions; Burial; Family; Employment & Job Training; Insurance; and Miscellaneous.

11.2. United States Department of Veterans Affairs (VA) Overview. The VA consists of three administrations:

11.2.1. Veterans Health Administration (VHA). Basically, any service that deals with the veterans' well-being is under the VHA. The VHA provides all medical care, including mental health. Additionally, all social services, from homeless prevention to assisting veterans who are involved in the criminal justice system, are part of the VHA. This is the largest administration of the VA.³⁵⁸

11.2.2. Veterans Benefits Administration (VBA). The VBA provides all monetary benefits. This includes oversight of service-connected disability, needs-based pension, education benefits, VA home loan program, etc.³⁵⁹

11.2.3. Veterans Cemetery Administration (VCA). The VCA oversees all veterans' cemeteries and provides all non-monetary burial benefits, such as a headstone and burial flag.³⁶⁰

11.3. General Eligibility for VA Benefits: Length of Service & Character of Discharge. Generally, eligibility for VA Benefits depends on when a veteran first entered military service and the length of their service, and their Character of Discharge.³⁶¹ The general rules are:

11.3.1. Length of Service.

- For veterans who first entered the military after 9/7/80 (enlisted) or after 10/16/81 (officer), they must have completed:

³⁵⁷ Chris Adams, *VA Lags as Many Veterans Unaware of Benefits*, MCCLATCHY NEWSPAPERS (Jun. 17, 2015), <https://www.mcclatchydc.com/news/nation-world/national/article24740527.html>

³⁵⁸ *Veteran's Health Administration*, VA.GOV, <https://www.va.gov/health/aboutVHA.asp> (last visited Apr. 17, 2020)

³⁵⁹ *Veteran's Benefits Administration*, VA.GOV, <https://www.benefits.va.gov/BENEFITS/about.asp> (last visited Apr. 17, 2020)

³⁶⁰ *National Cemetery Administration*, VA.GOV, <https://www.cem.va.gov/cem/about/index.asp> (last visited Apr. 17, 2020)

³⁶¹ *Eligibility for VA Benefits*, *supra* note 88

- 24 months continuous active service, *OR*
- The full period for which they were called or ordered to active duty (for Reserve and National Guard Members)
- For veterans who first entered the military on or before 9/7/80 (enlisted) or on or before 10/16/81 (officer), they must have completed 90 days of active military service (does not have to be continuous).³⁶²

11.3.2. Character of Discharge. A veteran must have been discharged under honorable conditions.³⁶³ Most laws state that the discharge must have been “under conditions other than dishonorable.”³⁶⁴ This means that administrative discharges like Honorable or General discharges are considered honorable, while punitive discharges like Bad Conduct and Dishonorable discharges are considered dishonorable.³⁶⁵ An Other Than Honorable Discharge is a grey area that the VA determines on a case-by-case basis.³⁶⁶ However, there are certain statutory bars that the VA cannot grant VA benefits.³⁶⁷ Further, the VA has established regulatory bars to VA Benefits.³⁶⁸

Keep in mind that these are general rules. There are some benefits that have their own special rules. For instance, the GI Bill education benefit is available only to those veterans who received an honorable discharge.³⁶⁹ And for the VA home loan guaranty, a veteran who entered the service after 9/7/80 (enlisted) or after 10/16/81 (officer), must have served at least 180 days continuous service.³⁷⁰ These exceptions are addressed in the applicable benefit discussed below.

11.3.2.1. Statutory Bars (38 U.S.C. § 5303). If a veteran was discharged from the military under one of the following conditions, then they are not eligible for any VA benefits:

- A conscientious objector who refused to perform military duty, wear the uniform, or comply with a lawful order.
- A discharge that was part of a sentence of a general court-martial.
- Resignation by an officer for the good of the service.
- A deserter.
- An alien who, during a period of hostilities, requested a discharge from the military.

³⁶² *Eligibility for VA Health Care*, VA.GOV, <https://www.va.gov/health-care/eligibility/> (last visited Apr. 17, 2020)

³⁶³ *Applying for Benefits and Your Character of Discharge*, *supra* note 111

³⁶⁴ *Claims for VA Benefits and Character of Discharge*, *supra* note 310

³⁶⁵ *Military Discharge in the United States*, *supra* note 314 at 2-3

³⁶⁶ *Claims for VA Benefits and Character of Discharge*, *supra* note 310

³⁶⁷ 38 U.S.C. § 5303 (2012); *see also* 38 C.F.R. § 3.12

³⁶⁸ *M21-1, Part III, Subpart v, Chapter 1, Section B - Statutory Bars to Benefits and Character of Discharge (COD)*, VA.GOV,

[https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000014217/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-B---Statutory-Bars-to-Benefits-and-Character-of-Discharge-\(COD\)#2](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000014217/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-B---Statutory-Bars-to-Benefits-and-Character-of-Discharge-(COD)#2) (last visited Apr. 20, 2020)

³⁶⁹ *Federal Benefits for Veterans, Dependents and Survivors, Chapter 5 Education and Training*, VA.GOV,

https://www.va.gov/opa/publications/benefits_book/benefits_chap05.asp (last visited Apr. 8, 2020)

³⁷⁰ *VA Guaranteed Home Loans for Veterans*, VA.GOV, 4, https://benefits.va.gov/homeloans/documents/docs/vap_26-4_online_version.pdf (last visited Apr. 20, 2020)

- A discharge under other than honorable conditions issued as a result of an absence without official leave (AWOL) for a continuous period of at least 180 days, unless there are compelling circumstances to warrant the prolonged unauthorized absence. The following factors are considered when determining whether there are compelling circumstances that warranted a prolonged unauthorized absence:
 - Length and character of service exclusive of the period of prolonged AWOL.
 - Reasons for going AWOL. Reasons which are entitled to be given consideration include family emergencies or obligations, or similar types of obligations or duties owed to third parties.
 - A valid legal defense exists for the absence which would have precluded a conviction for AWOL.³⁷¹

11.3.2.2. Regulatory Bars (38 C.F.R. § 3.12). The following are the regulatory bars to VA benefits:

- Acceptance of an undesirable or Other Than Honorable discharge to escape trial by general court-martial.
- Mutiny or spying.
- An offense involving moral turpitude. This includes, generally, a conviction of a felony.
- Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.³⁷²

11.3.2.3. Exception to the Bar to Benefits. If a military member was insane at the time of committing the offense that resulted in a discharge, then the bar to VA benefits does not apply.³⁷³

11.4. VA-accreditation for Attorneys. Anyone who advocates for veterans within the VA must be accredited by the VA Office of General Counsel (OGC). Attorneys who are seeking VA-accreditation should complete a VA Form 21a (Application for Accreditation as a Claims Agent or Attorney) and mail it to the address indicated on the form, fax it to the Office of the General Counsel (022D) at (202) 495-5457, or attached (as a pdf file) to an e-mail sent to ogcaccrreditationmailbox@va.gov. The form is available online at: <http://www.va.gov/vaforms/va/pdf/VA21a.pdf>.³⁷⁴

³⁷¹ *Supra* note 367 at § 5303

³⁷² *Supra* note 367 at § 3.12

³⁷³ *M21-1, Part III, Subpart v, Chapter 1, Section B, supra* note 368

³⁷⁴ *Accreditation & Discipline*, VA.GOV, <https://www.va.gov/ogc/accreditation.asp> (last visited Apr. 20, 2020)

11.4.1. The Accreditation Process. Once an attorney receives their accreditation by the VA, they are required to complete three hours of continuing legal education (CLE) within the first twelve months from when they received their accreditation. The CLE course must be approved by any State bar association. A free CLE on-line course can be arranged through the National Veterans Legal Services Program (www.nvlsp.org) in exchange for pro bono services. After the initial CLE requirement is met, the attorney must certify to the VA's OGC in writing that they have completed a qualifying CLE. The certification should include the title of the CLE, the date and time of the CLE, and the name of the CLE provider.³⁷⁵ See Section 14, Resources for Attorneys, for more VA accreditation CLE providers.

11.4.2. Maintaining Accreditation. To maintain VA-accreditation, attorneys are required to complete an additional three hours of CLE on veterans benefits law and procedure within 3 years from the date of their initial accreditation and every two years thereafter.³⁷⁶ Additionally, VA-accredited attorneys must notify the VA OGC in writing on an annual basis, providing any court, bar, federal agency, or state agency that they are admitted to practice or authorized to appear and certify that they are in good standing in each.³⁷⁷ If there is any change in status in any jurisdiction that they are admitted to appear, they must notify the VA OGC within 30 days.³⁷⁸ See 38 C.F.R. § 14.629 for more information on VA-Accreditation Requirements.

11.4.3. Attorney's Fees. Generally, an attorney cannot charge fees until the Notice of Disagreement (appeal) is filed with the VA. The fee agreement must be in writing and the fees must be reasonable. Fees that are 20% or less of past-due benefits awarded are presumed reasonable while fees that are more than 33 1/3% are presumed unreasonable.³⁷⁹ See 38 C.F.R. § 14.636 for more information on Fees and Fee Agreements.

11.5. Indiana Department of Veterans Affairs Overview. The Indiana Department of Veterans Affairs assists Indiana veterans and qualified family members or survivors, who are eligible for benefits or advantages provided by Indiana and the U.S. government. It oversees Indiana veterans' benefits and the Indiana Veterans Home. Additionally, it provides guidance and training to all county Veterans' Service Officers. For more information on Indiana Benefits and Services please visit: <https://www.in.gov/dva/2343.htm>.

11.5.1. Director and Veterans' Affairs Commission. The Indiana Department of Veterans Affairs Director sits on the Veterans' Affairs Commission. The commission adopts

³⁷⁵ *CLE Training and VA Accreditation for Attorneys*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/Military_Pro_Bono/aba-veterans-claims-and-assistance-network/attorneys-training/ (last visited Apr. 20, 2020)

³⁷⁶ *VA Accreditation Program, How to Apply for VA Accreditation as an Attorney or Claims Agent*, VA.GOV, 2, <https://www.va.gov/OGC/docs/Accred/HowtoApplyforAccreditation.pdf> (last visited Apr. 20, 2020)

³⁷⁷ *VA Accreditation Program*, *supra* note 376 at 1

³⁷⁸ 38 C.F.R. § 14.629(b)(4)

³⁷⁹ *The Fees Which May Be Charged By An Agent or Attorney*, NATIONAL ORGANIZATION OF VETERANS' ADVOCATES, INC., <https://www.vetadvocates.org/cpages/fees-which-may-be-charged-by-agent-attorney> (last visited Apr. 20, 2020)

rules that are necessary for veterans to receive benefits under present and future enactments of the Congress of the United States concerning veterans' affairs. It also enters into on behalf of the state contracts or agreements with the federal government to receive benefits under present and future federal enactments concerning veterans' aid and benefits. The commission also manages the Military Family Relief Fund and the Veterans' Affairs Trust Fund. For more information on the Director and Veterans' Affairs Commission please visit:

<https://www.in.gov/dva/2361.htm>

11.5.2. County Veterans' Service Officers. Each county has a County Veterans Service Officer (CVSO). These CVSO's are veterans who help veterans with applying for their benefits. Essentially, they are the veterans' liaison for all veteran issues. For a current listing of CVSO by county, see: <http://www.in.gov/dva/2370.htm>.

11.6. Accessing Military Records. Veterans and the next-of-kin of deceased veterans may order military records from the National Archives. To request military records, complete an SF-180. The SF-180 may be accessed at the National Archives website at: <http://www.archives.gov/veterans/military-service-records/standard-form-180.html>. Once the form is completed, it can be mailed or faxed using the address or fax number on the website.

11.7. Income-based Benefits.

11.7.1. Service-Connected Disability Compensation. This *federal* benefit is paid by the VA to a Veteran because of injuries or diseases that happened while on active duty or were made worse by active military service.³⁸⁰ It is also paid to certain Veterans who were disabled as a result of VA health care.³⁸¹ These disabilities are considered "service-connected." This benefit is tax-free (both state & federal).³⁸² Further, creditors may not garnish money from this benefit unless the debt is either for child support or a debt owed to the federal government.³⁸³

11.7.1.1. General Eligibility. A Veteran may be eligible for service-connected disability compensation if he or she has a service-related disability and was discharged under "other than dishonorable conditions." Generally, Veterans who received an Honorable or a General Discharge are eligible; Veterans who received an Other Than Honorable (OTH) may be eligible depending on the circumstances of their discharge. For veterans with an OTH discharge, the VA will make a character of

³⁸⁰ *Eligibility for VA Disability Benefits*, *supra* note 57

³⁸¹ Chris Attig, *Quick Guide: 5 Ways to Prove VA Service Connection*, VETERANS LAW BLOG, <https://www.veteranslawblog.org/how-to-prove-va-service-connection/> (last visited Apr. 20, 2020)

³⁸² *Disability Compensation*, VA.GOV, <https://benefits.va.gov/BENEFITS/factsheets/serviceconnected/Compensation.pdf> (last visited Apr. 20, 2020)

³⁸³ *M21-1, Part III, Subpart v, Chapter 3, Section D - Garnishment of Disability Compensation in Lieu of Military Retired Pay (MRP) to Pay Alimony or Child Support*, VA.GOV, [https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000020136/M21-1,-Part-III,-Subpart-v,-Chapter-3,-Section-D---Garnishment-of-Disability-Compensation-in-Lieu-of-Military-Retired-Pay-\(MRP\)-to-Pay-Alimony-or-Child-Support](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000020136/M21-1,-Part-III,-Subpart-v,-Chapter-3,-Section-D---Garnishment-of-Disability-Compensation-in-Lieu-of-Military-Retired-Pay-(MRP)-to-Pay-Alimony-or-Child-Support) (last visited Apr. 20, 2020)

discharge determination.³⁸⁴

11.7.1.2. Compensation Rates. The amount of compensation varies with the degree of disability and the number of Veteran's dependents.³⁸⁵ Veterans with certain severe disabilities may be eligible for more money.³⁸⁶ Compensation may be reduced if the veteran receives retirement pay or received disability severance pay or separation incentive pay when he or she left the military.³⁸⁷ For more information on compensation rates, see <https://www.va.gov/disability/compensation-rates/veteran-rates/>.

11.7.1.3. Proving a Service-Connected Disability. Once the VA determines that the veteran served the minimum time period and was discharged under other than dishonorable conditions, it will then look at three things to determine whether a disability is service connected:

- (1) An event that occurred while the veteran was serving in the military;
- (2) An injury or disease that the veteran currently suffers from; and
- (3) A medical link between the event and the injury or disease.³⁸⁸

Some injuries or diseases are considered "Presumptive" service connection when veterans with similar experiences have higher rates of certain types of illnesses. When a disease is designated as presumptively service-connected, the individual veteran does not need to prove that the disease was incurred during service.³⁸⁹ In other words, a presumption shifts the burden of proof concerning whether a disease or disability was caused or aggravated due to service from the veteran to the VA.³⁹⁰ The VA would have to demonstrate that some other intervening event caused the disability in order to rebut the presumption.³⁹¹ For instance, amyotrophic lateral sclerosis (ALS), often referred to as Lou Gehrig's Disease, is a presumed illness for any veteran who served during any era.³⁹² For veterans who served in Vietnam, there are certain cancers and illnesses that are presumed illnesses.³⁹³ Thus, for these veterans, all they need to show is that they currently suffer from a presumptive illness and that they served in Vietnam.³⁹⁴ For a list of illnesses that are presumed to be service-connected for certain Veterans, see http://www.va.gov/opa/publications/benefits_book/benefits_chap02.asp.

³⁸⁴ *Applying for Benefits and Your Character of Discharge*, *supra* note 111

³⁸⁵ *Disability Compensation*, *supra* note 64

³⁸⁶ *Disability Compensation*, *supra* note 64

³⁸⁷ *How VA Disability Compensation Affects Military Retired Pay*, MILITARY OFFICERS ASSOCIATION OF AMERICA (Dec. 3, 2018),

<https://www.moaa.org/content/publications-and-media/news-articles/2018-news-articles/how-va-disability-compensation-affects-military-retired-pay/>

³⁸⁸ Attig, *supra* note 381

³⁸⁹ Sidath Viranga Panangala ET AL, *Veterans Affairs: Presumptive Service Connection and Disability Compensation*, CONGRESSIONAL RESEARCH SERVICE (Nov. 8, 2014), 4, <https://fas.org/sgp/crs/misc/R41405.pdf>

³⁹⁰ *Veterans Affairs: Presumptive Service Connection*, *supra* note 389

³⁹¹ *Veterans Affairs: Presumptive Service Connection*, *supra* note 389

³⁹² *VA Secretary Establishes ALS as a Presumptive Compensable Illness*, VA.GOV (Sep. 23, 2008),

<https://www.va.gov/opa/pressrel/pressrelease.cfm?id=1583>

³⁹³ *Diseases Related to Agent Orange*, VA.GOV, <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/agent-orange/related-diseases/> (last visited Apr. 20, 2020)

³⁹⁴ *Agent Orange Exposure*, VA.GOV, <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/agent-orange/> (last visited Apr. 20, 2020)

11.7.1.4. No Statute of Limitations. If a veteran is diagnosed with a disease years after leaving the military and the disease may have been caused by military service, then they may be eligible for compensation, providing the three elements above are met.³⁹⁵

11.7.1.5. Eligibility for Other Benefits. Depending on the type of disability, a Veteran with a service-connected disability may be eligible for the following Federal benefits:

- Free VA health care for all rated service-connected conditions
- VA Vocational Rehabilitation & Employment services, *if the veteran qualifies*
- VA \$10,000 life insurance
- Federal employment preference
- VA home loan funding fee waived
- For other VA benefits that may be available, see https://www.va.gov/opa/publications/benefits_book/2019_Federal_Benefits_for_Veterans_Dependents_and_survivors.pdf

Additionally, the State of Indiana provides benefits:

- Hoosier Disabled Veteran License Plate
- Children of a disabled Veteran may be eligible for free tuition at some Indiana Schools
- Property Tax Deduction
- For more details about Indiana benefits, see: <https://www.in.gov/dva/2343.htm> OR <https://www.in.gov/dva/2989.htm>

11.7.2. Dependency & Indemnity Compensation (DIC) for Surviving Spouse. This *federal* benefit paid by the VA is available to **widows or widowers (or a surviving child)** of veterans who died from a service-connected injury or disease. DIC is a monthly tax-free (both state and federal) benefit.³⁹⁶ Further, creditors may not garnish money from this benefit unless the debt is either for child support or a debt owed to the federal government.³⁹⁷

11.7.2.1. Eligibility. DIC is paid to eligible survivors of a:

- Military service member who died while on active duty, active duty for training, or inactive duty training. Usually, a casualty officer assists the family with setting up these benefits, OR
- Veteran whose death was caused by a service-related injury or disease, OR
- Veteran whose death was caused by a nonservice-related injury or disease if the Veteran was receiving, or was entitled to receive VA service-connected

³⁹⁵ Margaret Wadsworth, *Is There a Statute of Limitations to Apply for Veterans' Disability or to Appeal a Denial?*, NOLO, <https://www.disabilitysecrets.com/resources/disability/disability-denials-appeals/statute-limitations-reapply-for-disability> (last visited Apr. 20, 2020)

³⁹⁶ *About VA DIC for Spouses, Dependents, and Parents*, VA.GOV, <https://www.va.gov/disability/dependency-indemnity-compensation/> (last visited Apr. 20, 2020)

³⁹⁷ 38 U.S.C. § 5307 (2012); see also 38 C.F.R. § 3.450 (a)(1)(ii)

disability that was rated as totally disabling and the Veteran suffered from this disability:

- For at least 10 years immediately before the Veteran's death, OR
- Since the Veteran left active duty and for at least five years immediately before his or her death, OR
- For at least one year before the Veteran's death if the he or she was a former prisoner of war who died after September 30, 1999.³⁹⁸

Generally, a **surviving spouse** is eligible if he or she meets the following requirements:

- **Length of Marriage:**
 - At least one year before the veteran's death, OR
 - Any length of time if a child was born during the marriage, OR
 - Any length of time if the surviving spouse married the veteran within 15 years of discharge from the period of military service in which the disease or injury that caused the veteran's death began or was aggravated.
- **Cohabited with Veteran:**
 - Lived with the veteran continuously until the veteran's death, OR
 - If separated, the surviving spouse was not at fault for the separation
- **No Remarriage:**
 - Is not currently remarried, OR
 - If remarried, remarries on or after December 16, 2003, and on or after attaining age 57.³⁹⁹
- A **surviving child** is eligible if they are not included on the surviving spouse's DIC (usually, this would occur if the child is not in the surviving spouse's custody), is unmarried, **and** either under age 18, **or** between the ages of 18 and 23 and attending school, **or** permanently incapable of self-support if the condition occurred before reaching the age of 18.⁴⁰⁰

11.7.2.2. Eligibility for DIC and Other Income Benefits. A surviving spouse cannot receive both a VA Pension and DIC. If a surviving spouse applies for both benefits, the VA will pay them whichever benefit is the greater amount.⁴⁰¹

11.7.2.3. Elimination of SBP/DIC Offset. Prior to 2020, annuity payments from a Survivor Benefit Plan (SBP) for a retiree's surviving spouse were reduced dollar-for-dollar by the amount of the DIC payments – this was known as the “widows’ tax.” Section 622 of the National Defense Authorization Act (NDAA) for FY 2020 will gradually phase out the reduction of Survivor Benefit Plan (SBP) payments made to surviving spouses by the amount of Death Indemnity Compensation (DIC). The phase out of

³⁹⁸ *Dependency and Indemnity Compensation*, VA.GOV, 1, <https://benefits.va.gov/BENEFITS/factsheets/survivors/dic.pdf> (last visited Apr. 20, 2020)

³⁹⁹ *Dependency and Indemnity Compensation*, *supra* note 398

⁴⁰⁰ *Dependency and Indemnity Compensation*, *supra* note 398 at 2

⁴⁰¹ *2020 VA DIC Rates for Spouses and Dependents*, VA.GOV, <https://www.va.gov/disability/survivor-dic-rates/> (last visited Apr. 20, 2020)

the offset will occur over three years, starting on January 1, 2020 (CY20), and the offset will be reduced by one-third each year. Beginning in CY20, a spouse's monthly SBP payment will increase by 30% by reducing the DIC offset by the corresponding amount. By the end of CY22, the surviving spouse will receive the full SBP amount. This benefit is not retroactive. Additionally, the section requires the Secretary of the Military Department to restore eligibility to surviving spouse who previously elected for his/her dependent child to receive the SBP benefit. This restored eligibility will be available as of January 1, 2023.⁴⁰²

11.7.2.4. Impact on Recipients: The repeal of the offset eliminates the DIC offset as a factor a surviving spouse must consider when making his or her SBP election, making the decision that much easier. Additionally, spouses who initially elected for their children to receive this benefit due to the offset, will be able to reassess this decision and re-elect to receive the benefit themselves.⁴⁰³ **For more information,** see <https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/>.

11.7.2.5. Other Survivor Benefits Available for DIC Recipients. If a surviving spouse or child qualifies for DIC, then he or she may also be eligible for the following benefits:

- Health Care (CHAMPVA)
- Federal Employment Preference
- Home Loan Guaranty
- Survivors' & Dependents' Educational Assistance.⁴⁰⁴

11.7.3. Needs-Based Pension (Non-service Connected). This **federal** benefit is paid by the VA to **wartime Veterans or their surviving spouse** who have **limited or no income**. When this benefit is paid to a surviving spouse, it is referred to as a "death pension." The pension works the same for either a veteran or a surviving spouse. But the maximum amount that may be paid to a surviving spouse is less. A veteran or surviving spouse who is more seriously disabled may also qualify for **Aid and Attendance** or **Housebound** benefits. This benefit is tax-free (both state & federal). Further, creditors may not garnish money from this benefit unless the debt is either for child support or a debt owed to the federal government.

11.7.3.1. Eligibility. A surviving spouse or unmarried child may be eligible if:

- The deceased Veteran was discharged under other than dishonorable conditions, **AND**
- He or she served 90 days or more of active duty, with at least one day during a time of war (see section 11.7.3.3 below for qualifying wartimes), **AND**

⁴⁰² *SBP-DIC Offset Phased Elimination*, DEFENSE SERVICE AND ACCOUNTING SERVICE, <https://www.dfas.mil/retiredmilitary/survivors/SBP-DIC-News> (last visited Apr. 20, 2020)

⁴⁰³ National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 622(e) (2019)

⁴⁰⁴ *Summary of VA Dependents' and Survivors' Benefits*, VA.GOV, <https://benefits.va.gov/BENEFITS/benefits-summary/SummaryofVADependentsandSurvivorsBenefits.pdf> (last visited Apr. 20, 2020)

- The surviving spouse or child's income is below the amount listed in the Survivors Pension Rate Table⁴⁰⁵, **AND**
- Their net worth meets the limits set for the Community Spouse Resource Allowance (CSRA) established by Congress for Medicaid., **AND**
- They are one of the following:
 - The unmarried surviving spouse (or surviving spouse was previously married and the marriage ended before Nov. 1, 1990).
 - The unmarried child of the deceased Veteran who is under 18, became permanently disabled before 18, or is between 18 and 23 years old and enrolled in an approved educational institution.
- If the deceased Veteran entered active duty after Sept. 7, 1980, he or she must have served at least 24 months of active-duty service. If the length of service is less than 24 months, the Veteran must have completed their entire tour of active duty.⁴⁰⁶

11.7.3.2. Wartime Veteran. A wartime veteran is someone who either:

- Entered active duty before September 8, 1980, served at least 90 days of active military service, **and** served at least one day of service during a wartime period, **OR**
- Entered active duty after September 7, 1980, served at least 24 months **OR** the full period for which called or ordered to active duty, **and** at served least one day was during a wartime period (there are exceptions to this rule).⁴⁰⁷

11.7.3.3. "Wartime" Service. To qualify for a VA Pension, the veteran must have served at least one day during the following wartime periods:

- **World War II:** Dec 7, 1941-Dec 31, 1946.
- **Korean conflict:** Jun 27, 1950-Jan 31, 1955.
- **Vietnam era:** Aug 5, 1964-May 7, 1975 (But if the veteran served in the Republic of Vietnam, wartime service is February 28, 1961-May 7, 1975).
- **Persian Gulf War:** August 2, 1990-through a future date to be set by law or presidential proclamation.⁴⁰⁸

11.7.3.4. Housebound Benefit. A Housebound is a benefit paid *in addition* to the monthly pension. Housebound benefits may **not** be paid if the veteran or surviving spouse is not eligible for a pension. A veteran or surviving spouse may be eligible for Housebound benefits when the veteran or the surviving spouse has:

- A single permanent disability evaluated as 100-percent disabling **AND** because of this disability, s/he is permanently and substantially confined to his or her home, **OR**

⁴⁰⁵ See the Survivors Pension Rate Table at https://www.benefits.va.gov/pension/current_rates_survivor_pen.asp for the current net worth limit and maximum annual pension rate.

⁴⁰⁶ *Survivor's Pension Benefit*, VA.GOV, <https://www.benefits.va.gov/BENEFITS/factsheets/survivors/Survivorspension.pdf> (last visited Apr. 3, 2020)

⁴⁰⁷ *Eligibility for Veterans Pension*, VA.GOV, <https://www.va.gov/pension/eligibility/> (last visited Apr. 20, 2020)

⁴⁰⁸ *Eligibility for Veterans Pension*, *supra* note 407

- A single permanent disability evaluated as 100% disabling **AND**, another disability, or disabilities, evaluated as 60% or more disabling.⁴⁰⁹

11.7.3.5. Aid and Attendance (A&A) benefit. A&A is a benefit paid *in addition* to a monthly pension. A&A may **not** be paid if the veteran is not eligible for a pension. A veteran, surviving spouse, or child who became disabled before age 18 may be eligible for A&A when:

- Needs the aid of another person in order to perform his/ her activities of daily living, such as bathing, feeding, dressing, going to the bathroom, adjusting prosthetic devices, or protecting him/herself from hazards in the house and/or area, **OR**
- Is bedridden, meaning s/he must remain in bed, because of the disability and not because of treatment or bed rest prescribed by a doctor, **OR**
- Is a patient in a nursing home because of mental or physical incapacity, **OR**
- Is blind, or so nearly blind as to have corrected visual acuity of 5/200 or less in both eyes.⁴¹⁰

11.7.3.6. No “Double-dipping.” A veteran or surviving spouse may not receive both the A&A and Housebound benefit at the same time.⁴¹¹ Additionally, a veteran may not receive service-connected disability compensation and a VA pension at the same time.⁴¹² Likewise, a surviving spouse may not receive DIC and a VA pension at the same time.⁴¹³ However, if the veteran or surviving spouse applies for both benefits, the VA will pay whichever benefit pays the greater amount.⁴¹⁴

11.7.3.7. Income Affects the VA Pension Amount. The VA Pension is a needs-based program. Thus, the VA determines the amount of “countable” income that a veteran or surviving spouse has and subtracts a portion of unreimbursed medical expenses to determine the total countable income amount. Then, using the maximum annual pension rate (MAPR) for the veteran or surviving spouse, subtracts the total countable income amount to determine the total benefit available. For example, if a veteran’s total countable income (after unreimbursed medical expenses are subtracted) is \$6000 and the MAPR for this veteran is \$12,465, then the total VA annual pension amount would be \$6,465. To determine the monthly amount, divide this number by 12.⁴¹⁵

⁴⁰⁹ *Enhanced or Special Monthly Pension Aid and Attendance or Housebound*, VA.GOV, <https://benefits.va.gov/BENEFITS/factsheets/limitedincome/EnhancedorSpecialPension.pdf> (last visited Apr. 20, 2020)

⁴¹⁰ *Enhanced or Special Monthly Pension Aid and Attendance or Housebound*, *supra* note 409

⁴¹¹ *VA Aid and Attendance Benefits and Housebound Allowance*, VA.GOV, <https://www.va.gov/pension/aid-attendance-housebound/> (last visited Apr. 20, 2020)

⁴¹² *Summary of VA Pension Benefits*, VA.GOV, 3, <https://benefits.va.gov/BENEFITS/benefits-summary/SummaryofVAPensionBenefits.pdf> (last visited Apr. 20, 2020)

⁴¹³ *2020 VA DIC Rates for Spouses and Dependents*, *supra* note 401

⁴¹⁴ *Summary of VA Pension Benefits*, *supra* note 412

⁴¹⁵ *Survivor’s Pension Benefit*, *supra* note 406 at 2

For the most current pension rates, see: <https://www.va.gov/pension/veterans-pension-rates/> for veterans and <https://www.va.gov/pension/survivors-pension-rates/> for surviving spouses.

- 11.7.3.7.1. Income for VA Pension Purposes.** The VA considers payments from almost any source as income received by the veteran or the surviving spouse and their dependents.⁴¹⁶ It includes earnings, and payments for disability, retirement, unemployment insurance, interest and dividends, and net income from farming, business, or rental property.⁴¹⁷ The VA assumes that all of a child's income is available to the veteran or the surviving spouse.⁴¹⁸ The VA may grant an exception to exclude a child's income in hardship cases.⁴¹⁹
- 11.7.3.7.2. Income that is not counted "Income" for VA purposes.** There are some specific sources of income not considered income, such as Supplemental Security (SSI) payments.⁴²⁰ But all income should be reported.⁴²¹ There are some expenses that may be deducted from the veteran's or surviving spouse's income.⁴²² For example, a portion of unreimbursed medical expenses paid by the veteran or the surviving spouse may be used to help reduce their income for VA purposes.⁴²³ Certain other expenses, such as a veteran's or surviving spouse's education expenses, and in some cases, a portion of the educational expenses of a child over 18 are also deductible from the veteran's or surviving spouse's income.⁴²⁴
- 11.7.3.8. Assets May Affect Eligibility for a VA Pension.** VA Pension is a needs-based benefit program.⁴²⁵ "Countable income" cannot be more than the pension amount a Veteran can potentially receive.⁴²⁶ Payments from any source are included as countable income unless specifically excluded.⁴²⁷ Though some income is not counted, all income needs to be reported.⁴²⁸ If there is countable family income, the monthly rate is reduced for each dollar of the amount of countable family income.⁴²⁹ Further, the Veteran's net worth cannot be excessive.⁴³⁰ The "net worth limit" tracks with Medicaid's Maximum Community Spouse Resource limit. As of

⁴¹⁶ *Quick Reference Guide Income and Assets for Financial Assessment*, VA.GOV, https://www.va.gov/healthbenefits/resources/publications/IB10-454_quick_reference_guide_income_and_assets.pdf (last visited Apr. 20, 2020)

⁴¹⁷ *Quick Reference Guide*, *supra* note 416

⁴¹⁸ 38 C.F.R. § 3.271 (2)

⁴¹⁹ *M21-1, Part V, Subpart iii, Chapter 1, Section F - Dependents for Current-Law Pension Purposes*, VA.GOV, [knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000014425/M21-1,-Part-V,-Subpart-iii,-Chapter-1,-Section-F---Dependents-for-Current-Law-Pension-Purposes](https://www.va.gov/healthbenefits/resources/publications/IB10-454_quick_reference_guide_income_and_assets.pdf) (last visited Apr. 20, 2020)

⁴²⁰ *Quick Reference Guide*, *supra* note 416

⁴²¹ *VA Pension Rates for Veterans*, VA.GOV, <https://www.va.gov/pension/veterans-pension-rates/> (last visited Apr. 21, 2020)

⁴²² 38 C.F.R. § 3.272 (3)(i)

⁴²³ 38 C.F.R. § 3.272 (g)

⁴²⁴ 38 C.F.R. § 3.272 (j)(2)

⁴²⁵ *VA Pension*, VA.GOV, <https://www.benefits.va.gov/BENEFITS/factsheets/limitedincome/livepension.pdf> (last visited Apr. 21, 2020)

⁴²⁶ *Benefits & Eligibility for the Aid & Attendance, Housebound & Basic Pensions for Veterans & Surviving Spouses*, AMERICAN COUNCIL ON AGING, <https://www.medicaidplanningassistance.org/va-pension-aid-and-attendance/> (last visited Apr. 21, 2020)

⁴²⁷ 38 C.F.R. §§ 3.271, 3.272

⁴²⁸ *VA Pension Rates for Veterans*, *supra* note 421

⁴²⁹ *2020 Survivors' Pension Rates*, MILITARYBENEFITS.INFO, <https://militarybenefits.info/survivors-pension-rate-tables/> (last visited Apr. 21, 2020).

⁴³⁰ *What is Net Worth?*, VA.GOV, https://iris.custhelp.va.gov/app/answers/detail/a_id/1233/~what-is-net-worth%3F (last visited Apr. 21, 2020)

2020, the maximum limit is \$129,094.⁴³¹ Annual income minus unreimbursed medical expenses are deducted in the net worth calculation.⁴³² Primary residence and up to two acres of land, personal vehicles, and household goods and personal items are not included in the net worth calculation.⁴³³

11.7.3.9. Three Year Look Back Period. As of October 18, 2018, the VA determination as to whether a veteran's or surviving spouse's assets are excessive is based on a look back period for asset transfers (gifting or selling for less than fair market value).⁴³⁴ This is ONLY applicable to asset transfers that are in excess of the net worth limit and that occurred after October 18, 2018.⁴³⁵ The VA has instituted a 3-year look back period for asset transfers and a maximum 5-year penalty as of the date the veteran applied for the pension.⁴³⁶ The Penalty Period Rate is currently \$2,266 per month.⁴³⁷ This means that if the asset transfer over the Net Worth Limit was \$10,000, then the penalty period would be 4.41 months (\$10,000 / \$2,266). Additionally, the purchase of Annuities that cannot be cashed out to spend down net worth over the net worth limit, would also constitute a violation.⁴³⁸

11.7.3.10. Exceptions to the Look-Back Period. The following exceptions apply to the look back period:

- If the net worth is below the net worth limit prior to the asset transfer, then the asset transfer is NOT a violation.⁴³⁹
- Transfers as a result of fraud or unfair business practice. An asset transferred as the result of fraud, misrepresentation, or unfair business practice related to the sale or marketing of financial products or services for purposes of establishing entitlement to VA pension will not be considered a covered asset. Evidence supporting this exception may include, but is not limited to, a complaint contemporaneously filed with state, local, or federal authorities reporting the incident.⁴⁴⁰
- Asset Transfer to a trust for a disabled child, provided that the child was deemed disabled and unable to support themselves PRIOR to the age of 18.⁴⁴¹

⁴³¹ VA Pension Rates for Veterans, *supra* note 421

⁴³² Annual Income Limits – Health Benefits, VA.GOV,

<https://www.va.gov/healthbenefits/apps/explorer/AnnualIncomeLimits/LegacyVAThresholds?FiscalYear=2018> (last visited Apr. 20, 2020)

⁴³³ What is the Asset / Net Worth Limit for Aid and Attendance Pension?, SENIOR VETERANS SERVICE ALLIANCE,

<https://www.veteransaidbenefit.org/what-is-the-asset-net-worth-limit-for-aid-and-attendance-pension.htm> (last visited Apr. 21, 2020)

⁴³⁴ VA Look Back & Net Income Rules for Aid & Attendance, Housebound and Basic Eligibility, AMERICAN COUNCIL ON AGING,

<https://www.medicaidplanningassistance.org/va-pension-lookback-rules/> (last visited Apr. 21, 2020)

⁴³⁵ Valerie Peterson, *Sweeping Changes to VA Pension Eligibility Rules*, NATIONAL ACADEMY OF ELDER LAW ATTORNEYS NEWS JOURNAL,

https://www.naela.org/NewsJournalOnline/OnlineNewsArticles/OnlineOct2018/2018_VA_Pension_Eligibility_Rules.aspx (last visited Apr. 21, 2020)

⁴³⁶ Peterson, *supra* note 435

⁴³⁷ VA Pension Rates for Veterans, *supra* note 421

⁴³⁸ VA Look Back & Net Income, *supra* note 434

⁴³⁹ Exceptions to Look Back Period, AMERICAN COUNCIL ON AGING, <https://www.medicaidplanningassistance.org/va-pension-lookback-rules/> (last visited Apr. 21, 2020)

⁴⁴⁰ 38 C.F.R. § 2.672 (c)

⁴⁴¹ 38 C.F.R. § 2.672 (d)(1)-(2)

- The penalty can be purged or reduced if the veteran can get their assets back prior to applying for the pension or within 60 days from the VA determination that the penalty period was violated.⁴⁴²
- “Spend down” on excess assets for services and other items valued at fair market value if the purchase was for non-countable assets (medical bills, pre-paying for a burial policy, buying a new vehicle).⁴⁴³

11.7.4. Pension for an Indiana National Guard Member Wounded or Disabled in the Service of the State (NOT on Federal Orders). This *Indiana* benefit is for any Indiana National Guard Member who is wounded or disabled (or dependent in the event of death) while on state orders to receive a pension from Indiana.⁴⁴⁴

11.7.4.1. Eligibility. Any Indiana National Guard Member who is wounded or disabled (or dependent in the event of death) while on **state orders** (not federal orders) may receive a pension from Indiana. If the wound, injury, or disease results in death, the surviving spouse, dependent children, or dependent parent of the member of the Indiana National Guard is eligible to receive the pension.⁴⁴⁵

11.7.4.2. Benefits Provided. This pension is intended to be the same as the VA service-connected disability and is awarded when the National Guard member would not qualify for VA disability compensation because they were not on federal orders at the time of their injury or death.

11.7.5. Survivor Benefit Plan (SBP). This *federal* benefit, offered by the Department of Defense, is an annuity program to provide a portion of an active duty military member’s pay or a military retiree’s retired pay to their **surviving spouse**.⁴⁴⁶

11.7.5.1. Eligibility. All married active duty members and retirees who are receiving retired pay must participate unless BOTH the retiree and their spouse opt out of the program.⁴⁴⁷

11.7.5.2. Benefits Provided. SBP provides up to 55% of the member’s retired pay to their survivors. The minimum survivor benefit amount is \$300 per month.⁴⁴⁸

11.7.5.3. Premiums. Active duty military members do not pay premiums. Retirees must pay premiums. The cost is generally 6.5% of the amount selected. The premium is deducted from retired pay – even for retired Reservists & National Guard members.

⁴⁴² 38 C.F.R. § 2.672 (e)(5)(ii)

⁴⁴³ *Exceptions to Look Back Period*, *supra* note 439

⁴⁴⁴ Ind. Code 10-16-7-19

⁴⁴⁵ *Id.* at § (8)

⁴⁴⁶ *Survivor Benefit Plan Overview*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/Overview/> (last visited Apr. 21, 2020)

⁴⁴⁷ *The Survivor Benefit Plan Explained*, MILITARY.COM, <https://www.military.com/benefits/survivor-benefits/the-survivor-benefit-plan-explained.html> (last visited Apr. 21, 2020)

⁴⁴⁸ *Spouse Coverage*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/Costs-and-Benefits/Spouse-Coverage/> (last visited Apr. 21, 2020)

The SBP is “paid up” when premiums have been paid for 360 months (30 yrs) **and** the retiree turns 70.⁴⁴⁹

11.7.5.4. Participating in the SBP. The retiree *and* spouse must elect to participate or decline.⁴⁵⁰ If the marriage ends, deductions stop when retiree notifies Defense Finance and Accounting Service (DFAS), unless court ordered coverage for the former spouse.⁴⁵¹ If a retiree remarries, they must notify DFAS of a remarriage.⁴⁵² The retiree and spouse has one year from their marriage date to elect to participate or decline but the default is “participate.”⁴⁵³ If a retiree fails to notify DFAS of their marriage, any premiums owed will be automatically deducted from retired pay.⁴⁵⁴

11.7.5.5. Remarriage of a Surviving Spouse Who is Receiving SBP Benefit. If a surviving spouse remarries before age 55, then the SBP benefit is suspended.⁴⁵⁵ If that marriage ends, then the benefit is reinstated when requested from DFAS.⁴⁵⁶ But other entitlements, such as TRICARE benefits, are NOT reinstated.⁴⁵⁷ If a surviving spouse remarries at age 55 or older, they continue to receive the SBP benefit.⁴⁵⁸

11.7.6. Emergency Funds. These funds are provided on a short-term basis when a military member or veteran, or their families are experiencing a financial hardship or set back.

11.7.6.1. Supportive Services for Veterans Families (SSVF) Fund. This *federal* benefit is available to **low income veterans and their families** to prevent the imminent loss of a Veteran’s home or identify a new, more suitable housing situation for the individual and his or her family; or to rapidly re-house Veterans and their families who are homeless and might remain homeless without this assistance.⁴⁵⁹ Although this is a VA program, the VA awards grants to community-based service providers, private non-profit organizations, and consumer cooperatives who assist veterans and their families in their local communities.⁴⁶⁰

⁴⁴⁹ *Survivor Benefit Plan (SBP)*, MYARMYBENEFITS, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Survivor-Benefit-Plan-\(SBP\)?serv=126](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Survivor-Benefit-Plan-(SBP)?serv=126) (last visited Apr. 21, 2020)

⁴⁵⁰ *The Survivor Benefit Plan Explained*, *supra* note 447

⁴⁵¹ *Changing or Stopping Your Coverage*, DEFENSE FINANCE AND ACCOUNTING SERVICE, <https://www.dfas.mil/retiredmilitary/provide/sbp/change.html> (last visited Apr. 21, 2020)

⁴⁵² *Changing or Stopping Your Coverage*, *supra* note 451

⁴⁵³ *Changing or Stopping Your Coverage*, *supra* note 451

⁴⁵⁴ *Changing or Stopping Your Coverage*, *supra* note 451

⁴⁵⁵ *Stopping Survivor Benefits Program*, MILITARY COMPENSATION, <https://militarypay.defense.gov/Benefits/Survivor-Benefit-Program/Stopping-SBP/> (last visited Apr. 21, 2020)

⁴⁵⁶ *Stopping Survivor Benefits Program*, *supra* note 455

⁴⁵⁷ Shane Ostrom, *Your Top Remarriage Concerns: SBP, TRICARE, and More*, MILITARY OFFICERS ASSOCIATION OF AMERICA (Aug. 19, 2019), <https://www.moaa.org/content/publications-and-media/news-articles/2019-news-articles/changing-benefits-your-top-remarriage-concerns/>

⁴⁵⁸ *Understanding SBP DIC and SSIA*, DEFENSE FINANCE AND ACCOUNTING SERVICE, <https://www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-SSIA.html> (last visited Apr. 21, 2020)

⁴⁵⁹ *Homeless Veterans*, VA.GOV, https://www.va.gov/homeless/for_at_risk_veterans.asp (last visited Apr. 21, 2020)

⁴⁶⁰ *Supportive Services for Veteran Families Program (SSVF)*, VA.GOV (Dec. 2019), 1, https://www.va.gov/HOMELESS/ssvf/docs/SSVF_Program_Guide_December_2019.pdf (last visited Apr. 21, 2020)

- 11.7.6.1.1. Eligibility.** The applicant must be a member of a Veteran family, that is very low income and occupying permanent housing.⁴⁶¹
- 11.7.6.1.2. Benefits Provided.** Payments to third parties (e.g., landlords, utility companies, moving companies, and licensed child care providers) if these payments help Veteran families stay in or acquire permanent housing on a sustainable basis.⁴⁶² The maximum amount of assistance provided depends on the type of assistance provided.⁴⁶³ Grantees who oversee this program also provide other non-monetary assistance.⁴⁶⁴
- 11.7.6.1.3. Current List of Grantees in Indiana.** For the most current list of Indiana grantees and which counties they serve, see:
<http://www.va.gov/HOMELESS/SSVF.asp>.
- 11.7.6.2. Military Family Relief Fund.** This *Indiana* benefit is available for **active duty military members, Reserve, National Guard members, and Veterans** to provide short-term financial assistance for hardships caused by their active duty service.⁴⁶⁵
- 11.7.6.2.1.1. Eligibility.** The military member, reservist, National Guard member, or veteran must be an Indiana resident and with at least 12 months of qualifying service, had been discharged in Honorable or Under Honorable Conditions and served during a time of national conflict or war. The applicant's Federal Gross Income cannot exceed two (2) times the U.S. Poverty Guidelines. The hardship incurred by the applicant must be a reasonable and logical consequence of the applicant's service in the Armed Forces or the National Guard. The request must directly impact the applicant's most central and basic living needs.⁴⁶⁶
- 11.7.6.2.1.2. Benefit Provided.** Funds may be used for: food, housing, utilities, medical expenses, basic transportation, childcare, education & employment assistance, other family support expenses or any other items will be considered on a case by case basis. Funds may NOT be used for: personal debts and loans to include, but not limited to, credit cards, payday loans, student loans, loans from family & friends, etc., phone, internet, and cable bill, reimbursement of expenses already paid, legal expenses and court costs to include, but not limited to attorney retainer & fees, tickets, child support, income taxes, etc. The lifetime maximum in total assistance that can be given to the applicant is \$2,500.⁴⁶⁷

⁴⁶¹ *Supportive Services*, *supra* note 460 at 9

⁴⁶² *Supportive Services*, *supra* note 460 at 60

⁴⁶³ *Supportive Services*, *supra* note 460 at 60

⁴⁶⁴ *Supportive Services*, *supra* note 460 at 52

⁴⁶⁵ *Military Family Relief Fund*, INDIANA DEPARTMENT OF VETERANS AFFAIRS, <https://www.in.gov/dva/files/nov2018%20mfrf%20appl.PDF> (last visited Apr. 22, 2020)

⁴⁶⁶ *Military Family Relief Fund*, IN.GOV, <https://www.in.gov/dva/2329.htm> (last visited Apr. 3, 2020)

⁴⁶⁷ *Military Family Relief Fund*, *supra* note 465

11.8. Health Care Benefits.

11.8.1. VA Medical Benefits Package. This *federal* benefit allows *eligible veterans* to receive their medical care from VA Medical Centers, Outpatient Clinics, and Community-Based Outpatient Clinics.⁴⁶⁸

11.8.1.1. Care Provided. The VA provides primary care, specialty & inpatient care, preventive health care, pharmacy benefits, emergency care, diagnosis & treatment for mental health & substance abuse, rehabilitation, surgical care & organ transplant, nursing home care, home health care, respite & hospice care, readjustment counseling, and blind rehabilitation services.⁴⁶⁹

11.8.1.1.1. Dental Care is limited. Dental care is provided generally, for any service-connected condition, while a veteran's participating in VA vocational rehabilitation, for veterans in some categories (former POW), and for recently separated veterans. Recently separated veterans are entitled to a one-time treatment only if the veteran did not receive necessary dental care within 90 days before release or discharge. These veterans must have served for at least 90 days *and* they must apply within 180 days of separation.⁴⁷⁰

11.8.1.1.2. Federal Employees Dental and Vision Insurance Program (FEDVIP). FEDVIP is a voluntary dental and vision insurance program offered by Delta Dental for Federal Employees and Military Retirees that allows those enrolled to choose between 10 dental carriers and 4 vision carriers. FEDVIP dental plans cover 100% of preventative service if an in-network provider is used. There are no deductibles for in-network dentists and there is no waiting period for major services such as crowns, bridges, dentures, and implants.⁴⁷¹

The FEDVIP Vision plan provides for routine eye exams without a referral. Insurance plans include for exams, frames or contact lenses, at many optical retail stores. There are multiple options available with regard to which lenses the beneficiary chooses including: shatter resistant lenses, scratch resistant lenses, and anti-reflective, UV Coated or tinted lenses.⁴⁷²

11.8.1.1.3. Eligibility. Most military retirees are eligible for dental coverage. Retirees are eligible for vision if they are also enrolled in a TRICARE health plan. Active duty family members are eligible for vision coverage if enrolled in a TRICARE health plan. Active duty service members are not eligible for either dental or vision coverage. Dependent children are covered until age 21 (non-students) or 23

⁴⁶⁸ *Medical Benefits Package*, VA.GOV, https://www.va.gov/healthbenefits/resources/publications/hbco/hbco_medical_benefits_package.asp (last visited Apr. 22, 2020)

⁴⁶⁹ *Medical Benefits Package*, *supra* note 468

⁴⁷⁰ *VA Dental Care*, VA.GOV, <https://www.va.gov/health-care/about-va-health-benefits/dental-care/> (last visited Apr. 22, 2020)

⁴⁷¹ *Carriers and Plans*, BENEFEDS, <https://www.benefeds.com/Portal/EducationSupport?EnsSubmit=dental-vision-plans> (last visited Apr. 23, 2020)

⁴⁷² *Carriers and Plans*, *supra* note 471

(full-time students).⁴⁷³

For a complete list of plans and the percentage of coverage offered for certain dental procedures under each plan please visit:

<https://feds.deltadentalins.com/fedvip/downloads/enrollment-fact-sheet.pdf>

11.8.1.1.4. VA Dental Insurance Program (VADIP). The VA Dental Insurance Program (VADIP) offers discounted private dental insurance for Veterans enrolled in VA health care or the current or surviving spouse or dependent child of a service member that is also enrolled in CHAMPVA.⁴⁷⁴ The VA selected Delta Dental and MetLife as the private insurance companies that offer this service.⁴⁷⁵

For a complete list of plans and the percentage of coverage offered for certain dental procedures under each plan please visit:

Delta Dental: <https://feds.deltadentalins.com/vadip/downloads/fact-sheet.pdf>

OR

MetLife: <https://www.metlife.com/vadip/plan-benefits/>

11.8.1.1.5. Maternity Care. Prenatal and preconception maternity care is provided for enrolled women veterans. Usually, maternity care is provided in the community and paid for by the VA. Care continues through the post-partum visit. Maternity care services include 7 days of newborn care for women Veterans.⁴⁷⁶

11.8.1.1.6. Services not included in the VA Medical Benefits Package.

- Abortions and abortion counseling.
- Cosmetic surgery, except where determined by VA to be medically necessary.
- Gender alteration surgery.
- Health club or spa membership.
- In-vitro fertilization.
- Drugs, biological, and medical devices not approved by the Food and Drug Administration, unless part of formal clinical trial under an approved research program or when prescribed under a compassionate use exemption.

⁴⁷³ *Select Your Eligibility Group*, BENEFEDS,

<https://www.benefeds.com/Portal/Registration?EventName=AlternateFlow&ProgId=DEN&Source=Enroll&ref=nlogin&ctoken=BFJRqXPU> (last visited Apr. 23, 2020)

⁴⁷⁴ *VA Dental Insurance Program (VADIP)*, VA.GOV, <https://www.va.gov/health-care/about-va-health-benefits/dental-care/dental-insurance/> (last visited Apr. 23, 2020)

⁴⁷⁵ *VA Dental Insurance Program*, VA.GOV, <https://www.va.gov/healthbenefits/VADIP/> (last visited Apr. 23, 2020)

⁴⁷⁶ *Maternity Care*, VA.GOV, <https://www.womenshealth.va.gov/WOMENSHEALTH/outreachmaterials/GeneralHealthandWellness/maternity.asp> (last visited Apr. 22, 2020)

- Inpatient hospital or outpatient care for a Veteran who is either a patient or inmate in an institution of another government agency, if that agency has a legal obligation to provide the care or services.⁴⁷⁷

11.8.1.2. Eligibility. Eligibility depends on when the veteran served and whether they served active duty, either in the regular active duty military or in the Reserves/National Guard.⁴⁷⁸ A service-connected condition is not necessary to receive VA health care; but any service member who has a service-connected condition does not need to meet the minimum service requirements to receive treatment for their service-connected condition.⁴⁷⁹

11.8.1.2.1. Regular Active Duty. Veterans who served in the active military and were discharged or released under conditions other than dishonorable. Veterans who enlisted in the Armed Forces after 9/7/80 must have completed 24 months continuous active service; veterans who enlisted in Armed Forces before 9/7/80 must have completed 90 days of continuous active service.⁴⁸⁰

11.8.1.2.2. Former Reservists and National Guard Members. Former Reservists and National Guard Members are eligible if they were called to active duty (other than for training only) by a **Federal order** and completed the full period for which they were called or ordered to active duty **and** were discharged or released under conditions other than dishonorable.⁴⁸¹

11.8.1.2.3. Operations Enduring Freedom & Iraqi Freedom (OEF/OIF) Veterans. Veterans who served on **active duty** in a combat operations theater after 11/11/1998, are entitled to FREE VA health care for vets for any illness possibly related to their service.⁴⁸²

11.8.1.3. Enrollment. To receive VA health care, veterans are required to enroll with the VA medical facility that they want to receive their treatment, unless one of the following applies:

- 50% or more service-connected VA disability rating
- Discharged within 1 year for a disability that was incurred/aggravated in the line of duty, but the VA has not yet rated the disability
- Seeks health care for a service-connected disability
- Veterans seeking registry examinations (ionizing radiation, Agent Orange, Gulf War/Operation Enduring Freedom/ Operation Iraqi Freedom/ Operation New

⁴⁷⁷ *Medical Benefits Package Exclusions*, VA.GOV, <https://www.va.gov/healthbenefits/access/exclusions.asp> (last visited Apr. 3, 2020)

⁴⁷⁸ *Chapter 1 Health Care Benefits*, VA.GOV, https://www.va.gov/opa/publications/benefits_book/Chapter_1_Health_Care_Benefits.asp (last visited Apr. 22, 2020)

⁴⁷⁹ *Eligibility for VA Health Care*, *supra* note 362

⁴⁸⁰ Szymendera, *supra* note 110 at 3

⁴⁸¹ *Summary of VA Benefits for National Guard and Reserve Members and Veterans*, VA.GOV, 5, <https://www.benefits.va.gov/BENEFITS/benefits-summary/SummaryofVANationalGuardandReserve.pdf> (last visited Apr. 21, 2020)

⁴⁸² *Combat Veteran Eligibility*, VA.GOV, https://www.va.gov/healthbenefits/resources/publications/IB10-438_combat_veteran_eligibility.pdf (last visited Apr. 22, 2020)

Dawn (OEF/OIF/OND) depleted uranium, airborne hazards and Airborne Hazards and Open Burn Pit Registry).⁴⁸³

11.8.1.4. Priority Groups. Once a veteran enrolls with a VA health care facility, their eligibility is verified. Based on their specific eligibility status, they are assigned a Priority Group. The Priority Groups range from 1-8 with 1 being the highest priority for enrollment. Some Veterans may have to agree to pay copay to be placed in certain Priority Groups. If a veteran is eligible for more than one Priority Group, they will be placed in the highest Priority Group for which they are eligible.⁴⁸⁴

11.8.1.4.1. Priority Group 1.

- Veterans with VA Service-connected disabilities rated 50% or more.
- Veterans assigned a total disability rating for compensation based on unemployability.
- Received Medal of Honor (MOH)⁴⁸⁵

11.8.1.4.2. Priority Group 2. Veterans with VA Service-connected disabilities rated 30% or 40%.⁴⁸⁶

11.8.1.4.3. Priority Group 3.

- Veterans who are former POWs.
- Veterans awarded the Purple Heart Medal.
- Veterans that were discharged for a disability that was caused by or was aggravated by active-duty service
- Veterans with VA Service-connected disabilities rated 10% or 20%.
- Veterans awarded special eligibility classification under Title 38, U.S.C., § 1151, “benefits for individuals disabled by treatment or vocational rehabilitation.”⁴⁸⁷

11.8.1.4.4. Priority Group 4.

- Veterans receiving increased compensation or pension based on their need for regular Aid and Attendance or by reason of being permanently Housebound.
- Veterans determined by VA to be catastrophically disabled.⁴⁸⁸

11.8.1.4.5. Priority Group 5.

- Veterans who do NOT have a service-connected disability, or have a non-compensable service-connected disability that the VA rated as 0% disabling, **and** the Veteran has an annual income level that's below VA

⁴⁸³ Chapter 1 Health Care Benefits, *supra* note 478

⁴⁸⁴ VA Priority Groups, MILITARYBENEFITS, <https://militarybenefits.info/va-priority-groups/> (last visited Apr. 22, 2020)

⁴⁸⁵ VA Priority Groups, VA.GOV, <https://www.va.gov/health-care/eligibility/priority-groups/> (last visited Apr. 22, 2020)

⁴⁸⁶ VA Priority Groups, *supra* note 485

⁴⁸⁷ VA Priority Groups, *supra* note 485

⁴⁸⁸ VA Priority Groups, *supra* note 485

adjusted income limits based on the Veteran's resident zip code (See <https://www.va.gov/healthbenefits/apps/explorer/AnnualIncomeLimits/HealthBenefitsforIncomeLimitsfor2020>) **or**

- Veteran is receiving VA pension benefits, **or**
- Veteran is eligible for Medicaid programs⁴⁸⁹

11.8.1.4.6. Priority Group 6.

- Non-compensable 0% service-connected Veterans.
- Veterans exposed to ionizing radiation during atmospheric testing or during the occupation of Hiroshima and Nagasaki.
- Project 112/SHAD participants.
- Veterans who served in the Republic of Vietnam between January 9, 1962 and May 7, 1975.
- Veterans who served in the Southwest Asia theater of operations from August 2, 1990, through November 11, 1998.
- Veterans who served on active duty at Camp Lejeune for at least 30 days between August 1, 1953, and December 31, 1987.
- Veterans may also be assigned to priority group 6 if they meet the following requirements: they are currently or newly enrolled in VA health care and they served in a theater of combat operations after November 11, 1998 or were discharged from active duty on or after January 28, 2003. (OEF/OIF Veterans)
- Combat Veterans are eligible for these enhanced benefits for 5 years after discharge. At the end of this enhanced enrollment period, the VA assigns the Veteran to the highest priority group that they qualify for at that time.⁴⁹⁰

11.8.1.4.7. Priority Group 7. Veterans with incomes **below** the geographic means test (GMT) income thresholds and who agree to pay the applicable copayment. See <https://www.va.gov/healthbenefits/apps/explorer/AnnualIncomeLimits/LegacyGMTThresholds/Index?FiscalYear=2020&PriorityGroupLevel=7&State=> for the GMT income thresholds.⁴⁹¹

11.8.1.4.8. Priority Group 8. Veterans with gross household incomes **above** the VA national income limits and the geographic means test (GMT) income thresholds for their resident location and who agree to pay copays. If a Veteran is assigned to priority group 8, their eligibility for VA health care benefits will depend on which sub priority group, discussed below, that they are placed in.⁴⁹²

11.8.1.4.9. Priority Group 8 Subpriority Groups.

Subpriority group a

⁴⁸⁹ VA Priority Groups, *supra* note 485

⁴⁹⁰ VA Priority Groups, *supra* note 485

⁴⁹¹ VA Priority Groups, *supra* note 485

⁴⁹² VA Priority Groups, *supra* note 485

All of these must be true:

- The Veteran has a non-compensable service-connected condition that the VA rated as 0% disabling, **and**
- The Veteran has enrolled in the VA health care program before January 16, 2003, **and**
- The Veteran has remained enrolled since that date and/or they were placed in this subpriority group because their eligibility status changed.⁴⁹³

Subpriority group b

All of these must be true:

- The Veteran has a non-compensable service-connected condition that the VA rated as 0% disabling, **and**
- The Veteran has enrolled in the VA health care program on or after June 15, 2009, **and**
- The Veteran's income exceeds current VA or geographical limits by 10% or less.⁴⁹⁴

Subpriority group c

All of these must be true:

- The Veteran does not have a service-connected condition, **and**
- The Veteran enrolled in the VA health care program as of January 16, 2003, **and**
- The Veteran has remained enrolled since that date and/or were placed in this subpriority group because their eligibility status changed.⁴⁹⁵

Subpriority group d

All of these must be true:

- The Veteran does not have a service-connected condition, **and**
- The Veteran enrolled in the VA health care program on or after June 15, 2009, **and**
- The Veteran's income exceeds current VA or geographical limits by 10% or less.⁴⁹⁶

The Veteran is NOT eligible for VA health care benefits if the VA places the Veteran in one of these subpriority groups:

Subpriority group e

All of these must be true:

- The Veteran has a non-compensable service-connected condition that is rated as 0% disabling, **and**
 - The Veteran does not meet the criteria for subpriority group a or b above
- Note:** The Veteran is eligible for care for their service-connected condition only.⁴⁹⁷

Subpriority group f

All of these must be true:

⁴⁹³ VA Priority Groups, *supra* note 485

⁴⁹⁴ VA Priority Groups, *supra* note 485

⁴⁹⁵ VA Priority Groups, *supra* note 485

⁴⁹⁶ VA Priority Groups, *supra* note 485

⁴⁹⁷ VA Priority Groups, *supra* note 485

- The Veteran does not have a service-connected condition, **and**
- The Veteran does not meet the criteria for subpriority group c or d above.⁴⁹⁸

For veterans who do not qualify for any other Priority Group, they must have income below the VA's Priority Group 8 Relaxed Threshold to enroll in the VA health care system at this time (see:

<https://www.va.gov/healthbenefits/apps/explorer/AnnualIncomeLimits/LegacyVAThresholds?FiscalYear=2020>).

11.8.1.5. Co-Payments. Although many veterans qualify for free VA healthcare because of a compensable service-connected condition (veterans who are service-connected 10% or greater are not required to pay a copay for inpatient or outpatient care medical care) or other qualifying factor, most veterans must complete an annual financial assessment to determine if they qualify for free VA healthcare.⁴⁹⁹ If a veterans' income exceeds the established VA Income Thresholds (and those who choose not to complete the financial assessment) must agree to pay copays.⁵⁰⁰

11.8.1.5.1. Outpatient Care. For services provided by a primary care physician, the copay is \$15 per visit; for services provided by a specialist, the copay is \$50 per visit.⁵⁰¹

11.8.1.5.2. Inpatient Care. There are two inpatient copay rates, the reduced rate and the full rate.⁵⁰²

11.8.1.5.2.1. Reduced Rate (Priority Group 7 and other veterans who are responsible for paying 20% of VA's inpatient copay rate). Inpatient copay for the first 90 days of care during a 365-day period is \$281.60 plus \$2 charge per day; inpatient copay for each additional 90 days of care during a 365-day period is \$140.80 plus \$2 charge per day.⁵⁰³

11.8.1.5.2.2. Full rate (Priority Group 8 and other veterans who are responsible for paying VA's full inpatient rate). Inpatient copay for the first 90 days of care during a 365-day period is \$1,408 plus \$10 charge per day; inpatient copay for each additional 90 days of care during a 365-day period is \$704 plus \$10 charge per day. Note that veterans who live in a high cost area may qualify for a reduced inpatient copay rate.⁵⁰⁴

11.8.1.5.3. Medications. Medication copays vary depending on the veteran's priority group and their income.

⁴⁹⁸ VA Priority Groups, *supra* note 485

⁴⁹⁹ Determine Cost of Care, VA.GOV, <https://www.va.gov/healthbenefits/cost/> (last visited Apr. 22, 2020)

⁵⁰⁰ Billing & Insurance, VA.GOV, <https://www.bath.va.gov/patients/billing.asp> (last visited Apr. 21, 2020)

⁵⁰¹ VA Health Care Copay Rates, VA.GOV, <https://www.va.gov/health-care/copay-rates/> (last visited Apr. 6, 2020)

⁵⁰² Copayments, VA.GOV, https://www.va.gov/communitycare/revenue_ops/copays.asp (Apr. 22, 2020)

⁵⁰³ VA Health Care Copay Rates, *supra* note 501

⁵⁰⁴ VA Health Care Copay Rates, *supra* note 501

11.8.1.5.3.1. Priority Group 1 and veterans whose income is at or below the Maximum Allowable Pension Rate (MAPR). Medication is free for these veterans.⁵⁰⁵

11.8.1.5.3.2. Priority Groups 2-8. Veterans pay a copay for: medications that the healthcare provider prescribes to treat non-service-connected conditions, and over the counter medications (like aspirin, cough syrup, or vitamins) that Veterans get from a VA pharmacy. Veterans are advised by the VA to consider buying their over-the-counter medications on their own. It should be noted that the cost for any medications Veterans receive while staying in a VA or other approved hospital or health facility are covered by the Veteran’s in-patient copay.⁵⁰⁶

The amount the Veteran pays will depend on the “tier” of the medication and the amount of medication they are getting. The VA makes this determination based on the days of supply. Once the Veteran has paid \$700 in medication copays within a calendar year (January 1 to December 31), the Veteran will not have to pay any more for that year even if they are still getting more medication. This is known as the copay cap.⁵⁰⁷

2020 Outpatient Medication Copay Amounts⁵⁰⁸

Outpatient Medication Tier	1-30 Day Supply	31-60 Day Supply	61-90 Day Supply
Tier 1 (preferred generic prescription medicines)	\$5	\$10	\$15
Tier 2 (non-preferred generic prescription medicines and some over-the-counter medicines)	\$8	\$16	\$24
Tier 3 (brand-name prescription medicines)	\$11	\$22	\$33

11.8.1.6. Financial Assessment (Means Test). Veterans who do not receive a VA disability or pension or have a special eligibility, such as OEF/OIF veterans, must provide information on their prior year’s total gross household income and net worth to determine which Priority Group they belong and their copay responsibilities.⁵⁰⁹

⁵⁰⁵ VA Health Care Copay Rates, *supra* note 501

⁵⁰⁶ VA Health Care Copay Rates, *supra* note 501

⁵⁰⁷ VA Health Care Copay Rates, *supra* note 501

⁵⁰⁸ VA Health Care Copay Rates, *supra* note 501

⁵⁰⁹ Health Benefits, Financial Reporting Requirements, VA.GOV,

https://www.va.gov/healthbenefits/resources/publications/hbco/hbco_basic_eligibility.asp (last visited Apr. 6, 2020)

Total gross income includes the income of the veteran, their spouse, and dependent children.⁵¹⁰ The VA has eliminated the annual requirement for updated financial information.⁵¹¹ The VA now uses information from the Internal Revenue Service (IRS) and Social Security Administration (SSA) to automatically match individual Veteran's income information, reducing the burden on Veterans to keep their health care eligibility up to date.⁵¹² The VA verifies the veteran's reported income through the Internal Revenue Service (IRS) and the Social Security Administration (SSA).⁵¹³ If the veteran's reported income does not match the IRS/SSA records, the VA will notify the veteran.⁵¹⁴ If the veteran does not dispute these records, the VA will assume that the IRS/SSA records are accurate and will place the veteran in the appropriate Priority Group.⁵¹⁵

11.8.1.7. Inability to Pay Copays. If a veteran is financially unable to pay the assessed copay charges, there are options (hardship determination, waiver, compromise, or repayment plan) available through the VA healthcare facility or by telephone at 877-222-VETS (8387).⁵¹⁶ A Veteran Service Officer (VSO) may also assist with requesting a waiver, compromise, or a repayment plan.⁵¹⁷

11.8.1.8. Health Care Insurance. Health insurance or lack of health insurance does not affect a veteran's eligibility for VA health care. But a veteran who is covered under a health insurance policy must provide this information to the VA. The VA will bill private health insurance providers. The veteran will not be responsible for any unpaid balance that the insurance carrier does not pay, except for the VA copay. Additionally, payments from an insurance carrier may allow for the VA to offset part or all of the veteran's copay. Many insurance carriers apply VA health care charges towards the veteran's annual deductible.⁵¹⁸

11.8.1.9. VA Health Facilities. To find a local VA Health Facility, see: <https://www.va.gov/find-locations/>.

11.8.1.10. VA Health Care and the Affordable Health Care Act. VA Health care meets the standards of the Affordable Health Care Act. Thus, veterans only need to enroll in the VA medical facilities in which they want to receive health care to comply with the act. Veterans who are currently enrolled do not need to do anything more.⁵¹⁹

11.8.2. TRICARE. This *federal* benefit allows *active duty service members (including*

⁵¹⁰ *Health Benefits*, *supra* note 509

⁵¹¹ *Health Benefits*, *supra* note 509

⁵¹² *Health Benefits*, *supra* note 509

⁵¹³ *Your Healthcare Costs*, VA.GOV, <https://www.va.gov/health-care/about-va-health-benefits/cost-of-care/> (last visited Apr. 22, 2020)

⁵¹⁴ *Your Healthcare Costs*, *supra* note 513

⁵¹⁵ *Your Healthcare Costs*, *supra* note 513

⁵¹⁶ *Medication Copayments*, VA.GOV, https://www.va.gov/healthbenefits/resources/publications/hbco/hbco_copayments.asp (last visited Apr. 22, 2020)

⁵¹⁷ *Request VA Financial Hardship Assistance*, VA.GOV, <https://www.va.gov/health-care/pay-copay-bill/financial-hardship/> (Apr. 22, 2020)

⁵¹⁸ *VA Health Care and Other Insurance*, VA.GOV, <https://www.va.gov/health-care/about-va-health-benefits/va-health-care-and-other-insurance/> (last visited Apr. 22, 2020)

⁵¹⁹ *VA, Affordable Care Act and You*, VA.GOV, <https://www.va.gov/health/aca/> (last visited Apr. 22, 2020)

active duty reservists and National Guard members on federal orders), retirees, and their dependents to receive health care.⁵²⁰

11.8.2.1. Medical Care Covered Under TRICARE. TRICARE covers most inpatient and outpatient care that is medically necessary and considered proven.⁵²¹ However, there are special rules or limits on certain types of care, while other types of care are not covered at all.⁵²² Additionally, dental care is covered under TRICARE.⁵²³

11.8.2.2. Eligibility. TRICARE is available to active duty service members and retirees of the military, their family members, survivors and others who are registered in the Defense Enrollment Eligibility Reporting System (DEERS).⁵²⁴ TRICARE is also available to National Guard/Reserve members and their families.⁵²⁵ Benefits will vary depending on the sponsor's military status.⁵²⁶ If a Reservist's or National Guard Member's military status is:

- **On Military Duty for 30 Days or Less (When Inactive).** They qualify to purchase TRICARE Reserve Select, a premium-based, voluntary health plan that provides comprehensive health coverage for the military member and their family.⁵²⁷
- **When Activated.** They become eligible for the same health and dental benefits as active duty service members and their families.⁵²⁸
- **When Deactivated.** If a member was activated in support of a contingency operation,⁵²⁹ then they are covered for an additional 180 days after their active duty ends. Otherwise, their coverage ends as soon as their active duty service ends.⁵³⁰
- **When retired.** When a Reservist or National Guard Member retires and they are under 60-yrs old, they can purchase TRICARE Retiree Dental Program or TRICARE Retired Reserve. When they reach 60-yrs of age, they are eligible for the same TRICARE programs as all other retired service members are.⁵³¹

11.8.2.3. Medicare Eligibility and TRICARE. If a TRICARE beneficiary is eligible for Medicare Part A, then they must have Medicare Part B to remain eligible for

⁵²⁰ *Eligibility*, TRICARE, <https://www.tricare.mil/Plans/Eligibility> (last visited Apr. 22, 2020)

⁵²¹ *Covered Services*, TRICARE, <https://www.tricare.mil/CoveredServices> (last visited Apr. 22, 2020)

⁵²² *Exclusions*, TRICARE, <https://www.tricare.mil/CoveredServices/IsItCovered/Exclusions> (last visited Apr. 22, 2020)

⁵²³ *Dental Care*, TRICARE, <https://www.tricare.mil/CoveredServices/Dental> (last visited Apr. 22, 2020)

⁵²⁴ *Eligibility*, *supra* note 520

⁵²⁵ *Eligibility*, *supra* note 520

⁵²⁶ *Eligibility*, *supra* note 520

⁵²⁷ *When Inactive*, TRICARE, <https://www.tricare.mil/Plans/Eligibility/NGRMandFamilies/Inactive> (last visited Apr. 22, 2020)

⁵²⁸ *When Activated*, TRICARE, <https://www.tricare.mil/Plans/Eligibility/NGRMandFamilies/Activated> (last visited Apr. 22, 2020)

⁵²⁹ A military operation that is either designated by the Secretary of Defense as a contingency operation or becomes a contingency operation as a matter of law (10 USC 101(a)(13)). It is a military operation that is: (1) designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing force; or (2) created by definition of law. Under 10 USC 101 (a)(13)(B), a contingency operation exists if a military operation results in the: (1) callup to (or retention on) active duty of members of the uniformed Services under certain Enumerated Statutes (10 USC Sections 688, 12301(a), 12302, 12304, 12305, 12406, or 331-335); or (2) the callup to (or retention on) active duty of members of the uniformed Services under other (non-enumerated) statutes during war or national emergency declared by the President or Congress.

⁵³⁰ *When Deactivated*, TRICARE, <https://www.tricare.mil/Plans/Eligibility/NGRMandFamilies/Activated> (last visited Apr. 22, 2020)

⁵³¹ *Retired Reserves Members and Families*, TRICARE, <https://www.tricare.mil/Plans/Eligibility/NGRRandFamilies> (last visited Apr. 22, 2020)

TRICARE (with a few exceptions).⁵³²

11.8.2.4. TRICARE Programs. There are a variety of TRICARE Programs that military members, retirees, and their families are eligible for, depending on their status. The following highlights the primary TRICARE programs:

11.8.2.4.1.1. TRICARE Prime. TRICARE Prime is the least expensive program and is available for all active duty service members and retirees under 65-yrs old.⁵³³ When retired service members and their families reach the age of 65, they become eligible for TRICARE For Life, at which point, they are no longer eligible for TRICARE Prime.⁵³⁴ Retired Reservists and National Guard Members become eligible for TRICARE Prime when they begin receiving retired pay (usually when they reach the age of 60).⁵³⁵ Active duty service members and their families have no out-of-pocket costs for any type of care as long as care is received from the Primary Care Manager or with a referral.⁵³⁶ All other beneficiaries pay annual enrollment fees and network copayments.⁵³⁷ TRICARE Prime offers fewer out-of-pocket costs than other TRICARE programs, but there is less freedom of choice for providers as the beneficiary must select a provider from the network.⁵³⁸ For the current costs, see <http://www.tricare.mil/Costs/HealthPlanCosts/PrimeOptions.aspx>. Providers are either at a military hospital or clinic or from the TRICARE network (many VA facilities are in the network).⁵³⁹ If a beneficiary lives outside of the time and distance standards for a TRICARE Prime network provider, they may waive drive time standards and enroll if they live within 100 miles of a primary care manager or select another plan.⁵⁴⁰

11.8.2.4.2. TRICARE Select. TRICARE Select replaced TRICARE Standard and Extra.⁵⁴¹ TRICARE Select is a preferred provider plan available to all non-active duty.⁵⁴² All active duty members, including activated Reservists and National Guard Members must use TRICARE Prime.⁵⁴³ TRICARE Select allows beneficiaries to choose their own TRICARE-authorized provider.⁵⁴⁴ An authorized provider is any individual, institution/organization, or supplier that is licensed by a state,

⁵³² *Becoming Medicare Eligible*, TRICARE, <https://www.tricare.mil/medicare> (last visited Apr. 22, 2020)

⁵³³ *TRICARE Costs and Fact Sheet 2020*, TRICARE, https://tricare.mil/-/media/Files/TRICARE/Publications/Misc/Costs_Sheet_2020.pdf?la=en&hash=EEE1BE886F3F785159A3636DC50C7088B63149CB9C9292489217F1F9BA7218F8 (last visited Apr. 22, 2020)

⁵³⁴ *TRICARE for Life Handbook 2020*, TRICARE, 13, https://www.tricare.mil/~/-/media/Files/TRICARE/Publications/Handbooks/TFL_HBK.pdf (last visited Apr. 22, 2020)

⁵³⁵ *Retiring from Guard or Reserve*, TRICARE, <https://www.tricare.mil/LifeEvents/Retiring/GuardReserve> (last visited Apr. 22, 2020)

⁵³⁶ *TRICARE Prime*, TRICARE, <https://www.tricare.mil/Plans/HealthPlans/Prime> (last visited Apr. 22, 2020)

⁵³⁷ *TRICARE Prime*, *supra* note 536

⁵³⁸ *TRICARE Prime*, *supra* note 536

⁵³⁹ *All Provider Directories*, TRICARE, <https://www.tricare.mil/FindDoctor/AllProviderDirectories> (last visited Apr. 22, 2020)

⁵⁴⁰ *TRICARE Prime Distance and Drive Time Standards*, TRICARE, <https://tricare.mil/primeaccess> (last visited Apr. 22, 2020)

⁵⁴¹ *Which Plan is Right for You? Comparing TRICARE Prime and TRICARE Select*, TRICARE, https://tricare.mil/CoveredServices/BenefitUpdates/Archives/03_22_18_Compare_Plans (last visited Apr. 22, 2020)

⁵⁴² *Which Plan is Right for You?*, *supra* note 541

⁵⁴³ *Active Duty Servicemembers and Families*, TRICARE, <https://www.tricare.mil/Plans/Eligibility/ADSMandFamilies> (last visited Apr. 22, 2020); *When Activated*, *supra* note 528

⁵⁴⁴ *Which Plan is Right for You?*, *supra* note 541

accredited by national organization, or meets other standards of the medical community, and is certified to provide benefits under TRICARE.⁵⁴⁵ There are two types of TRICARE-authorized providers: Network and Non-Network.⁵⁴⁶ Beneficiaries have lower out-of-pocket costs if care is provided by a TRICARE-authorized network provider.⁵⁴⁷ Some services require prior authorization.⁵⁴⁸ A beneficiary can also receive certain services from non-network, TRICARE-authorized providers, but will pay higher cost sharing amounts for out-of-network care.⁵⁴⁹ TRICARE won't reimburse the patient for care received from non-authorized, non-network providers.⁵⁵⁰ Under a TRICARE Select option, beneficiaries pay a fixed fee for care for most services from a TRICARE network provider instead of paying a percentage of the allowable charge.⁵⁵¹

For the current costs, see <https://www.tricare.mil/Costs/Compare>

11.8.2.4.3. TRICARE for Life. When a beneficiary is eligible for Medicare, they must switch over to TRICARE for Life. TRICARE For Life offers secondary coverage to Medicare for all beneficiaries who have both Medicare Parts A and B. TRICARE For Life is available worldwide. Medicare provides coverage in the U.S. and U.S. Territories. In all other overseas locations, TRICARE is the primary payer. There are no enrollment fees or out-of-pocket costs, but the beneficiary must pay Medicare Part B monthly premiums. Part B premium is based on the beneficiary's income. But if the beneficiary receives their care from a VA facility or a provider who has opted out of Medicare, they might have higher out-of-pocket costs because these providers are not permitted to bill Medicare.⁵⁵²

11.8.2.4.4. TRICARE Reserve Select. TRICARE Reserve Select is a premium-based plan that Reservists, National Guard Members, and their families can purchase when they are not on active duty orders (and are eligible for TRICARE Prime) or they are not eligible for the Federal Employees Health Benefits program. Members in the Individual Ready Reserve do not qualify to purchase TRICARE Reserve Select. Out-of-pocket costs include a monthly premium, an annual deductible, and copays (varies depending on whether the health care provider is in or out of the TRICARE network).⁵⁵³ For the current costs, see <https://tricare.mil/Costs/HealthPlanCosts/TRS>

11.8.2.4.5. TRICARE Retired Reserve. TRICARE Retired Reserve is a premium-based plan that qualified retired Reserve members, their families, and survivors can

⁵⁴⁵ Which Plan is Right for You?, supra note 541

⁵⁴⁶ Which Plan is Right for You?, supra note 541

⁵⁴⁷ Which Plan is Right for You?, supra note 541

⁵⁴⁸ Which Plan is Right for You?, supra note 541

⁵⁴⁹ Which Plan is Right for You?, supra note 541

⁵⁵⁰ Which Plan is Right for You?, supra note 541

⁵⁵¹ Which Plan is Right for You?, supra note 541

⁵⁵² TRICARE FOR LIFE, TRICARE, <https://tricare.mil/tfl> (last visited Apr. 23, 2020)

⁵⁵³ TRICARE Reserve Select, TRICARE, <https://tricare.mil/Plans/HealthPlans/TRS> (last visited Apr. 23, 2020)

purchase. This program is for retired reserve members who are under age 60 and not eligible for Federal Employees Health Benefits program. Out-of-pocket costs include a monthly premium, an annual deductible, and copays (varies depending on whether the health care provider is in or out of the TRICARE network).⁵⁵⁴ For the current costs, see <https://tricare.mil/Costs/HealthPlanCosts/TRR>

For more information about TRICARE, see <https://tricare.mil/>

11.8.3. Civilian Health and Medical Program of the VA (CHAMPVA). This **federal** benefit allows for **eligible dependents or survivors** of veterans to receive health care. Although this program is similar to TRICARE, CHAMPVA is a VA program that is available to certain dependents who are not otherwise eligible for TRICARE. If a dependent is eligible for TRICARE, then they are not eligible for CHAMPVA.⁵⁵⁵

11.8.3.1. Medical Care covered under CHAMPVA.

- Ambulance service
- Ambulatory surgery
- Durable medical equipment (DME)
- Family planning and maternity
- Hospice
- Inpatient services
- Mental health services
- Outpatient services
- Pharmacy (prescription medicines)
- Skilled nursing care
- Transplants⁵⁵⁶

11.8.3.2. Eligibility. The spouse or child of the veteran cannot be eligible for TRICARE (DoD medical program) *and* must be a surviving spouse or child of a veteran who:

- Has been rated permanently and totally service-connected disabled by a VA Regional office, or
- Died from VA-rated service-connected disability, or
- Was at the time of death rated permanently and totally disabled from a service-connected disability, or
- Died on active duty service and in the line of duty (not caused by misconduct) – usually, the spouse or child of a veteran who dies on active duty is eligible for TRICARE, not CHAMPVA.⁵⁵⁷

11.8.3.3. Remarriage. A surviving spouse under the age of 55 who remarries loses

⁵⁵⁴ TRICARE Retired Reserve, TRICARE, <https://tricare.mil/Plans/HealthPlans/TRR> (last visited Apr. 23, 2020)

⁵⁵⁵ CHAMPVA Benefits, VA.GOV, <https://www.va.gov/health-care/family-caregiver-benefits/champva/> (last visited Apr. 23, 2020)

⁵⁵⁶ CHAMPVA Benefits, *supra* note 555

⁵⁵⁷ CHAMPVA Benefits, *supra* note 555

CHAMPVA eligibility. But they may reestablish eligibility if the marriage ends. A surviving spouse who remarries after age 55 does not lose eligibility.⁵⁵⁸

11.8.3.4. Medicare eligibility and CHAMPVA. CHAMPVA is the secondary payer to Medicare. Thus, when a dependent who receives CHAMPVA benefits turns 65-yrs old, they must meet the following conditions:

- If they turned 65 on or after June 5, 2001, they must be enrolled in Medicare Part A and Part B to remain eligible for CHAMPVA.
- If they turned 65 before June 5, 2001, and were otherwise eligible for CHAMPVA, and were entitled to Medicare Part A coverage, then they may be eligible for CHAMPVA without having to have Medicare Part B coverage.
- If they turned 65 before June 5, 2001, and have Medicare Part A and Part B, they must keep Part A and Part B to be eligible for CHAMPVA.
- They are not required to enroll in Medicare Part D in order to become or remain CHAMPVA eligible.⁵⁵⁹

11.8.3.5. Deductible. The annual deductible is \$50 per beneficiary or a maximum of \$100 per year.⁵⁶⁰

11.8.3.6. Receiving Care at a VA Facility. Many VA facilities provide services to CHAMPVA beneficiaries, but services are provided on a “space-available” basis after veterans’ needs are met.⁵⁶¹

For more information about CHAMPVA, see
<https://www.va.gov/communitycare/programs/dependents/champva/>.

11.8.4. Vet Centers. This *federal* benefit provides counseling services, such as readjustment counseling, bereavement counseling and military sexual trauma counseling, to **eligible veterans and their dependents**. Vet Centers are part of the VHA.⁵⁶²

11.8.4.1. Readjustment Counseling.

11.8.4.1.1. Readjustment Counseling Services. Readjustment counseling is a wide range of services offered to eligible veterans and their families to help make a successful transition from military to civilian life. They include:

- Individual and group counseling for veterans and their families
- Family counseling for military-related issues

⁵⁵⁸ CHAMPVA Benefits, *supra* note 555

⁵⁵⁹ CHAMPVA Eligibility, VA.GOV, https://www.va.gov/COMMUNITYCARE/programs/dependents/champva/champva_eligibility.asp (last visited Apr. 23, 2020)

⁵⁶⁰ *Economical Premiums to Fit Your Budget*, MILOPS, <https://champva.us/champva-supplement-rates/> (last visited Apr. 23, 2020)

⁵⁶¹ *Federal Benefits for Veterans, Dependents and Survivors: Chapter 12 Dependents and Survivors*, VA.GOV, https://www.va.gov/opa/publications/benefits_book/benefits_chap12.asp (last visited Apr. 23, 2020)

⁵⁶² *Vet Centers Readjustment Counseling*, VA.GOV, <https://www.vetcenter.va.gov/> (last visited Apr. 23, 2020)

- Substance abuse assessment and referral
- Bereavement counseling for families who experience an active duty death
- Outreach and education including PDHRA, community events, etc.
- Employment assessment & referral
- Veterans Benefits Administration explanation and referral
- Screening & referral for medical issues including TBI, depression, etc.⁵⁶³

11.8.4.1.2. *Readjustment Counseling Eligibility.* Generally, veterans who served in an armed conflict are eligible to receive Vet Center services. The more recent conflicts that the VA recognizes are:

- Vietnam War – 28 Feb. 1961 to 7 May 1975.
- Lebanon – 25 Aug. 1982 to 26 Feb. 1984.
- Grenada – 23 Oct. 1983 to 21 Nov. 1983.
- Panama – 20 Dec. 1989 to 31 Jan. 1990.
- Persian Gulf – 2 Aug. 1990 to TBD.
- Somalia – 17 Sept. 1992 to TBD.
- Bosnia – 21 Nov. 1995 to 01 Nov. 2007.
- Kosovo – 24 Mar. 1999 to TBD.
- Global War on Terrorism – Veterans who serve or have served in military expeditions to combat terrorism on or after September 11, 2001 and before a terminal date yet to be established. Includes Operation Enduring Freedom, Operation Iraqi Freedom & Operation New Dawn.
- The VA also recognizes specific campaigns/ periods during WWII and the Korean War.⁵⁶⁴

11.8.4.2. *Bereavement Counseling.*

11.8.4.2.1. *Bereavement Counseling Services.* Bereavement counseling provides assistance and support to people with emotional and psychological stress after the death of a loved one. Bereavement counseling includes a broad range of transition services, including outreach, counseling, and referral services to family members. To access Bereavement Counseling Services, contact Readjustment Counseling Service at 1-877-WAR-VETS (927-8387) or email at vetcenter.bereavement@va.gov. Readjustment Counseling Service staff assist families in contacting the nearest Vet Center. Often counseling can be made available in the family's home or where the family feels most comfortable.⁵⁶⁵

To find a Vet Center near you please visit:

<https://www.va.gov/find-locations/>

⁵⁶³ *Vet Center Services*, VA.GOV, https://www.vetcenter.va.gov/Vet_Center_Services.asp (last visited Apr. 23, 2020)

⁵⁶⁴ *Vet Center Eligibility*, VA.GOV, <https://www.vetcenter.va.gov/Eligibility.asp> (last visited Apr. 23, 2020)

⁵⁶⁵ *Bereavement Counseling*, VA.GOV, https://www.vetcenter.va.gov/Bereavement_Counseling.asp (last visited Apr. 23, 2020)

11.8.4.2.2. Bereavement Counseling Eligibility. Parents, spouses, and children of service members who died while serving on active duty are eligible.⁵⁶⁶

11.8.4.3. Military Sexual Trauma Counseling.

11.8.4.3.1. Military Sexual Trauma Counseling Services. Military sexual trauma counseling may include individual or group counseling, marital and family counseling, referral for benefits assistance, liaison with community agencies or substance abuse information and referral to help a veteran deal with the emotions of military sexual trauma and regain confidence in their everyday life. A veteran can contact the Military Sexual Trauma Coordinator (or Women Veterans Program Manager) at their local VA medical center. Assessment and referral for sexual trauma counseling are available at all Vet Centers.⁵⁶⁷

11.8.4.3.2. Military Sexual Trauma Counseling Eligibility. Any veteran who was sexually traumatized while serving in the military is eligible to receive counseling regardless of gender, era of service, or whether they served in a war zone.⁵⁶⁸

11.8.4.4. Vet Centers in Indiana. Vet Center staff is available toll-free during normal business hours at 1-800-905-4675 (Eastern). Or a veteran can contact a Vet Center directly. There are five Vet Centers in Indiana:

- **Crown Point: Gary Area Vet Center.** Phone: 219-736-5633 Or 877-927-8387
- **Evansville Vet Center.** Phone: 812-473-5993 Or 877-927-8387
- **Fort Wayne Vet Center.** Phone: 260-460-1456 Or 877-927-8387
- **Indianapolis Vet Center.** Phone: 317-988-1600 Or 877-927-8387
- **South Bend Vet Center.** Phone: 574-231-8480 Or 877-927-8387⁵⁶⁹

11.8.5. Indiana Veterans Home. The Indiana Veterans' Home (IVH), located in West Lafayette, is managed by the Indiana Department of Veterans Affairs. It provides nursing and domiciliary care to **Indiana veterans and their spouses**. The nursing care facilities provide comprehensive nursing care for veterans and spouses who are unable to meet their own care needs. The domiciliary facilities provide independent living for veterans and their spouses. When a veteran or spouse first applies for admission, an assessment is conducted to determine the level of care needed; that assessment determines which IVH facility the applicant will be housed.⁵⁷⁰

11.8.5.1. Eligibility. To be eligible for admission to the IVH, an individual must be:

⁵⁶⁶ *Bereavement Counseling*, *supra* note 565

⁵⁶⁷ *Military Sexual Trauma Counseling*, VA.GOV, https://www.vetcenter.va.gov/Military_Sexual_Trauma.asp (last visited Apr. 23, 2020)

⁵⁶⁸ *Military Sexual Trauma Counseling*, *supra* note 567

⁵⁶⁹ *Facilities in Indiana*, VA.GOV, https://www.va.gov/directory/guide/fac_list_by_state.cfm?State=IN&dnum=All (last visited Apr. 23, 2020)

⁵⁷⁰ *Official Website of the Indiana Veterans' Home*, IN.GOV, <https://www.in.gov/ivh/> (last visited Apr. 23, 2020)

- An honorably discharged veteran, or the spouse (or surviving spouse) of an honorably discharged veteran
- An Indiana resident for at least one year before applying for admission; veterans who enlisted from or discharged to the state of Indiana may request a residency waiver
- Able to pass a criminal background check.⁵⁷¹

11.8.7. Education Benefits.

11.8.8. GI Bill and Other Educational Programs from Previous Eras. These *federal* benefits offer **veterans and, in some cases, their spouse or children**, with vocational or college education. The program(s) that is available to a veteran depends on when they entered the service.⁵⁷²

11.8.8.1. Post 9/11 GI Bill. This *federal VA benefit* provides financial support for education and housing to **veterans**. Eligible service members may transfer this benefit to a **dependent**.

11.8.8.1.1. Post 9/11 GI Bill Eligibility. For the veteran, or dependent seeking the benefit to receive this educational benefit at least one of these following must be true:

- The Veteran served at least 90 days on active duty (either all at once or with breaks in service) on or after September 11, 2001, **or**
- The Veteran received a Purple Heart on or after September 11, 2001, and were honorably discharged after any amount of service, **or**
- Served for at least 30 continuous days (all at once, without a break in service) on or after September 11, 2001, and were honorably discharged with a service-connected disability, **or**
- The recipient is a dependent child using benefits transferred by a qualifying Veteran or Servicemember
- If the Veteran is a member of the Reserves who lost education benefits when the Reserve Educational Assistance Program (REAP) ended in November 2015, they may qualify to receive restored benefits under the Post-9/11 GI Bill.⁵⁷³

11.8.8.1.2. Post 9/11 GI Bill Benefit. The Post-9/11 GI Bill provides:

- Up to 36 months of benefits education towards approved training including: graduate and undergraduate degrees, vocational/technical training, on-the-job training, flight training, correspondence training, licensing and national testing programs, entrepreneurship training, and tutorial assistance.⁵⁷⁴ If the person seeking assistance qualifies for the maximum benefit, the VA pays

⁵⁷¹ Admissions Information, IN.GOV, <https://www.in.gov/ivh/2333.htm> (last visited Apr. 23, 2020)

⁵⁷² GI Bills Enacted Prior to 2008 and Related Veterans' Education Assistance Programs: A Primer, CONGRESSIONAL RESEARCH SERVICE (Oct. 6, 2017), <https://fas.org/sgp/crs/misc/R42785.pdf>

⁵⁷³ Post-9/11 GI Bill Benefits (Chapter 33), VA.GOV, <https://www.va.gov/education/about-gi-bill-benefits/post-9-11/> (last visited Apr. 8, 2020)

⁵⁷⁴ Federal Benefits for Veterans, *supra* note 369

full tuition and fees for public in-state students.⁵⁷⁵ For private or foreign/out-of-state schools, tuition and fees paid are capped at the national maximum rate.⁵⁷⁶ If the amount paid through the Post-9/11 GI Bill is not enough to cover fees, some schools have implemented a “Yellow Ribbon Program” to help make up the difference. For a listing of “Yellow Ribbon” schools, see: https://www.benefits.va.gov/GIBILL/yellow_ribbon/yrp_list_2018.asp

- A monthly housing allowance based on cost of living where the school is located.⁵⁷⁷
- An annual books and supplies stipend of \$1,000 per year.⁵⁷⁸
- A one-time payment of \$500 (to relocate) if the recipient lives in a county with 6 or fewer people per square mile and they’re either moving at least 500 miles to go to school or have no other option but to fly by plane to get to the school.⁵⁷⁹

11.8.8.1.2.1. Transfer of Post 9/11 GI Bill Education Benefits to Dependents. Only current active duty and Selected Reserve servicemembers may transfer this benefit. Any unused Post-9/11 GI Bill may be transferred to a service member’s spouse or dependent children. The Department of Defense determines eligibility. Currently, service members who are eligible for Post-9/11 GI Bill may transfer their benefits if one of the following applies:

- The service member has at least six years of service in the military (active duty and/or Selected Reserve) on the approval date **and**
- The service member agrees to serve four additional years in the military from the date of election **and**
- The person getting the benefits has enrolled in the Defense Enrollment Eligibility Reporting System (DEERS).
- *Spouses may:* use the benefit right away or use the benefit for up to 15 years after the servicemember’s separation from active duty. Spouses may use the benefit while the servicemember is on active duty or after the servicemember has separated from service. Spouses do not qualify for the monthly housing allowance while the servicemember is on active duty.
- *Children may:* start to use the benefit after the servicemember has finished at least 10 years of service and can use the benefit while the servicemember is on active duty or after they’ve separated from service. Children are not required to use this benefit within 15 years after the servicemember’s separation from active duty, but they cannot use this benefit after they’ve reached the age of 26. Children may not use the benefit until they have received a high school diploma, an equivalency certificate, or

⁵⁷⁵ Post-9/11 GI Bill Benefits (Chapter 33), *supra* note 573

⁵⁷⁶ Post-9/11 GI Bill Benefits (Chapter 33), *supra* note 573

⁵⁷⁷ Post-9/11 GI Bill Benefits (Chapter 33), *supra* note 573

⁵⁷⁸ Post-9/11 GI Bill Benefits (Chapter 33), *supra* note 573

⁵⁷⁹ Post-9/11 GI Bill Benefits (Chapter 33), *supra* note 573

reach 18 years of age. Unlike spouses, Children do qualify for the monthly housing allowance while the servicemember is on active duty

- Dependents may still qualify even if a child marries or the Service member and their spouse divorce. However, service members and Veterans can cancel or change the transfer of benefits at any time. If a dependent's transfer has been cancelled, the Servicemember cannot restore those benefits.⁵⁸⁰

11.8.8.1.2.1 GI Forever Bill. The Harry W. Colmery Veterans Educational Assistance Act, also known as the "Forever GI Bill," was signed into law August 16, 2017.⁵⁸¹ The Act significantly changes Veterans education benefits by enhancing and expanding the Post-9/11 Bill for Veterans, servicemembers, families, and survivors.⁵⁸²

- **Expanded Benefits to Purple Heart Recipients.** With the expanded benefits, approximately 1,500 Purple Heart recipients are now eligible for full education benefits.⁵⁸³ This includes coverage of tuition costs at a public school's in-state rate for 36 months and stipends for textbooks and housing.⁵⁸⁴ Previously, Purple Heart recipients without a service-connected disability were required to reach 36 months of active duty service in order to receive the full educational benefit.⁵⁸⁵
- **Students Effected by School Closures and Program Disapprovals.** Educational benefits were restored to student veterans whom were forced to stop seeking higher education due to a temporary or permanent closure of a school or if the student veteran was unable to transfer those credits to a new institution.⁵⁸⁶
- **Elimination of 15-year time limit.** Prior to the passage of the Bill, Veterans had to use their Post-9/11 GI Bill Benefits within 15 years of their last 90-day service period of active duty service.⁵⁸⁷ This change applies to those whose last discharge or release from active duty is on or after January 1, 2013, children of deceased servicemembers who became entitled to Post-9/11 GI Bill benefits on or after January 1, 2013.⁵⁸⁸
- **Expanded Yellow Ribbon Eligibility.** The Yellow Ribbon GI Education Enhancement Program is a voluntary agreement between institutions of higher learning and the U.S. Department of Veterans Affairs to cover tuition

⁵⁸⁰ *Transfer your Post-9/11 GI Bill benefits*, VA.GOV, <https://www.va.gov/education/transfer-post-9-11-gi-bill-benefits/> (last visited Apr. 8, 2020)

⁵⁸¹ *Forever GI Bill Sections*, VA.GOV, <https://www.benefits.va.gov/GIBILL/docs/factsheets/FGIBSections.pdf> (last visited Apr. 8, 2020)

⁵⁸² *Forever GI Bill Sections*, *supra* note 581

⁵⁸³ *Forever GI Bill Set to Go into Effect in August*, AMERICAN COUNCIL ON EDUCATION, (July 23, 2018), <https://www.acenet.edu/News-Room/Pages/Forever-GI-Bill-Set-to-Go-Into-Effect-in-August.aspx>

⁵⁸⁴ Natalie Gross, *Trump signed the 'Forever GI Bill.' Here are 11 things you should know.*, MILITARYTIMES.COM, (August 16, 2017), <https://rebootcamp.militarytimes.com/education-transition/education/2017/08/16/trump-signed-the-forever-gi-bill-here-are-11-things-you-should-know/>

⁵⁸⁵ Gross, *supra* note 584

⁵⁸⁶ *Forever GI Bill Set to Go into Effect in August*, *supra* note 583

⁵⁸⁷ Gross, *supra* note 584

⁵⁸⁸ *Forever GI Bill Sections*, *supra* note 581

and fee expenses that exceed the VA's maximum payable amount.⁵⁸⁹ The program now includes Purple Heart recipients, surviving spouses and children or servicemembers killed in the line of duty, and Fry Scholarship recipients.⁵⁹⁰ Beginning August 1, 2022, Active Duty servicemembers may also use the yellow ribbon program.⁵⁹¹

- **Independent Study at Technical Schools and Non-Institutions of Higher Learning (IHLs) Study.** Beneficiaries will now be able to use their Post-9/11 educational assistance to pursue accredited independent study programs at area career and technical education schools that provide postsecondary level education and postsecondary vocational institutions.⁵⁹²
- **Priority Enrollment.** Also called priority registration, priority enrollment allows Veterans and servicemembers to schedule their classes ahead of the general student population.⁵⁹³ Beneficiaries may visit: <https://www.va.gov/gi-bill-comparison-tool> to find out if their school offers priority enrollment for their desired course(s).
- **Work-Study Expansion.** Under the new law, there is no longer an expiration date for certain qualifying work-study activities which allow a recipient to be paid an additional educational assistance allowance.⁵⁹⁴ Accepted work study activities include: outreach services for a State Approving Agency, providing hospital and domiciliary care and medical treatment to Veterans in a State home, or performing an activity relating to the administration of a national cemetery or a state Veterans' cemetery.⁵⁹⁵
- **GI Bill Monthly House Allowance.** The Monthly Housing Allowance (MHA) is a monthly payment given to for Post-9/11 GI Bill students based on the military's Basic Allowance for Housing (BAH) rates for an E-5 with dependents.⁵⁹⁶ To calculate what this amount would be please visit: <https://www.defensetravel.dod.mil/site/bahCalc.cfm>. The Department of Defense adjusts the military BAH rates every calendar year (January 1) based on changes to housing costs in each housing area.⁵⁹⁷ Rates can either go up or down.⁵⁹⁸ MHA rate changes are effective August 1 (the beginning date of the academic year).⁵⁹⁹ The Monthly House Allowance (MHA) is now based on the date that the student first used their Chapter 33

⁵⁸⁹ *Post-9/11 GI Bill: Yellow Ribbon Program*, VA.GOV, https://benefits.va.gov/BENEFITS/factsheets/education/Post-911_Yellow_Ribbon.pdf (last visited Apr. 8, 2020)

⁵⁹⁰ *Forever GI Bill Set to Go into Effect in August*, *supra* note 583

⁵⁹¹ *Forever GI Bill Sections*, *supra* note 581

⁵⁹² *Post 9/11 GI Bill*, MYARMYBENEFITS, <https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Post-9/11-GI-Bill?serv=128> (last visited Apr. 8, 2020)

⁵⁹³ *VA's GI Bill Comparison Tool is a Valuable Resource in Checking Priority Enrollment for Veterans and Service Members*, VA.GOV, VAantage Point (May 21, 2018), <https://www.blogs.va.gov/VAantage/48653/vas-gi-bill-comparison-tool-is-a-valuable-resource-in-checking-priority-enrollment-for-veterans-and-service-members/>

⁵⁹⁴ *Important Dates for the Forever GI Bill*, MILITARYBENEFITS.COM, <https://militarybenefits.info/forever-gi-bill-important-dates/> (last visited Apr. 8, 2020)

⁵⁹⁵ *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, VA.GOV, <https://www.benefits.va.gov/GIBILL/FGIBSummaries.asp> (last visited Apr. 8, 2020)

⁵⁹⁶ *GI Bill Monthly Housing Allowance Communications Toolkit*, VA.GOV, (December 2019), 4, https://www.benefits.va.gov/GIBill/docs/FGIB/MHA_comms_toolkit.pdf

⁵⁹⁷ *GI Bill Monthly*, *supra* note 596

⁵⁹⁸ *GI Bill Monthly*, *supra* note 596

⁵⁹⁹ *GI Bill Monthly*, *supra* note 596

entitlement and where the student physically attends the majority of their classes.⁶⁰⁰ The best way to determine MHA rate is to visit <https://www.va.gov/gi-bill-comparison-tool>.

- **Changes to Licensing and Certification Charges.** Section 108 of the Forever GI Bill now allows for the proration of entitlement charges for licensing and certification examinations and national tests.⁶⁰¹ Specifically, the charges for exams and tests is now pro-rated based on the actual amount of the fee charged for the test relative to the rate of \$2,042.06 for one month.⁶⁰² The maximum reimbursable amount for licensing and certification tests is \$2000.⁶⁰³ There is no maximum reimbursable amount for national tests.⁶⁰⁴
- **Changes to Transfer of Benefits (TEB).** Veterans that previously transferred their benefits to a dependent can designate a new dependent if the original recipient dies before using the entitlement.⁶⁰⁵ Dependents that received the transfer can transfer the entitlement themselves to another eligible dependent if the Veteran that made the original transfer dies.⁶⁰⁶
- **Informing Schools About Beneficiary Entitlement.** The VA must make information about the amount of educational assistance to which a beneficiary is entitled available to educational institutions.⁶⁰⁷ A beneficiary may elect not to provide the information to an educational institution.⁶⁰⁸
- **Monthly Housing Allowance During Active Duty Service (Including Reserve Components performing Active Duty Service).** The VA will prorate the monthly housing allowance under the Post-9/11 GI Bill.⁶⁰⁹ Previously, those who left active duty could not receive their housing allowance until the beginning of the next full month after being released from active duty.⁶¹⁰ With the change in the law, the student receives housing payments effective the day of discharge.⁶¹¹
- **VET TEC (Veteran Employment Through Technology Education Courses) Pilot Program.** VET TEC allows Veterans to receive accelerated training in coding bootcamps and similar programs in information science, computer programming, computer software, media application, and data processing.⁶¹² To participate, veterans need only one day of unexpired GI

⁶⁰⁰ *GI Bill Monthly*, *supra* note 596

⁶⁰¹ *Post-9/11 GI Bill (Chapter 33) Payment Rates for 2019 Academic Year (August 1, 2019 - July 31, 2020)*, VA.GOV, https://www.benefits.va.gov/GIBILL/resources/benefits_resources/rates/ch33/ch33rates080119.asp (last visited Apr. 8, 2020)

⁶⁰² *Post-9/11 GI Bill*, *supra* note 601

⁶⁰³ *Post-9/11 GI Bill*, *supra* note 601

⁶⁰⁴ *Post-9/11 GI Bill*, *supra* note 601

⁶⁰⁵ *Harry W. Colmery Veterans Educational Assistance Act – Forever GI Bill*, VA.GOV, <https://www.benefits.va.gov/GIBILL/docs/factsheets/ForeverGIBillFactSheet.pdf> (last visited Apr. 8, 2020)

⁶⁰⁶ *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, *supra* note 605

⁶⁰⁷ *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, *supra* note 605

⁶⁰⁸ *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, *supra* note 605

⁶⁰⁹ *Forever GI Bill Sections*, *supra* note 581

⁶¹⁰ *Forever GI Bill Sections*, *supra* note 581

⁶¹¹ *Forever GI Bill Sections*, *supra* note 581

⁶¹² *VET TEC, a High-Tech Training Pilot Program, is Now Taking Veteran Applications*, VA.GOV, VAntage Point (Apr. 30, 2019), <https://www.blogs.va.gov/VAntage/59513/vet-tec-high-tech-training-pilot-program-now-taking-veteran-applications/>

Bill benefits.⁶¹³ The program doesn't use GI Bill benefits and pays a monthly housing stipend to students accepted into the program.⁶¹⁴ After applying, VA will determine eligibility.⁶¹⁵ Veterans will receive certificates of eligibility on a first-come, first-serve basis until the funds are exhausted.⁶¹⁶

- **Reserve Component Benefits.** The Forever GI Bill now allows for Reservists and Guardsmen called to active duty by a governor in response to an emergency or natural disaster (10 USC § 12304a) or when the DoD mobilizes the Reserve Component in support of a combatant command (10 USC § 12304b) to accrue active duty time that counts towards earning GI Bill Benefits.⁶¹⁷ The time that a Reservist was ordered to active duty to receive authorized medical care, to be medically evaluated for disability, or to complete a Department of Defense health care study on or after September 11, 2001, now counts as active duty time towards educational benefits.⁶¹⁸ Reservists who established eligibility to educational assistance under the Reserve Educational Assistance Program (REAP) before November 25, 2015 and lost it due to the program's termination may elect to have that service credited towards the Post-9/11 GI Bill.⁶¹⁹
- **Survivors' & Dependents' Educational Assistance (DEA) Program.** The Forever GI Bill decreases the amount of entitlement under the Survivors' and Dependents Educational Assistance (DEA) program from 45 months to 36 months.⁶²⁰ This change applies to individuals who first used the DEA program after August 1, 2018.⁶²¹ Individuals who first used DEA prior to August 1, 2018, qualify for a maximum of 45 months of entitlement.⁶²²
- **Consolidation of Benefit Levels.** Effective August 1, 2020, the 40% benefit level is removed and expanded to a 60% benefit level under the Post 9/11 Forever GI Bill.⁶²³ An individual with aggregate service of 90 days but less than six months of active-duty service (excluding entry and skill training) now qualifies at the 50% benefit level.⁶²⁴ An individual with aggregate service of at least six months but less than eighteen months of active-duty service (excluding entry and skill training) now qualifies at the 60% benefit level.⁶²⁵

⁶¹³ VET TEC, *supra* note 612

⁶¹⁴ VET TEC, *supra* note 612

⁶¹⁵ VET TEC, *supra* note 612

⁶¹⁶ VET TEC, *supra* note 612

⁶¹⁷ *What the Forever GI Bill Means for Guardsmen and Reservists*, YELLOW RIBBON REINTEGRATION PROGRAM, (Jan. 17, 2019), <https://www.yellowribbon.mil/cms/2019/01/17/what-the-forever-gi-bill-means-for-guardsmen-and-reservists/>

⁶¹⁸ *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, *supra* note 605

⁶¹⁹ *Reserve Education Assistance Program (REAP)*, MYARMYBENEFITS, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Reserve-Educational-Assistance-Program-\(REAP\)](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Reserve-Educational-Assistance-Program-(REAP)) (last visited Apr. 8, 2020)

⁶²⁰ *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, *supra* note 605

⁶²¹ *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, *supra* note 605

⁶²² *Forever GI Bill - Harry W. Colmery Veterans Educational Assistance Act*, *supra* note 605

⁶²³ *Post 9/11 GI Bill*, *supra* note 601

⁶²⁴ *Post 9/11 GI Bill*, *supra* note 601

⁶²⁵ *Post 9/11 GI Bill*, *supra* note 601

GI Bill Benefit Eligibility (based on time in service)	Percentage of Maximum Benefits Payable
At least 36 months	100%
At least 30 continuous days on active duty and must be discharged due to service-connected disability or received a Purple Heart (Purple Heart effective August 1, 2018)	100%
At least 30 months, but less than 36 months	90%
At least 24 months, but less than 30 months	80%
At least 18 months, but less than 24 months	70%
At least 6 months, but less than 18 months	60%
At least 90 days, but less than 6 months	50%

- More Benefits for Science, Technology, Engineering and Math (STEM) Programs.** This VA scholarship program provides nine months of additional Post-9/11 GI Bill benefits to qualifying veterans that are working towards an undergraduate degree in Science, Technology, Engineering or Math that lead to a post-secondary degree or a teaching certification.⁶²⁶ The total scholarship awarded may not exceed \$30,000. Areas of concentration include biological or biomedical science; physical science; science technologies or technicians; computer and information science and support services; mathematics or statistics; engineering; engineering technologies or an engineering-related field; a health profession or related program; a medical residency program; an agriculture science program or natural resources science program; or other subjects and fields identified by VA as meeting national needs.⁶²⁷ These additional benefits cannot be transferred to dependents.⁶²⁸ Only Veterans may apply; spouses and dependents are NOT eligible for the STEM extension.⁶²⁹

11.8.8.2. Montgomery GI Bill. This **federal VA benefit** is available for **active duty military members** under the Montgomery GI Bill-Active Duty and for **Reservists** under the Montgomery-GI Bill-Selected Reserves. While the educational benefits available under the active duty or the reserves are the same, the eligibility for each program is different.

⁶²⁶ Edith Nourse Rogers Science Technology Engineering Math (STEM) Scholarship, VA.GOV, <https://benefits.va.gov/gibill/fgib/stem.asp> (last visited Apr. 8, 2020)

⁶²⁷ Edith Nourse Rogers Science Technology Engineering Math (STEM) Scholarship, *supra* note 626

⁶²⁸ Edith Nourse Rogers Science Technology Engineering Math (STEM) Scholarship, *supra* note 626

⁶²⁹ GI Bill Stem Extension, MILITARYBENEFITS.COM, <https://militarybenefits.info/gi-bill-stem-extension/> (last visited Apr. 8, 2020)

11.8.8.2.1. *Montgomery GI Bill-Active Duty.* Active duty members must enroll and pay \$100 per month for 12 months. Once they complete their minimum service obligation, then they are entitled to receive a monthly education benefit.⁶³⁰

11.8.8.2.1.1. *Montgomery GI Bill-Active Duty Eligibility.* Generally, benefits are payable for ten years following the military member's release from active duty, with some exceptions. To use this benefit, the service member must have received an ***honorable discharge*** and meet the requirements in one of the following categories:

- ***Category I:*** Have a High School Diploma, GED, or 12 hours of college credit and entered active duty for the first time after June 30, 1985, and paid \$100 a month for first twelve months of service, and continuously served for:
 - Three years, OR
 - Two years if the enlistment period was two years, OR
 - Two years if the military member entered the Selected Reserve within a year of leaving active duty and served four years ("2 by 4" Program).
- ***Category II:*** Have a High School Diploma, GED, or 12 hours of college credit and entered active duty before January 1, 1977, served at least 1 day between 10/19/84 and 6/30/85, and stayed on active duty through 6/30/88, (or 6/30/87 if the military member entered the Selected Reserve within 1 year of leaving active duty and served 4 years), and on 12/31/89, the military member had entitlement left from Vietnam-Era GI Bill.
- ***Category III:*** Have a High School Diploma, GED, or 12 hours of college credit and are not eligible for MGIB under Category I or II, military pay was reduced by \$1200 before separation, and one of the following:
 - On active duty on 9/30/90 AND separated involuntarily after 2/2/91, OR
 - Involuntarily separated on or after 11/30/93, OR
 - Voluntarily separated under either the Voluntary Separation Incentive (VSI) or Special Separation Benefit (SSB) program
- ***Category IV:*** Have a High School Diploma, GED, or 12 hours of college credit and paid \$100 a month for twelve months or made a \$1200 lump-sum contribution and one of the following:
 - On active duty on 10/9/96 AND the service member had money remaining in a VEAP account on that date AND they elected MGIB by 10/9/97, OR
 - Entered full-time National Guard duty between 7/1/85, and 11/28/89 AND elected MGIB during the period 10/9/96, through 7/8/97.⁶³¹

⁶³⁰ *Montgomery GI Bill User Guide*, MILITARY.COM, <https://www.military.com/education/gi-bill/active-duty-gi-bill-users-guide.html> (last visited Apr. 23, 2020)

⁶³¹ *Montgomery GI Bill Active Duty (MGIB)*, VA.GOV, <https://www.va.gov/education/about-gi-bill-benefits/montgomery-active-duty/> (Apr. 23, 2020)

11.8.8.2.1.2. *Montgomery GI Bill-Active Duty Benefit.* The Montgomery GI Bill-Active Duty provides up to 36 months of education benefits. This benefit may be used for degree and certificate programs, flight training, apprenticeship/on-the-job training and correspondence courses. The monthly benefit paid is based on the type of training that the veteran attends, their length of service, their category (see above), and if DoD put extra money in their MGIB Fund (called "kickers").⁶³²

11.9.1.2.2. *Montgomery-GI Bill-Selected Reserves.* Reservists, including National Guard members, must be actively drilling and have a six-year obligation in the Selected Reserve to be eligible.⁶³³

11.9.1.2.2.1. *Montgomery-GI Bill-Selected Reserves Eligibility.* To qualify, the Reservist must meet the following requirements:

- Have a six-year obligation to serve in the Selected Reserve or are an officer in the Selected Reserve that agreed to serve six years in addition to their original obligation. The obligation must have started after June 30, 1985 or September 30, 1990.
- The Reservist must also: complete their initial active duty for training (IADT), get a high school diploma or an equivalent diploma such as a GED or High School Equivalency Diploma before finishing IADT. Unlike Active Duty categories, a Reservist cannot use 12 hours towards a college degree to meet this requirement. The Reservist must remain in good standing while serving in a Reserve unit, meaning eligibility normally ends when the reservist leaves the reserves. Reservists who are discharged because of a disability that was not caused by misconduct will remain eligible. The eligibility period may be extended for the amount of time the Reservist was mobilized PLUS four months.⁶³⁴

11.9.1.2.2.2. *Montgomery-GI Bill-Selected Reserves Benefit.* The Montgomery GI Bill-Selected Reserves provides up to 36 months of education benefits.⁶³⁵ This benefit may be used for degree and certificate programs, flight training, apprenticeship/on-the-job training and correspondence courses.⁶³⁶ The monthly benefit paid is based on the type of training that the veteran attends, their length of service, their category (see above), and if DoD put extra money in their Montgomery GI Bill Fund (called "kickers").⁶³⁷

11.9.2 *Vocational Rehabilitation & Employment (VR&E) VetSuccess Program.* This

⁶³² *Montgomery GI Bill Active Duty (MGIB)*, *supra* note 631

⁶³³ *Montgomery GI Bill Selected Reserve (MGIB-SR)*, VA.GOV, <https://www.va.gov/education/about-gi-bill-benefits/montgomery-selected-reserve/> (last visited Apr. 23, 2020)

⁶³⁴ *Montgomery GI Bill Selected Reserve (MGIB-SR)*, *supra* note 633

⁶³⁵ *Montgomery GI Bill Selected Reserve (MGIB-SR)*, *supra* note 633

⁶³⁶ *How to Use Your GI Bill Benefits*, VA.GOV, <https://www.va.gov/education/about-gi-bill-benefits/how-to-use-benefits/> (Apr. 23, 2020)

⁶³⁷ *GI Bill Kicker*, US ARMY NATIONAL GUARD, <https://www.nationalguard.com/tools/gi-bill-kicker> (last visited Apr. 23, 2020)

federal program assists **veterans** with **service-connected disabilities** to prepare for, find, and keep suitable jobs.⁶³⁸ If a veteran's service-connected disabilities are so severe that they cannot immediately consider work, then the program offers services to improve their ability to live as independently as possible.⁶³⁹

11.9.2.1. VR&E Program Services. The VR&E Program offers the following services:

- A complete evaluation to determine your abilities, skills, and interests for employment
- Vocational counseling & rehabilitation planning.
- Employment services.
- Assistance with finding and keeping a job.
- On-the-Job-Training, apprenticeships, and non-paid work experiences.
- Post-secondary training at a college, vocational, technical, or business school.
- Rehabilitation evaluation to determine abilities, skills, and interests.
- Independent living services.⁶⁴⁰

11.9.2.2. VR&E Eligibility. Active duty service members and veterans are eligible if:

- They received, or expect to receive a discharge that is other than dishonorable, **AND**
- They have a service-connected disability rating of at least 20% from the VA. If a veteran or service member has not yet been awarded VA service-connected disability rating, they may request a "memorandum" rating to qualify for VR&E.⁶⁴¹

11.9.2.3. VR&E Time Period of Eligibility. A Veteran is eligible for VR&E services for 12 years from the latter of the following:

- Date of separation from active military service, or
- Date the Veteran was first notified by VA of a service-connected disability rating.⁶⁴²

11.9.2.4. Exceptions to the VR&E Eligibility Requirements. If the service-connected disability rating is less than 20%, or if the Veteran is beyond the 12-year basic period of eligibility, then he or she must have a **serious employment handicap** to be entitled to VR&E services. A serious employment handicap is based on the level of services required for a Veteran to overcome his or her disabilities and to find a suitable job.⁶⁴³

⁶³⁸ Chapter 3 Vocational Rehabilitation and Employment (VR&E), VA.GOV, https://www.va.gov/opa/publications/benefits_book/benefits_chap03.asp last visited Apr. 23, 2020)

⁶³⁹ VR&E Independent Living Track, VA.GOV, <https://www.va.gov/careers-employment/vocational-rehabilitation/programs/independent-living/> (last visited Apr. 23, 2020)

⁶⁴⁰ Eligibility for VA Vocational Rehab and Employment, VA.GOV, <https://www.va.gov/careers-employment/vocational-rehabilitation/eligibility/> (last visited Apr. 23, 2020)

⁶⁴¹ Eligibility for VA Vocational Rehab and Employment, *supra* note 640

⁶⁴² Eligibility for VA Vocational Rehab and Employment, *supra* note 640

⁶⁴³ VA Vocational Rehab and Employment (VR&E), MYARMYBENEFITS, [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Vocational-Rehabilitation-and-Employment-Service-\(VRandE\)?serv=124](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Vocational-Rehabilitation-and-Employment-Service-(VRandE)?serv=124) (last visited Apr. 23, 2020)

11.9.2.5. VR&E Entitlement Determination. An active duty service member or veteran must be **entitled** to VR&E, meaning they are not only eligible, but they also have an **employment handicap**. To determine whether a veteran or service member is entitled to VR&E services, they must meet with a Vocational Rehabilitation Counselor (VRC) who will:

- Determine if the veteran has an **employment handicap**. The veteran has an employment handicap if their service-connected disability impairs their ability to keep a job.
- Assess the veteran's interests, aptitudes, and abilities.
- Assess whether service-connected disabilities impair the veteran's ability to find and hold a job using the skills he or she has already developed.
- Explore and develop goals that will lead to job or independence at home and in the veteran's community.⁶⁴⁴

11.9.2.6. VR&E Rehabilitation Plan. The VRC and the veteran work together to develop a Rehabilitation Plan.⁶⁴⁵ The plan outlines the services, resources, and criteria needed to meet the goals for finding a job or living independently.⁶⁴⁶ It is an agreement that is signed by the veteran and the VRC.⁶⁴⁷ The VRC works with the veteran to implement the plan.⁶⁴⁸ A Rehabilitation Plan has five possible tracks:

11.9.2.7. Reemployment with Previous Employer. Services may include advice about reemployment rights, meeting with the employer, work adjustment services, short-term training, job accommodations or modifications, and licensure and certifications.⁶⁴⁹

11.9.2.8. Direct Job Placement Services for New Employment (Rapid Access). For veterans who already have most of the required skills to compete for suitable jobs and who wish to find a job as soon as possible. Services may include short-term training, licensure, certifications, job readiness preparation, resume development, job search assistance, and job accommodations.⁶⁵⁰

11.9.2.9. Self-Employment. For veterans who have limited access to a traditional job, need flexible work schedules, or need a more accommodating work environment because of their disabilities or life circumstances. Services may include analysis of the viability of a business concept, business plan development, training in small business operations, marketing and financial assistance, and guidance on finding

⁶⁴⁴ Eligibility for VA Vocational Rehab and Employment, *supra* note 640

⁶⁴⁵ VA Vocational Rehab and Employment, MILITARY.COM, [military.com/benefits/veteran-benefits/vocational-rehabilitation-and-employment.html](https://www.military.com/benefits/veteran-benefits/vocational-rehabilitation-and-employment.html) (last visited Apr. 23, 2020)

⁶⁴⁶ VA Vocational Rehab and Employment, *supra* note 645

⁶⁴⁷ VA Vocational Rehab and Employment, *supra* note 645

⁶⁴⁸ VA Vocational Rehab and Employment, *supra* note 645

⁶⁴⁹ VR&E Reemployment Track, VA.GOV, <https://www.va.gov/careers-employment/vocational-rehabilitation/programs/reemployment/> (last visited Apr. 23, 2020)

⁶⁵⁰ VR&E Rapid Access to Employment Track, VA.GOV, <https://www.va.gov/careers-employment/vocational-rehabilitation/programs/rapid-access-to-employment/> (last visited Apr. 23, 2020)

enough resources to implement the plan.⁶⁵¹

11.9.2.10. Employment through Long-Term Services. For veterans who need specialized training or education to find and keep a suitable job. Services may include OJT, apprenticeships, post-secondary education such as college, vocational, or technical school, internships, job shadowing, work monitoring, work study, and public-private job partnering.⁶⁵²

11.9.2.11. Independent Living Services. For veterans who cannot pursue a job at the moment because of their disabilities – and may need services so that they can live more independently before they can consider returning to work. Services may include independent living skills training, assistive technology, services at special rehabilitation facilities, and connection to community-based support services.⁶⁵³

11.9.3. Troops to Teachers (TTT). This *federal program*, run by Department of Defense’s Defense Activity for Non-Traditional Education Support (DANTES) and Department of Education, assists *service members and veterans* with pursuing a career in Pre-K through 12 Education.⁶⁵⁴ The TTT program focuses on providing teachers in critical subjects, such as math, science, special education, foreign language, and career-technical, for disadvantaged schools.⁶⁵⁵

11.9.4. TTT Eligibility. Current military members and veterans are eligible if their discharge was characterized as “honorable” and they are seeking to do one of the following:

- To teach in an academic area: a four-year degree
- To teach in a vocational area: one year of college and six years of work experience in the technical or vocational field that they want to teach.⁶⁵⁶

11.9.4.1. TTT Services. The TTT program is not a teacher certification program. Instead, it provides the following services to assist a service member or veterans with becoming certified:

11.9.4.1.1. TTT Transition to Teaching. The TTT program assists participants with transitioning to a new career as a public school teacher, including counseling and assistance regarding the state’s particular certification requirements, planning to become certified in a state, and employment opportunities.⁶⁵⁷

⁶⁵¹ *VR&E Self-Employment Track*, VA.GOV, <https://www.va.gov/careers-employment/vocational-rehabilitation/programs/self-employment/> (last visited Apr. 23, 2020)

⁶⁵² *VR&E Employment through Long-Term Services Track*, VA.GOV, <https://www.va.gov/careers-employment/vocational-rehabilitation/programs/long-term-services/> (last visited Apr. 23, 2020)

⁶⁵³ *VR&E Independent Living Track*, VA.GOV, <https://www.va.gov/careers-employment/vocational-rehabilitation/programs/independent-living/> (last visited Apr. 23, 2020)

⁶⁵⁴ *Troops to Teachers*, DEFENSE ACTIVITY FOR NON-TRADITIONAL EDUCATION SUPPORT, <https://www.dantes.doded.mil/EducationPrograms/become-a-teacher/troopstoteachers.html> (Apr. 23, 2020)

⁶⁵⁵ Rod Powers, *The Troops to Teachers Program for Military Personnel*, THEBALANCECAREERS.COM, <https://www.thebalancecareers.com/troops-to-teachers-3332697> (last visited Apr. 23, 2020)

⁶⁵⁶ Powers, *supra* note 655

⁶⁵⁷ *Troops to Teachers*, *supra* note 654

11.9.4.1.1.1. TTT Education Counseling. The TTT program educates participants on the requirements for teacher certification in the state where they wish to teach.⁶⁵⁸ It also provides information on teaching degree programs and alternative paths to certification.⁶⁵⁹ Because of the emphasis on high-needs teachers, the program also provides information on critical teacher shortage areas by discipline and location.⁶⁶⁰ It will also assist certified teachers who want to move to another state with meeting reciprocity requirements.⁶⁶¹ And for those desiring to teach in a vocational or technical area, the TTT program provides information on career and technical education certification.⁶⁶²

11.9.4.1.2. TTT Financial Assistance. The TTT program may provide financial assistance in the form of a stipend, up to \$5,000, to help a participant pay for the cost of teacher certification. Additionally, eligible participants may also receive a bonus up to \$10,000 to teach in a school serving a high percentage of students from low-income families. The total maximum award of stipend and bonus cannot exceed \$10,000. The stipend or bonus are only awarded to those participants who agree to teach for three years in a "high-needs" school or school district.⁶⁶³

11.9.4.1.3. TTT Employment Referrals. The TTT program assists participants with finding employment opportunities.⁶⁶⁴

For more information about the Troops to Teachers Program – See:
<https://www.dantes.doded.mil/EducationPrograms/become-a-teacher/troopstoteachers.html> or call the Indiana State TTT Office at 1-800-231-6242

11.9.5. Purple Heart Recipients Remission of Fees for State-supported Schools. This **Indiana** benefit provides **Purple Heart Recipients** with 124 semester credit hours of education at a state-supported college or university.⁶⁶⁵

11.9.5.1. Purple Heart Recipients Remission of Fees Eligibility. The veteran must have been an Indiana resident when they entered active duty, awarded a Purple Heart, received an honorable discharge, and is eligible to pay the resident tuition rate at an Indiana school.⁶⁶⁶

⁶⁵⁸ *Teacher Certification*, TROOPS TO TEACHERS, <https://www.proudtoserveagain.com/Participants/Certification> (last visited Apr. 24, 2020)

⁶⁵⁹ *Teacher Certification*, *supra* note 658

⁶⁶⁰ *Troops to Teachers: From the Military to the Classroom*, COMMUNITY FOR ACCREDITED ONLINE SCHOOLS, <https://www.accreditedschoolsonline.org/education-teaching-degree/troops-to-teachers/> (last visited Apr. 24, 2020)

⁶⁶¹ *Teacher Certification*, *supra* note 658

⁶⁶² *Troops to Teachers: From the Military to the Classroom*, *supra* note 660

⁶⁶³ *Financial Assistance*, TROOPS TO TEACHERS, <https://www.proudtoserveagain.com/participants/financialassistance> (last visited Apr. 23, 2020)

⁶⁶⁴ *Teaching Opportunities*, TROOPS TO TEACHERS, <https://www.proudtoserveagain.com/Opportunities> (last visited Apr. 24, 2020)

⁶⁶⁵ *Tuition and Fee Exemption for Purple Heart Recipients*, IN.GOV, <https://www.in.gov/dva/2449.htm> (last visited Apr. 24, 2020)

⁶⁶⁶ *Tuition and Fee Exemption for Purple Heart Recipients – Indiana Purple Heart Recipient*, IN.GOV, <https://www.in.gov/che/4521.htm> (last visited Apr. 24, 2020)

11.9.5.2. Purple Heart Recipients Remission of Fees Benefits. Tuition/fees exempted for up to 124 semester credit hours at a state-supported college or university.⁶⁶⁷

11.9.6. Dependents' Educational Assistance Program (Chapter 35). This *federal* benefit provides education for a *spouse or child of a veteran* who died from service-connected injury or was permanently & totally service-connected disabled.⁶⁶⁸

11.9.6.1. Dependents' Educational Assistance Program Eligibility. The individual must be the child or spouse of a veteran or service member who is one of the following:

- Died or is permanently and totally disabled as the result of a service-connected disability. The disability must arise out of active service in the Armed Forces.
- Died from any cause while such permanent and total service-connected disability was in existence.
- Is missing in action or captured in line of duty by a hostile force.
- Was forcibly detained or interned in line of duty by a foreign government or power.
- Is hospitalized or receiving outpatient treatment for a service-connected permanent and total disability and is likely to be discharged for that disability. This change was effective December 23, 2006.⁶⁶⁹

11.9.6.2. Dependents' Educational Assistance Program Period of Eligibility.

11.9.6.2.1. Eligible Children of Veterans. Eligible children of veterans must be between the ages of 18 and 26. In certain instances, it is possible to begin their education before age 18 and to continue after age 26. Marriage is not a bar to this benefit. If an eligible child is in the Armed Forces, they may not receive this benefit while on active duty. To pursue training after military service, their discharge must not be under dishonorable conditions. The VA can extend their period of eligibility by the number of months and days equal to the time spent on active duty. This extension cannot generally go beyond their 31st birthday.⁶⁷⁰

11.9.6.2.2. Spouses of Veterans. Benefits for spouses end 10 years from the date the VA finds them eligible or from the date of death of the veteran. If the VA rated the veteran permanently and totally disabled with an effective date of 3 years from discharge, a spouse will remain eligible for 20 years from the effective date of the rating. This change is effective October 10, 2008 and no benefits may be paid for any training taken prior to that date. For surviving spouses (spouses of service members who died on active duty) benefits end 20 years from the date

⁶⁶⁷ *Tuition and Fee Exemption, supra* note 665

⁶⁶⁸ *Survivors' and Dependents' Educational Assistance, VA.GOV*, <https://www.va.gov/education/survivor-dependent-benefits/dependents-education-assistance/> (last visited Apr. 24, 2020)

⁶⁶⁹ *Survivors' and Dependents' Educational Assistance, supra* note 668

⁶⁷⁰ *Survivors' and Dependents' Educational Assistance, supra* note 668

of death. Unlike children of the servicemembers, spouses may continue to receive DIC payments and use these benefits at the same time.⁶⁷¹

11.9.6.3. Dependents' Educational Assistance Program Benefits. The program offers up to 45 months of education benefits for those that started school or training before August 1, 2018.⁶⁷² For those that began using the program after August 1, 2018, they can receive benefits for up to 36 months.⁶⁷³ These benefits may be used for a college degree, certificate programs, apprenticeship, and on-the-job training.⁶⁷⁴ Spouses may also take correspondence courses.⁶⁷⁵ Remedial, deficiency, and refresher courses may be approved under certain circumstances.⁶⁷⁶

11.9.7. Children of Disabled Veterans Tuition and Fee Exemption for State-supported Schools. This *Indiana* benefit provides tuition and regularly assessed fees for up to 124 semester credit-hours at Indiana public colleges and universities at the undergraduate resident tuition rate at the undergraduate, graduate, or professional level.⁶⁷⁷

11.9.7.1. Children of Disabled Veterans Tuition and Fee Exemption Eligibility. The student must be either the biological or adopted child of a person who:

- Served in the armed forces of the United States during a war or performed duty equally hazardous that was recognized by the award of a service or campaign medal of the United States. The military discharge DD214 / DD215, award orders, or certificate of the award must reflect the medal.
- Eligible wartime dates are:
 - WWII: December 7, 1941 - December 31, 1946
 - Korea: June 27, 1950 - Jan 31, 1955
 - Vietnam: Aug 5, 1964 - May 7, 1975
 - Gulf War: August 2, 1990 - present
- The Veteran must have either listed Indiana as home of record at the time of enlistment in the armed forces of the United States OR resided in Indiana at least five (5) years before the student first applies for this tuition and fee exemption.
- Suffered a service-connected death or disability as determined by the United States Department of Veterans Affairs.
- Received any discharge or separation from the armed forces other than a dishonorable discharge.⁶⁷⁸

⁶⁷¹ *Survivors' and Dependents' Educational Assistance*, *supra* note 668

⁶⁷² *Survivors' and Dependents' Educational Assistance*, *supra* note 668

⁶⁷³ *Survivors' and Dependents' Educational Assistance*, *supra* note 668

⁶⁷⁴ *Survivors' and Dependents' Educational Assistance*, *supra* note 668

⁶⁷⁵ *Dependents' Education Assistance DEA Chapter 35*, LAMAR UNIVERSITY, <https://www.lamar.edu/veterans-affairs/dea.html> (last visited Apr. 24, 2020)

⁶⁷⁶ *Dependents' Education Assistance DEA Chapter 35*, *supra* note 675

⁶⁷⁷ *Tuition and Fee Exemption – Children of Disabled Veterans*, IN.GOV, <https://www.in.gov/che/4517.htm> (last visited Apr. 24, 2020)

⁶⁷⁸ *Tuition and Fee Exemption*, IN.GOV, <https://www.in.gov/dva/2378.htm> (last visited Apr. 7, 2020)

11.9.7.1.1. Adoption. If the student was the adopted child of a veteran parent, the adoption must have occurred before the student turned eighteen (18) years old.⁶⁷⁹

11.9.7.1.2. Age Requirement. The student must first apply for this tuition and fee exemption before turning 33 years old.⁶⁸⁰

11.9.7.1.3. Student Residency Requirement and Time Limits. The student must be eligible for the resident tuition rate at the Indiana public college or university where they attend.

- After high school graduation, the student must be pursuing a degree or certificate at the undergraduate, graduate, or professional level that is eligible for Title IV federal student aid.
- Students have eight (8) academic years to use this tuition and fee exemption.
 - For students who first use this tuition and fee exemption in the 2011-2012 academic year or later, the eight years begin in the academic year the student first uses this tuition and fee exemption.
 - For students who first used this tuition and fee exemption before the 2011-2012 academic year, the eight years begin when the student uses this tuition and fee exemption again beginning with the 2017-2018 academic year.⁶⁸¹

11.9.7.1.4. Satisfactory Academic Progress. Beginning July 1, 2020, students must maintain Satisfactory Academic Progress (SAP) at the Indiana public college or university where they attend.⁶⁸²

11.9.7.1.5. If the Veteran parent entered military service on or before June 30, 2011: This tuition and fee exemption covers 100% tuition and regularly assessed fees at the undergraduate resident tuition rate.⁶⁸³

11.9.7.1.6. If the Veteran parent entered military service on or after July 1, 2011: This tuition and fee exemption covers a percentage of tuition and regularly assessed fees at the undergraduate resident tuition rate based on the veteran parent's disability percentage assigned by the United States Department of Veterans Affairs. The percentage of tuition and regularly assessed fees covered is 20% + the veteran parent's VA disability percentage.⁶⁸⁴

11.9.7.1.7. Citizenship. The student must be a U.S. citizen or eligible noncitizen; must not

⁶⁷⁹ Tuition and Fee Exemption, *supra* note 678

⁶⁸⁰ Tuition and Fee Exemption, *supra* note 678

⁶⁸¹ Tuition and Fee Exemption – Children of Disabled Veterans, *supra* note 677

⁶⁸² Tuition and Fee Exemption – Children of Disabled Veterans, *supra* note 677

⁶⁸³ Tuition and Fee Exemption, *supra* note 678

⁶⁸⁴ Tuition and Fee Exemption, *supra* note 678

have a disqualifying drug conviction while using federal student aid; must be registered with the Selective Service System if over the age of 18, male, and not exempt from registration; must not be in default on any federal student loans or owe repayment of federal student aid; and must not be incarcerated in any federal or Indiana correctional facilities.⁶⁸⁵

11.9.7.1.8. Remission of fees for family member of State Service-Connected Death.

This *Indiana* benefit provides the **surviving spouse and children of National Guard members whose death was service connected** while serving on **state active duty** (not federal) with full tuition and fees at a state-supported college or university.⁶⁸⁶

11.9.7.1.9. In-state Tuition for Active Duty. This *Indiana* benefits allows for **active duty military members and their dependents** who are stationed in Indiana to pay in-state tuition rates, even if their legal domicile is NOT Indiana.⁶⁸⁷

11.9.7.1.10. Delayed High School Diploma. This *Indiana* benefit provides high school diplomas to **WWI, WWII, Korea, and Vietnam veterans**.⁶⁸⁸

11.9.7.1.11. Delayed High School Diploma Eligibility. Veterans who:

- Attended high school in Indiana before their military service.
- Were students in good standing.
- Did NOT graduate because they left high school to serve in the military.
- Were honorably discharged.
- Served in the military between the following dates:
 - April 6, 1917 and November 11, 1918 (World War I)
 - December 7, 1941 and December 31, 1946 (World War II)
 - June 27, 1950 and Jan 31, 1955 (Korea)
 - Aug 5, 1964 and May 7, 1975 (Vietnam)⁶⁸⁹

11.9.7.1.12. Delayed High School Diploma Benefit. Eligible veterans (or their survivors) may apply to Indiana Department of Veterans' Affairs for a high school diploma.⁶⁹⁰

11.9.7.1.13. National Guard Educational Benefits (100% tuition). This *Indiana* benefit provides **Indiana National Guard Members** with 100% tuition at a state-supported college or university for their first Associates or Bachelors degree.⁶⁹¹

⁶⁸⁵ Tuition and Fee Exemption – Children of Disabled Veterans, *supra* note 677

⁶⁸⁶ Children and Spouse of Indiana National Guard, IN.GOV, <https://www.in.gov/che/4523.htm> (last visited Apr. 24, 2020)

⁶⁸⁷ IC § 21-14-9-1

⁶⁸⁸ High School Diploma Program for WWI, WWII, Korea and Vietnam Veterans, IN.GOV, <https://www.in.gov/dva/2388.htm> (last visited Apr. 24, 2020)

⁶⁸⁹ High School Diploma Program, *supra* note 688

⁶⁹⁰ High School Diploma Program, *supra* note 688

⁶⁹¹ National Guard Tuition Supplemental Grant, IN.GOV, <https://www.in.gov/che/4516.htm> (last visited Apr. 24)

11.10. Housing Benefits.

11.10.1. VA Home Loan. This **federal** benefit provides veterans, military members, and in some circumstances, a surviving spouse, to buy a home, usually with no down payment. A VA Home Loan is usually not a loan from the Department of Veterans Affairs. The VA is not the lender. Instead, it is a home loan made by a private lender. The VA guarantees the repayment of the loan. This guarantee reduces the risk to the lender. Because of this, the lender may provide lower interest rates and better terms for the eligible veteran. A direct loan from the VA may be available for an eligible Native American veteran to buy, build, or improve a home on Native American trust land.⁶⁹²

11.10.1.1. VA Home Loan Eligibility. To be eligible for a VA Home Loan, a veteran must have been discharged under other than dishonorable conditions. But there are also other requirements, such as a minimum amount of time on active duty. A military member who is currently serving in the regular active duty, reserves, or National Guard may also be eligible if they meet the minimum time requirements. Also, a surviving spouse of a service member who died while in service or who died from a service-connected disability OR a spouse of a service member who was a POW or MIA may also be eligible.⁶⁹³

11.10.1.2. VA Home Loan Down Payment is NOT Required. The greatest advantage to a VA home loan is that a down payment is not required.⁶⁹⁴ Prior to January 1, 2020, VA borrowers were required to make a down payment on loans that exceeded county loan limits.⁶⁹⁵ As of now, the VA no longer caps how much a veteran can borrow with zero down payment.⁶⁹⁶ This means that Veterans that qualify for VA home loans can exceed county loan limits and still avoid being required to make a down payment.⁶⁹⁷ For example, under the old system, if the local loan limit was \$450,000 and a veteran qualified for a \$600,000 loan, the VA wouldn't guarantee the \$150,000 that went over the limit and the VA borrower would have to make a down payment.⁶⁹⁸ In this scenario, their down payment would be equal to 25% of \$150,000 — which comes out to almost \$37,500 paid upfront.⁶⁹⁹ Under the new rule, the VA will guarantee the full \$600,000 loan amount — assuming the veteran meets all other requirements to be eligible for a VA loan.⁷⁰⁰ The removal of loan limits doesn't mean unlimited borrowing power without a down payment.⁷⁰¹

⁶⁹² *Federal Benefits for Veterans, Dependents and Survivors, Chapter 6 Home Loan Guaranty*, VA.GOV, https://www.va.gov/opa/publications/benefits_book/benefits_chap06.asp (last visited Apr. 24, 2020)

⁶⁹³ *Federal Benefits for Veterans, Dependents and Survivors, Chapter 6 Home Loan Guaranty*, *supra* note 692

⁶⁹⁴ *Purchase Loan*, VA.GOV, <https://www.va.gov/housing-assistance/home-loans/loan-types/purchase-loan/> (last visited Apr. 24, 2020)

⁶⁹⁵ Peter Miller, *Guide to 2020 VA Mortgage Loan Changes*, MORTGAGE REPORTS, <https://themortgagereports.com/59619/2020-changes-to-va-loan-limits-and-funding-fees> (last visited Apr. 23, 2020)

⁶⁹⁶ Miller, *supra* note 695

⁶⁹⁷ Miller, *supra* note 695

⁶⁹⁸ Miller, *supra* note 695

⁶⁹⁹ Miller, *supra* note 695

⁷⁰⁰ Miller, *supra* note 695

⁷⁰¹ Barbara Marquand, *VA Home Loan Changes in 2020*, NERDWALLET (Jan. 8, 2020), <https://www.nerdwallet.com/blog/mortgages/va-home-loan-limit-and-funding-fee-changes-2020/>

Veterans still need to have sufficient income and meet a lender's credit requirements to qualify for the loan amount.⁷⁰² Loan limits will still apply in 2020 to veterans who have one or more active VA loans or have defaulted on a previous loan.⁷⁰³

These limits are available here:

https://www.fhfa.gov/DataTools/Downloads/Documents/Conforming-Loan-Limits/FullCountyLoanLimitList2019_HERA-BASED_FINAL_FLAT.pdf

11.10.1.3. VA Home Loan Certificate of Eligibility (COE). A Certificate of Eligibility proves to the lender that the veteran is eligible for a VA loan. The VA issues the COE.⁷⁰⁴ The veteran can obtain a COE either through their lender, online at <https://www.ebenefits.va.gov/ebenefits/about/feature?feature=cert-of-eligibility-home-loan>, or by completing a VA Form 26-1880 (Request For A Certificate of Eligibility For Home Loan Benefits, which is available here: <http://www.vba.va.gov/pubs/forms/VBA-26-1880-ARE.pdf>) and mailing it to the address on the form. An eligible surviving spouse must apply for the Certificate by mail using VA Form 26-1817 (which is available here: <https://www.vba.va.gov/pubs/forms/VBA-26-1817-ARE.pdf>) and mailing the form to the address on the form.

11.10.1.4. VA Home Loan Appraisal. Before a home may be purchased using a VA home loan, it must be appraised by a VA-approved appraiser.⁷⁰⁵ Usually, lenders will arrange for this.⁷⁰⁶ The primary purpose of the VA appraisal is to ensure that the market value of the home is in line with the purchase price.⁷⁰⁷ Regardless, the VA cannot guarantee that the veteran is making a good investment.⁷⁰⁸ And this appraisal is not an inspection of the home and should **not** be considered a guarantee that a home is free of defects.⁷⁰⁹ Therefore, a veteran should seek expert advice from a qualified residential inspector **BEFORE** legally committing to a purchase agreement.⁷¹⁰

11.10.1.5. VA Home Loan Closing Costs and Fees. The VA has a list of fees that cannot be charged, such as commissions or “buyer broker” fees.⁷¹¹ The VA home loans do not have the closing costs that a conventional home loan has but there are

⁷⁰² Marquand, *supra* note 701

⁷⁰³ Marquand, *supra* note 701

⁷⁰⁴ *How to Apply for a VA Home Loan Certificate of Eligibility*, VA.GOV, <https://www.va.gov/housing-assistance/home-loans/how-to-apply/> (last visited Apr. 24, 2020)

⁷⁰⁵ Samantha Reeves, *8 Things You Must Know About VA Appraisals*, VETERANSUNITED, <https://www.veteransunited.com/realestate/8-things-you-must-know-about-the-va-appraisal/> (last visited Apr. 24, 2020)

⁷⁰⁶ *Understanding the VA Appraisal*, VA LOANS, <https://www.valoans.com/articles/va-appraisals/> (last visited Apr. 24, 2020)

⁷⁰⁷ *The VA Appraisal*, VETERANS UNITED, <https://www.veteransunited.com/education/processing/> (last visited Apr. 24, 2020)

⁷⁰⁸ *VA Guaranteed Home Loans for Veterans*, VA.GOV, 3, https://www.benefits.va.gov/WARMS/docs/admin26/pamphlet/pam26_4/pam26_4.pdf (last visited Apr. 24, 2020)

⁷⁰⁹ *VA Guaranteed Home Loans for Veterans*, *supra* note 708

⁷¹⁰ *VA Guaranteed Home Loans for Veterans*, *supra* note 708

⁷¹¹ *Non-Allowable Fees on VA Home Loans*, VETERANS UNITED, <https://www.veteransunited.com/education/library/non-allowable-fees/> (last visited Apr. 24, 2020)

some closing costs that may be charged.⁷¹² With a VA loan, the seller can pay the veteran's closing costs as long as the cost is not more than 4% of the sale price of the home.⁷¹³ The veteran must pay a funding fee for a VA loan, unless they receive service-connected disability compensation from the VA, in which case, they are exempt.⁷¹⁴ The funding fee can be rolled into the home loan.⁷¹⁵ Although the funding fee is standard, regardless of the lender, the fee ranges from 1.4% to 3.6% of the price of the home, depending on:

- Whether the veteran's service was regular active duty or in the reserves/National Guard;
- The down payment amount that the veteran will pay; and
- Whether the veteran has used the VA loan benefit before.⁷¹⁶
- For the current funding fees, see: <https://www.va.gov/housing-assistance/home-loans/funding-fee-and-closing-costs/#va-funding-fee-rate-charts>.

11.10.1.6. Credit History May Affect Ability to Secure a VA Home Loan. The lender determines whether it will lend to a veteran.⁷¹⁷ A low credit score and some late payments might affect whether a lender will lend to a veteran, but credit and income standards are not as strict as they are for most conventional loans.⁷¹⁸ A veteran may be able to qualify for a VA Loan even if they cannot qualify for a conventional home loan.⁷¹⁹ More importantly, the lender will determine how much the veteran can afford to pay each month based in part on current debts, monthly payments, and income.⁷²⁰ The lender also sets the interest rate, so the interest rates vary among lenders.⁷²¹ However, once a veteran is approved for a VA Loan by the lender, they are eligible for the best interest rates available with that lender regardless of their credit score or credit history.⁷²²

11.10.1.7. History of Bankruptcy May Affect Ability to Secure a VA Home Loan. A bankruptcy does not necessarily disqualify a veteran for a VA home loan. The following rules apply:

- If the bankruptcy was discharged more than 2 years ago, it *may* be disregarded

⁷¹² VA Funding Fee and Loan Closing Costs, VA.GOV, <https://www.va.gov/housing-assistance/home-loans/funding-fee-and-closing-costs/> (last visited Apr. 24, 2020)

⁷¹³ VA Funding Fee and Loan Closing Costs, *supra* note 712

⁷¹⁴ VA Funding Fee and Loan Closing Costs, *supra* note 712

⁷¹⁵ VA Funding Fee and Loan Closing Costs, *supra* note 712

⁷¹⁶ Funding Fee Tables, VA.GOV, https://www.benefits.va.gov/HOMELOANS/documents/docs/funding_fee_table_01012020.pdf (last visited Apr. 24, 2020)

⁷¹⁷ Credit Requirements for VA Loan Eligibility, VA LOANS, <https://www.valoans.com/eligibility/credit/> (last visited Apr. 24, 2020)

⁷¹⁸ Hal M. Bundrick ET AL, VA Loan Requirements for 2020, NERDWALLET, <https://www.nerdwallet.com/article/mortgages/va-loan-eligibility-requirements> (last visited Apr. 24, 2020)

⁷¹⁹ The Department of Veterans Affairs Home Loan Basics, MILITARY ONE SOURCE, <https://www.militaryonesource.mil/military-life-cycle/separation-transition/military-separation-retirement/the-department-of-veterans-affairs-home-loan-basics> (last visited Apr. 27, 2020)

⁷²⁰ Debt to Income (DTI) Ratio Guidelines for VA Loans, VETERANS UNITED, <https://www.veteransunited.com/education/library/va-debt-to-income-ratio/> (last visited Apr. 24, 2020)

⁷²¹ VA Loan Interest Rates, VETERANS UNITED, <https://www.veteransunited.com/education/homebuying/interest-rates/> (last visited Apr. 24, 2020)

⁷²² Beth Buczynski, VA Home Loan Credit Score Requirements for 2020, NERDWALLET, <https://www.nerdwallet.com/blog/mortgages/va-home-loan-credit-score-requirements/> (last visited Apr. 24, 2020)

- If the bankruptcy was discharged within the last 1 to 2 years, it is probably not possible to determine that a veteran or their spouse are a satisfactory credit risk unless both of the following requirements are met:
 - The veteran or their spouse have reestablished satisfactory credit; and
 - The bankruptcy was caused by circumstances beyond the veteran's or their spouse's control (such as unemployment, medical bills, etc.)
- If the bankruptcy was discharged within the past 12 months, it will not generally be possible to determine that the veteran or their spouse are satisfactory credit risks.⁷²³

11.10.1.8. VA Home Loan Repayment Options. VA home loans are 30-year loans. But a veteran can choose the payment plan. Payment plan options include:

- A traditional fixed-payment plan has specific fixed interest rate. The payments do not change over the lifetime of the loan. This might be the best option if the veteran is looking for stable, predictable payments for the life of the loan.⁷²⁴
- A graduated payment mortgage allows for lower payments at the beginning of the loan and gradually increase each year up to the sixth year. At the sixth year of the loan, the payments are not increased again. This might be the best option if the veteran expects to be making more money in the future.⁷²⁵
- A growing equity mortgage allows for gradual increases in the payment amount. But the increases are applied to the principal of the loan, not the interest. This will increase the equity. This might be the best option if the veteran wants to reduce the amount of interest paid on the loan.⁷²⁶
- A traditional adjustable rate mortgage (ARM) is a loan in which the interest rate is adjusted annually. For a VA loan, each annual adjustment cannot be more than a one percent increase. The maximum adjustment over the lifetime of the loan is five percent. This might be the best option if the veteran plans to refinance the loan in the future.⁷²⁷
- A hybrid ARM has a fixed interest rate for at least three years. If the fixed rate is locked in for five years or longer, the first adjustment can be as high as two percentage points. But the cap on the interest rate increase over the entire term of the loan is five percent. Like the traditional ARM, this might be the best option if the veteran plans to refinance the loan in the future.⁷²⁸
- The VA does not offer interest-only loans. Regardless of which payment option a veteran chooses, a portion of the payments is credited to the principal, as opposed to interest.

⁷²³ VA Pamphlet 26-7, Revised, Chapter 4: Credit Underwriting, VA.GOV, 44,

https://www.benefits.va.gov/WARMS/docs/admin26/pamphlet/pam26_7/ch04.pdf (last visited Apr. 24, 2020)

⁷²⁴ Types of VA Loan Repayment Plans, VA LOANS, <https://www.valoans.com/articles/types-of-va-loan-repayment-plans/> (last visited Apr. 24, 2020)

⁷²⁵ VA Graduated Payment Mortgage, MILITARYBENEFITS.INFO, <https://militarybenefits.info/va-gpm/> (last visited Apr. 24, 2020)

⁷²⁶ VA Pamphlet 26-7, Revised Chapter 7-Loans Requiring Special Underwriting, Guaranty and Other Considerations, VA.GOV, 34,

<https://www.benefits.va.gov/WARMS/docs/admin26/handbook/ChapterLendersHandbookChapter7.pdf> (last visited Apr. 24, 2020)

⁷²⁷ Chris Birk, A Closer Look at VA Adjustable-Rate Mortgages (ARMs), VETERANS UNITED, <https://www.veteransunited.com/valoans/va-arm/> (last visited Apr. 24, 2020)

⁷²⁸ Justin Pritchard, How Hybrid Loan Works (and Why This Type of Mortgage Benefits You), THE BALANCE, <https://www.thebalance.com/how-hybrid-loans-work-and-benefits-4157799> (last visited Apr. 24, 2020)

11.10.1.9. Purchases That Can Be Made Using a VA loan. Besides buying a house, VA Loans can be used to:

- Build a home
- Improve a home (aka a second mortgage)
- Buy and renovate a home
- Buy a manufactured home and lot
- Buy a condominium or a cooperative unit
- Buy a farm residence
- Refinance an existing home loan, so long as the new loan does not exceed 90% of the appraised value plus the costs of any improvements
- Improve a home's energy-efficiency.⁷²⁹

11.10.1.10. VA Home Loan Restrictions. A veteran must live in the home that is financed with a VA Loan and it must be their primary residence. But if a military member is currently deployed in the military, they can still buy a home with a VA Loan, so long as the home will be their primary residence when they return. Also, a VA Loan cannot be used to buy a home that is not in the USA.⁷³⁰

11.10.1.11. VA Home Loan Requires Homeowner's Insurance. Before closing, the veteran must buy homeowner's insurance. Homeowner's insurance will protect both the veteran and the lender from any future damage or loss of the home.⁷³¹

11.10.1.12. Re-using the VA Home Loan Benefit. If a veteran has paid off a VA loan and sold the property, they can get another VA Loan.⁷³² Also, if the veteran paid off a VA loan and still owns the property, they may be able to get another VA loan on a one-time only basis.⁷³³ In either case, to restore their eligibility, the veteran must send a completed VA Form 26-1880 (available at <http://www.vba.va.gov/pubs/forms/VBA-26-1880-ARE.pdf>) to the Atlanta Eligibility Center (the address is on the form).⁷³⁴ To prevent delays in processing, the veteran should also include evidence that the prior loan has been paid in full and, if applicable, that the property has been sold.⁷³⁵ This evidence can be in the form of a paid-in-full statement from the former lender or a copy of the HUD-1 settlement statement (a form that is completed when the property is sold or refinanced).⁷³⁶

⁷²⁹ Samantha Reeves, *What You Can (and Cannot) Do with Your VA Home Loan*, VETERANS UNITED, <https://www.veteransunited.com/valoans/va-loan-basics-acceptable-and-non-acceptable-uses/> (last visited Apr. 24, 2020)

⁷³⁰ *8 Keys to Understanding VA Loan Occupancy Rules*, MILITARY.COM, <https://www.military.com/money/va-loans/8-keys-to-understanding-v-a-loan-occupancy-rules.html> (last visited Apr. 24, 2020)

⁷³¹ Matt Timmons, *Homeowners Insurance for Veterans and Members of the Military*, VALUE PENGUIN, <https://www.valuepenguin.com/homeowners-insurance-military-veterans> (last visited Apr. 24, 2020)

⁷³² *VA Pamphlet 26-7, Revised, Chapter 2: Veteran's Eligibility and Entitlement*, VA.GOV, 18, https://benefits.va.gov/WARMS/docs/admin26/pamphlet/pam26_7/Chapter2.pdf (last visited Apr. 24, 2020)

⁷³³ *VA Pamphlet 26-7*, *supra* note 732

⁷³⁴ *VA Home Loans*, VA.GOV, https://www.benefits.va.gov/homeloans/faq_eligibility.asp (last visited Apr. 24, 2020)

⁷³⁵ *VA Home Loans*, *supra* note 734

⁷³⁶ *VA Home Loans*, *supra* note 734

11.10.1.13. Assuming a VA Loan. For a buyer to be eligible to assume a VA loan, they must not only qualify from a credit and income standpoint, but they must also be a veteran who is entitled to a VA loan and meet occupancy requirements. If a buyer will be assuming a VA Loan, then the seller should request a “release of liability” from the VA. This will protect seller if the buyer fails to pay the loan. Without a release of liability, the seller is responsible for the debt if the buyer fails to pay. If a VA loan was made after March 1, 1988, a seller is required to notify the VA and request that they approve that the buyer assume the loan. If your VA loan was made before March 1, 1988, the loan may be assumed without approval. But it is recommended that a seller do this anyway.⁷³⁷

11.10.1.14. VA Home Loan Delinquency Assistance. If a veteran falls behind on their mortgage payments, the VA has specialists who can work with the VA Loan Servicer to determine the best option for the veteran. This could entail finance counseling or the assignment of a VA loan technician. More intensive measures to avoid foreclosure through the VA include:

There are 6 general ways Veterans can attempt to avoid a foreclosure:

1. **Repayment plan:** If they’ve missed a few mortgage payments, this plan lets them go back to making their regular payments, with an added amount each month to cover the ones they’ve missed.
2. **Special forbearance:** This plan gives the veteran some extra time to repay the missed mortgage payments.
3. **Loan modification:** This plan lets the veteran add the missed mortgage payments and any related legal costs to their total loan balance. The Veteran and their servicer then come up with a new mortgage payment schedule.
4. **Extra time to arrange a private sale:** If the veteran needs to sell their home, this plan lets them delay a foreclosure so they have time to sell.
5. **Short sale:** If the veteran owes more money than their house is worth, their servicer might agree to a short sale. This means the servicer will accept the total proceeds from the home sale (even if it’s less than the full amount they owe on the mortgage) as full payment of the debt the veteran owes.
6. **Deed in lieu of foreclosure:** This plan lets the veteran avoid the foreclosure process by signing over the deed to the home to their servicer. The home will then belong to the servicer.⁷³⁸

⁷³⁷ *Federal Benefits for Veterans*, *supra* note 692

⁷³⁸ *VA Help to Avoid Foreclosure*, VA.GOV, <https://www.va.gov/housing-assistance/home-loans/trouble-making-payments/> (last visited Apr. 6, 2020)

A VA Loan Specialist can be contacted at 1-877-827-3702. For more information about this VA program, see <https://www.va.gov/housing-assistance/home-loans/trouble-making-payments/>.

11.10.2. Homeless Prevention Programs. There are a few programs available to prevent homelessness of veterans and their families. However, if you know of a veteran or veterans' family who are struggling with homelessness, have them call the VA Homeless Hotline at 1-877-4AID-VET (1-877-424-3838). This hotline will connect the veteran / family with the services in their area.⁷³⁹

11.11. Tax Deductions & Exemptions Benefits.

11.11.1. VA Benefits. ALL VA income is tax-free, both federal and state.⁷⁴⁰

11.11.2. Indiana Benefits.

11.11.2.1. Property Tax Deductions. Disabled Hoosier veterans are eligible for the following property tax deductions, depending on value of their home, their age, and their percentage of service-connected disability as determined by the VA. The surviving spouse of the veteran is eligible for the veteran's tax deduction. The spouse must apply in his or her own name.

- A **\$14,000 tax deduction** is available to a veteran who:
 - Served at least 90 days of honorable service during any period.
 - Received an Honorable Discharge
 - And is either:
 - Totally disabled (receiving VA Compensation at 100% or VA Pension),
OR
 - At least 62 years old and 10% service-connected disabled.⁷⁴¹
 - This deduction is **NOT** available if the assessed value of the real property owned by the veteran is over of \$200,000.
- A **\$24,960 tax deduction** is available for veterans who:
 - Served honorably in the Armed Forces during any period of wartime, AND
 - Are at least 10% service-connected disabled.⁷⁴²
- A **\$38,960 tax deduction** is available for any veteran who:
 - Served honorably during any period of wartime
 - And is either:
 - At least 62 years of age with at least a 10% service-connected disability OR

⁷³⁹ *Homeless Veterans*, VA.GOV, <https://www.va.gov/homeless/nationalcallcenter.asp> (last visited Apr. 27, 2020)

⁷⁴⁰ *Federal Taxes on Veterans' Disability or Military Retirement Pensions*, MYARMYBENEFITS, <https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Federal-Taxes-on-Veterans-Disability-or-Military-Retirement-Pensions?serv=122> (last visited Apr. 27, 2020)

⁷⁴¹ IC § 6-1.1-12-14

⁷⁴² *Property Tax Deductions*, IN.GOV, <https://www.in.gov/dva/2383.htm> (last visited Apr. 6, 2020)

- Has a permanent and total service-connected disability rating at any age AND whose home's assessed is \$200,000 or less can receive both property tax deductions for a total of \$38,960.
- This is a combination of the \$14,000 deduction and the \$24,960 deduction and in the event the property is valued above \$200,000 the \$14,000 portion is not applicable and, therefore, this deduction cannot be awarded.⁷⁴³

11.11.2.2. State Income Tax Exemptions.

11.11.2.2.1. Current members of the active branches of service, National Guard, and Reserves. Active duty military, National Guard, and Reserves are eligible to receive an exemption of \$5,000 on their state income tax return.⁷⁴⁴

11.11.2.2.2. Military Retirees Over 60-years Old. Veterans who are military retirees over age 60 are eligible for an exemption of \$5,000 on their state income tax return.⁷⁴⁵

11.11.2.2.3. National Guard & Reserves Deployed to Combat Zone. Military pay earned by National Guard and Reserve Members while under orders to a combat zone is exempt from state tax. The exemption period begins with the date on the orders and ends when the orders end. But this exemption and the \$5,000 exemption cannot be claimed on the same return. It must be one or the other, but not both.⁷⁴⁶

11.12. Burial Benefits.

11.12.1. VA (Federal) Benefits.

11.12.1.1. Burial Expense Reimbursement. The VA provides a burial expense reimbursement. The amount depends on the veterans' status.

- **\$300 Burial & Funeral Expense Reimbursement and \$300 Plot or internment allowance for burial in cemetery that is not a US Government cemetery.** Available for veterans who were entitled to receive a VA Pension, had a service-connected disability, or died while hospitalized in a VA facility, a State veterans' home, or a VA-contracted nursing home. The deceased veteran must have been discharged under conditions other than dishonorable. Claims must be filed within two years. Additionally, the VA will pay up to \$300

⁷⁴³ Property Tax Deductions, *supra* note 742

⁷⁴⁴ Indiana Adjusted Gross Income Tax Applicable to Military Personnel and Spouses, IN.GOV, INDIANA DEPARTMENT OF REVENUE, INFORMATION BULLETIN #27 INCOME TAX (Nov. 2018), 3, <https://www.in.gov/dor/files/ib27.pdf>

⁷⁴⁵ General Information About Veteran's Benefits, WAYNE COUNTY VETERAN'S OFFICE, <https://www.co.wayne.in.us/veteran/> (last visited Apr. 6, 2020).

⁷⁴⁶ Indiana Adjusted Gross Income Tax, *supra* note 744

for a plot or internment allowance when the veteran is not buried in a cemetery under U.S. Government jurisdiction.⁷⁴⁷

- **\$2000 Burial & Funeral Expense Reimbursement.** Available for veterans whose death is service-connected. Additionally, the VA will pay the cost of transporting the remains of a service-connected veteran to the nearest national cemetery that has available gravesites. For service-connected deaths, there is no time limit for filing of reimbursement claims.⁷⁴⁸

11.12.1.2. Burial Flag. The VA will provide an American Flag to drape a veteran's casket, after which it may be given to the next of kin or associate of the deceased.⁷⁴⁹ Flags are available at any VA Regional Office and most local post offices.⁷⁵⁰ Additionally, the funeral director will help you obtain the flag.⁷⁵¹ The deceased veteran must have been discharged under conditions other than dishonorable and must have been one of the following:

- Veteran who served during wartime.
- Veteran who died on active duty after May 27, 1941.
- Veteran who served after January 31, 1955.
- Peacetime Veteran who was discharged or released before June 27, 1950.
- Certain persons who served in the organized military forces of the Commonwealth of the Philippines while in service of the U.S. Armed Forces and who died on or after April 25, 1951.⁷⁵²
- National Guardsmen and Reservists who were entitled to retired pay at the time of death (i.e. performed 20 years of service).⁷⁵³

11.12.1.3. Headstone or Grave Marker. A headstone or grave marker is provided without charge and shipped to the cemetery.⁷⁵⁴ Any VA Regional Office will provide information and other assistance in filling out an application.⁷⁵⁵ A headstone or grave marker is available for:

- Any deceased veteran of wartime or peacetime service (other than for training) who was discharged under conditions other than dishonorable.
- National Guardsmen and Reservists who die while performing active duty for training.
- National Guardsmen and Reservists who have 20 years of service.⁷⁵⁶

⁷⁴⁷ *Burial Benefits*, VA.GOV, <https://www.benefits.va.gov/compensation/claims-special-burial.asp> (last visited Apr. 27, 2020)

⁷⁴⁸ *Burial Benefits*, *supra* note 747

⁷⁴⁹ *Burial Flag*, VA.GOV, <https://benefits.va.gov/BENEFITS/factsheets/burials/flag.pdf> (last visited Apr. 27, 2020)

⁷⁵⁰ *Burial Flag*, *supra* note 749

⁷⁵¹ *Burial Flags Frequently Asked Questions*, VA.GOV, <https://www.va.gov/opal/nac/sdc/faqBurialFlags.asp#q009> (last visited Apr. 27, 2020)

⁷⁵² *Burial Flags to Honor Veterans and Reservists*, VA.GOV, <https://www.va.gov/burials-memorials/memorial-items/burial-flags/> (Apr. 27, 2020)

⁷⁵³ *Federal Benefits for Veterans, Dependents and Survivors, Chapter 8 Burial and Memorial Benefits*, VA.GOV, https://www.va.gov/opa/publications/benefits_book/benefits_chap08.asp (last visited Apr. 27, 2020)

⁷⁵⁴ *Headstones, Markers, and Medallions*, VA.GOV, <https://www.cem.va.gov/hmm/> (last visited Apr. 27, 2020)

⁷⁵⁵ *VA Form 40-1330, Claim for Standard Government Headstone or Marker*, VA.GOV, 1, <https://www.va.gov/vaforms/va/pdf/va40-1330.pdf> (last visited Apr. 27, 2020)

⁷⁵⁶ *Veterans headstones, Markers, and Medallions*, VA.GOV, <https://www.va.gov/burials-memorials/memorial-items/headstones-markers-medallions/> (last visited Apr. 27, 2020)

11.12.1.4. Burial in National Cemetery. Burial in a National Cemetery that has space available. Applications should be made only at the time of death of the veteran or eligible dependent by contacting the Superintendent of the national cemetery in which burial is desired. This benefit is available to:

- Any deceased veteran of wartime or peacetime service (other than for training) who was discharged under conditions other than dishonorable
- National Guardsmen and Reservists who die while performing active duty for training also
- An eligible veteran's spouse, widow or widower, minor children, and, under certain circumstances, unmarried adult children, even if they predecease the veteran.⁷⁵⁷

11.12.2. Indiana Benefits.

11.12.2.1. County Burial Allowance. Each County Auditor is authorized to pay up to an amount not to exceed \$1,000 for the burial of a veteran or the veteran's spouse, which may include up to \$100 for the setting of a federal headstone. Veterans must have received an honorable discharge. An application must be filed with the county auditor in the county of residence.⁷⁵⁸

11.12.2.2. Burial in Indiana Veterans Memorial Cemetery. The Indiana Veterans Memorial Cemetery is located adjacent to the Madison State Hospital and Clifty Falls State Park in Madison, Indiana. Any veteran, spouse or dependent who eligible to be buried in a National Cemetery is eligible for burial in the Indiana Veterans Memorial Cemetery. For an application for burial, contact the Indiana Department of Veterans Affairs.⁷⁵⁹

11.12.2.3. Funeral Expenses for National Guard Members Who Die While On State Duty. If a member of the Indiana National Guard dies in the active service of the state, the member's reasonable funeral expenses, not exceeding \$4,000 will be paid by the state.⁷⁶⁰ Contact the Indiana Department of Veterans Affairs to apply for funeral expense reimbursement.

11.13. Family-related Benefits.

11.13.1. Federal Benefits.

11.13.1.1. Family Medical Leave Act (FMLA). In 2008, the FMLA was expanded to include leave for military families. Under the FMLA, employers must provide 26 weeks of FMLA leave during a single 12-month period to allow a "spouse, son, daughter,

⁷⁵⁷ Eligibility for Burial in a VA National Cemetery, VA.GOV, <https://www.va.gov/burials-memorials/eligibility/> (last visited Apr. 27, 2020)

⁷⁵⁸ Indiana Military and Veterans Benefits, MYARMYBENEFITS, <https://myarmybenefits.us.army.mil/Benefit-Library/State/Territory-Benefits/Indiana> (last visited Apr. 27, 2020)

⁷⁵⁹ Indiana Veterans Memorial Cemetery, IN.GOV, <https://www.in.gov/dva/2387.htm> (last visited Apr. 27, 2020)

⁷⁶⁰ IC § 10-16-7-19(b)

parent, or next of kin" to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness."⁷⁶¹ This portion of the expansion became effective upon the president's signature and is part of the 2008 National Defense Authorization Act (NDAA).⁷⁶²

11.13.2. Indiana Benefits.

11.13.2.1. Family Leave. When a Hoosier service member is ordered to deploy on active duty, his or her family members who work for an employer who has over 50 employees, are eligible for an unpaid leave of absence of up to 10 days. Family members include spouse, parent, grandparents or siblings, including biological, adopted-, foster- or step-family. The leave can be taken in the 30-day period after the service member receives their orders, while they are home on leave during the deployment, or in the 30-day period at the end of their deployment.⁷⁶³

11.13.2.2. Military Custody and Parenting. A military parent who receives temporary deployment or mobilization orders may request a court to:

- Hold an expedited hearing to determine or modify custody or parenting time; and
- Allow, with reasonable notice, a parent to present testimony and evidence by certain electronic means in a custody or parenting time proceeding, if the military duties of a parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing concerning custody or parenting time.⁷⁶⁴

11.13.2.2.1. Military Custody and Parenting Benefit. This Indiana law allows:

- A court, upon motion by a parent who has received military deployment orders, to delegate the parent's parenting time, or a part of the parent's parenting time, during the time that the parent is deployed to a person who has a close and substantial relationship with the parent's child, if the court determines delegating the time is in the best interests of the child.⁷⁶⁵
- An order delegating parenting time automatically terminates after the parent returns from deployment.⁷⁶⁶
- The court will terminate an order delegating parenting time if the court determines that the delegated parenting time is no longer in the best

⁷⁶¹ Fact Sheet #28M: The Military Family Leave Provisions under the Family and Medical Leave Act, US DEPARTMENT OF LABOR, <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28m.pdf> (last visited Apr. 27, 2020)

⁷⁶² Family and Medical Leave Act - National Defense Authorization Act for FY 2010 Amendments, US DEPARTMENT OF LABOR, <https://www.dol.gov/agencies/whd/fmla/military-families> (last visited Apr. 27, 2020)

⁷⁶³ IC § 22-2-13-12

⁷⁶⁴ IC § 31-14-13-6.2

⁷⁶⁵ IC § 31-14-13-6.1(a)

⁷⁶⁶ IC § 31-14-13-6.1(b)

interests of the child.⁷⁶⁷

11.14. Employment & Job Training Benefits.

11.14.1. Federal Benefits.

11.14.1.1. Civil Service Preference (Office of Personnel Management). Many veterans are entitled to a civil service preference when applying for a job within the federal government. To be eligible, the veteran must have either an honorable or general discharge. Unless disabled, military retirees at the rank of O-4 or higher are not eligible. The preference is provided by adding to the civil service exam either 5 or 10 points to their **passing** score or, for “white collar” jobs, a veteran may receive preference under the Veterans Recruitment Appointment program. Guard and Reserve active duty for training purposes does not qualify for preference. Over the past decade legislation proposed which would qualify certain National Guard and Reserve members. Most recently, Senators Ted Cruz and John Tester introduced bipartisan legislation in the form of the Military Reserve Jobs Act of 2019.⁷⁶⁸ The bill, if passed, would establish tiered hiring preference for members of the reserve components of the Armed Forces.⁷⁶⁹ The bill grants (1) a 2-point preference to current members of a reserve component who have completed at least 6 years of service in a reserve component and were credited with at least 50 retirement points in each year of service, and (2) a 3-point preference to current members of a reserve component who have completed a least 10 years of service and were credited with at least 50 retirement points in each year of service.⁷⁷⁰

11.14.1.2. 5-Point Civil Service Preference. Five points are added to the passing score of a veteran who served:

- During a war; or
- For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976; or
- During the Gulf War from August 2, 1990, through January 2, 1992; or
- For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last day of Operation Iraqi Freedom; or
- In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti. A campaign medal holder or Gulf War veteran who

⁷⁶⁷ IC § 31-14-13-6.1(c)

⁷⁶⁸ *Sens. Cruz, Tester Introduce Bipartisan Military Reserve Jobs Act*, US SENATOR FOR TEXAS TED CRUZ, (Feb 15, 2019), (https://www.cruz.senate.gov/?p=press_release&id=4326)

⁷⁶⁹ Military Reserve Jobs Act of 2019, S. 517, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/517/all-info>

⁷⁷⁰ Military Reserve Jobs Act of 2019, *supra* note 768

originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty.⁷⁷¹

11.14.1.2.1. 10-Point Civil Service Preference. Ten points are added to the passing examination score of:

- A veteran who served any time and who (1) has a present service-connected disability or (2) is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs. Individuals who received a Purple Heart qualify as disabled veterans.
- An unmarried spouse of certain deceased veterans, a spouse of a veteran unable to work because of a service-connected disability, and
- A parent of a veteran who died in service or who is permanently and totally disabled.⁷⁷²

11.14.1.2.2. Civil Service Veterans Recruitment Appointment (VRA). Under the VRA, a veteran can be appointed to a white-collar position through GS 11 without having to compete with other applicants. The VRA is open to veterans who are disabled, served on active duty during a war or major campaign, and left the service under honorable conditions within three years.⁷⁷³

11.14.1.3. Reemployment Rights. See Section 13, Uniformed Services Employment and Reemployment Rights Act.

11.14.1.4. Unemployment Compensation. The Unemployment Compensation for Ex-service members (UCX) program provides benefits for eligible ex-military personnel. The program is administered by the States. A recently separated military member is eligible if:

- They were on active duty.
- They were separated under honorable conditions.⁷⁷⁴

11.14.2. Indiana Benefits.

11.14.2.1. Employment assistance. The Indiana Department of Workforce Development/ WorkOne (with funding from the U.S. Department of Labor) provides services to Hoosier Veterans. Through the Disabled Veterans' Outreach Program (DVOP), and the Local Veterans' Employment Representative (LVER) Program, Workforce

⁷⁷¹ Veterans Services, OPM.GOV, <https://www.opm.gov/policy-data-oversight/veterans-services/vet-guide-for-hr-professionals/> (last visited Apr. 8, 2020)

⁷⁷² Veteran's Preference Points, MILITARY.COM, <https://www.military.com/benefits/veteran-benefits/veterans-employment-preference-points.html> (last visited Apr. 8, 2020)

⁷⁷³ Veterans' Recruitment Appointment (VRA), USAJOBS.GOV, <https://www.usajobs.gov/Help/working-in-government/unique-hiring-paths/veterans/vra/> (last visited Apr. 27, 2020)

⁷⁷⁴ Unemployment Compensation for Ex-servicemembers, US DEPARTMENT OF LABOR, <https://oui.doleta.gov/unemploy/ucx.asp> (last visited Apr. 27, 2020)

Development Offices throughout the State assists Hoosier veterans with their transition to civilian life. The DVOPs specialize in tailored training and job placement for veterans with service-connected disabilities. The LVERs coordinate services that are available for veterans including counseling, testing, and identifying training and employment opportunities.⁷⁷⁵

11.14.2.2. Job Training Priority for National Guard Members and Their Spouses. A National Guard member who has served on active duty for at least 30 days or their spouse is entitled to priority for placement in any state or federal employment or training program administered by the Department of Workforce Development for up to one year after discharge if the member is otherwise eligible for the program.⁷⁷⁶

11.15. Miscellaneous Benefits.

11.15.1. Federal Benefits.

11.15.1.1. Naturalization Benefits (Dept. of Justice Immigration & Naturalization Service). Members of the military, including National Guard and reserves, and recently separated veterans (separated within the last six months) are eligible to apply for citizenship under a special provision of the Immigration and Nationality Act.⁷⁷⁷

11.15.1.1.1. Naturalization General Requirements/Qualifications. A military member must:

- Be able to read, write, and speak basic English.
- Demonstrate knowledge of U.S. history and government.
- Demonstrate good moral character for at least 1 year prior to filing the application until the time of his or her naturalization.
- Have an attachment to the principles of the U.S. Constitution by taking an oath of allegiance to the U.S. Constitution.

NOTE: Generally, military members do not have to meet the required residency and physical presence in the US naturalization requirements.⁷⁷⁸

11.15.1.1.2. Naturalization Requirements for Veterans Who Served During a Period of Conflict. A veteran who separated from the military and served active duty during a period of conflict must meet the following requirements:

- The applicant may be of any age.

⁷⁷⁵ *Employment Assistance*, IN.GOV, <https://www.in.gov/dva/2390.htm> (last visited Apr. 27, 2020)

⁷⁷⁶ *2012 State and Federal Benefit Information*, INDIANA DEPARTMENT OF VETERAN AFFAIRS, 25, https://www.in.gov/dva/files/IDVA_State_Benefits_Booklet_5-25-12.pdf (last visited Apr. 27, 2020)

⁷⁷⁷ *Naturalization for Military Members and Their Families*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://my.uscis.gov/exploremyoptions/naturalization_through_military (last visited Apr. 7, 2020)

⁷⁷⁸ *Naturalization for Military Members and Their Families*, *supra* note 777

- The applicant must have served honorably in the U.S. armed forces during a designated period of hostility.
- Must have served during the following time periods: September 1, 1939-December 31, 1946; June 25, 1950 - July1, 1955; and February 28, 1961-October 5, 1978, Aug. 2, 1990 – April 11, 2001 or any additional period designated by the President in an Executive Order, including September 11, 2001 and after any other authorized period of conflict.
- Lawfully admitted as a permanent resident of the US or was physically present in the US or territory at the time of their enlistment, reenlistment, or induction in the military:
 - In the United States or its outlying possessions, including the Canal Zone, American Samoa, or Swains Island, or
 - On board a public vessel owned or operated by the United States for noncommercial service.
- The applicant must either be a lawful permanent resident (LPR) or have been physically present at the time of enlistment, reenlistment, or extension of service or induction into the U.S. armed forces.
- The applicant must be able to read, write, and speak basic English
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least 1 year prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the United States during all relevant periods under the law.
- An applicant who files on the basis of military service during hostilities is exempt from the general naturalization requirements of continuous residence and physical presence.
- Both “Honorable” and “General-Under Honorable Conditions” discharge character of service qualify as honorable service for immigration purposes. Other discharge types, such as “Other Than Honorable,” do not qualify as honorable service.⁷⁷⁹

11.15.1.1.3. *Naturalization Requirements for Veterans Who Did NOT Serve During a Period of Conflict.* A person who has served honorably in the U.S. armed forces for one year at any time may be eligible to apply for naturalization, which is sometimes referred to as “peacetime naturalization.” While some of the general naturalization requirements apply to qualifying members or veterans of the U.S. armed forces seeking to naturalize based on one year of service, other requirements may not apply or are reduced. The applicant must establish that he or she meets all of the following criteria in order to qualify:

⁷⁷⁹ Chapter 3 – Military Service During Hostilities INA 329, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, uscis.gov/policy-manual/volume-12-part-i-chapter-3 (last visited Apr. 7, 2020)

- The applicant must be 18 years of age or older.
- The applicant must have served honorably in the U.S. armed forces for at least one year.
- The applicant must be a lawful permanent resident (LPR) at the time of examination on the naturalization application.
- The applicant must meet certain residence and physical presence requirements.
- The applicant must demonstrate an ability to understand English including an ability to read, write, and speak English.
- The applicant must demonstrate knowledge of U.S. history and government.
- The applicant must demonstrate good moral character for at least five years prior to filing the application until the time of his or her naturalization.
- The applicant must have an attachment to the principles of the U.S. Constitution and be well disposed to the good order and happiness of the U.S. during all relevant periods under the law.⁷⁸⁰

11.15.1.1.4. *Naturalization Additional Benefits Available.* A military member or veteran is entitled to the following additional benefits:

- There are no filing fees to apply for naturalization. Between the naturalization application and fingerprinting fees, civilian applicants pay almost \$800 to become a U.S. citizen. Foreign-born service members are not required to pay the application fee, but spouses must pay the fee.⁷⁸¹
- Active duty military members at U.S. embassies, consulates, and where practical, military installations abroad are entitled to pursue naturalization – without having to be physically present in the US.⁷⁸²

11.15.1.1.5. *Naturalization Benefits available to Immediate Family Members of US Citizens Deployed Outside the US.* If a military member is a US citizen and is or will be deployed for at least one year, then the following persons may be eligible for expedited naturalization: their non-US citizen spouse, children under the age of 18 (including adopted children under the age of 18, stepchildren, children born out of wedlock, and children born overseas), parents of a military member, and siblings.⁷⁸³

An immediate relative of a U.S. armed forces member who died from combat-related injuries while on active duty, may be eligible for certain “survivor” immigration benefits, including citizenship.⁷⁸⁴

⁷⁸⁰ Chapter 2 - One Year of Military Service during Peacetime (INA 328), U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-2> (last visited Apr. 7, 2020)

⁷⁸¹ *Your Military Service Offers a Faster Track to US Citizenship*, MILITARY ONE SOURCE, (Apr. 3, 2020), <https://www.militaryonesource.mil/financial-legal/legal/citizenship-and-immigration/us-citizenship-through-military-service>

⁷⁸² *Naturalization for Military Members and Their Families*, *supra* note 777

⁷⁸³ Chapter 9 - Spouses, Children, and Surviving Family Benefits, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/policy-manual/volume-12-part-i-chapter-9#footnote-39> (last visited Apr. 7, 2020); *See also Chapter 2 – Definition of Child and Residence for Citizenship and Naturalization*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-2> (last visited Apr. 7, 2020)

⁷⁸⁴ *Family Based Survivor Benefits*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/military/family-based-survivor-benefits> (last visited Ar. 7, 2020)

11.15.2. *Indiana Benefits.*

11.15.2.1. *Veterans' Courts.* Veterans' Courts address the cause leading to criminal behavior and supports the guarantee of restorative justice founded in the Indiana Constitution.⁷⁸⁵ Veterans' Courts aim to rehabilitate instead of incarcerate.⁷⁸⁶ The VA assists with this effort by providing some funding and through and Veterans' Justice Outreach Coordinators to ensure that veterans who are in the Veterans' Court system receive treatment and services.⁷⁸⁷ Veterans struggling with post-traumatic stress, brain trauma, anxiety, depression, chemical dependency, unemployment, and homelessness are asked to do more than get treatment.⁷⁸⁸ There is a complete case plan, including tools for rehabilitation and readjustment.⁷⁸⁹ Each veteran in the program receives guidance through a mentor, who is typically a veteran who successfully completed this program.⁷⁹⁰ If a veteran is homeless, then they will be placed in a program to place them in a home.⁷⁹¹ If a veteran is unemployed, then they will get into a jobs program.⁷⁹² Not all Indiana counties have Veterans' Courts but these courts are being established at such a rapid rate that it is difficult to keep up with.⁷⁹³ Contact your local court to see if they have a Veteran's Court or if they have plans to establish one.

11.15.2.2. *License Plates.* Special license plates are available for veterans, disabled veterans, veterans who are former prisoners of war, and veterans who received the Purple Heart Medal.⁷⁹⁴

11.15.2.2.1. *Hoosier Veteran License Plates.* Any Hoosier veteran who received an Honorable Discharge from active duty military Armed Forces can purchase a military branch-specific Hoosier Veteran license plate. The veteran may bring their DD-214 to their local BMV office and request the special plate. Plates denote the particular branch of service in which the veteran served.⁷⁹⁵

11.15.2.2.2. *Disabled Hoosier Veteran Plates.* A Hoosier veteran may apply for a disabled Hoosier veteran license plate if, as the result of having served in the military, they suffer from one of the following:

- Lost sight in both eyes or suffered permanent impairment of vision in both

⁷⁸⁵ *Veteran's Court: Restorative Justice*, INDIANA COURT TIMES (Aug. 16, 2013), <http://indianacourts.us/times/2013/08/veterans-court/> (last visited Apr. 27, 2020)

⁷⁸⁶ *Veteran's Court: Restorative Justice*, *supra* note 785

⁷⁸⁷ *Veterans Justice Outreach Program*, VA.GOV, <https://www.va.gov/homeless/vjo.asp> (last visited Apr. 27, 2020)

⁷⁸⁸ *Veteran's Court: Restorative Justice*, *supra* note 785

⁷⁸⁹ *Veteran's Court: Restorative Justice*, *supra* note 785

⁷⁹⁰ *Veteran's Court: Restorative Justice*, *supra* note 785

⁷⁹¹ *Veteran's Court: Restorative Justice*, *supra* note 785

⁷⁹² *Veteran's Court: Restorative Justice*, *supra* note 785

⁷⁹³ Olivia Covington, *At Launch of 100th Problem-Solving Court, Judges Hail Results*, THE INDIANA LAWYER (April 16, 2019), <https://www.theindianalawyer.com/articles/49981-at-launch-of-100th-problem-solving-court-judges-hail-results>

⁷⁹⁴ *Motor Vehicle License Plates, Licenses and Waivers*, IN.GOV, <https://www.in.gov/dva/2385.htm> (last visited Apr. 27, 2020)

⁷⁹⁵ *Motor Vehicle License Plates*, *supra* note 794

eyes to the extent of being eligible for service-connected compensation for the loss;

- Lost one or both feet or the permanent loss of use of one or both feet;
- Lost one or both hands or the permanent loss of use of one or both hands;
- They have a VA disability rating for a physical condition that precludes the person from walking without pain or difficulty;
- They have a VA disability rating of at least 50% and are receiving service-related compensation from the United States Department of Veterans Affairs. At least 60% of the disability rating must be for a mobility disability.⁷⁹⁶

The veterans should attach a copy of their VA Rating Determination with their applications for a Disabled Hoosier Veteran Plate. Applications should be submitted to the Indiana Department of Veterans Affairs. This license plate bears the universal handicap symbol (wheelchair) and can be parked in designated handicap parking spaces.⁷⁹⁷

11.15.2.2.3. *Ex-Prisoner of War Plate.* Hoosier veterans who are former POWs or the surviving spouses of veterans who were a POW may apply for a POW license plate. A veteran with a POW license plate is not subject to pay for metered parking and cannot be ticketed for parking for longer than permitted at a metered parking space. Applications for these plates are available from the Indiana Department of Veterans Affairs. The Indiana Department of Veterans Affairs must verify the eligibility of the applicant.⁷⁹⁸

11.15.2.2.4. *Purple Heart Plates.* Any Hoosier Veteran who has received the Purple Heart Medal is authorized to have these special license plates. Applications may be obtained at the BMV or from the Indiana Department of Veterans Affairs. The veteran must present official documentation of the award, and the Indiana Department of Veterans Affairs must verify the veteran's eligibility.⁷⁹⁹

11.15.2.2.5. *Military Family Relief Fund.* This *Indiana* benefit is available for **active duty military members, reserves, National Guard members, and veterans** to provide short-term financial assistance for hardships caused by their active duty service.⁸⁰⁰

11.15.2.2.6. *Eligibility.* The military member, reservist, National Guard member, or veteran must be an Indiana resident and with at least 12 months of qualifying service, had been discharged in Honorable or Under Honorable Conditions and served during a time of national conflict or war. The applicant's Federal

⁷⁹⁶ Eligibility for Veteran License Plates, IN.GOV, <https://www.in.gov/dva/2386.htm> (last visited Apr. 27, 2020)

⁷⁹⁷ Eligibility for Veteran License Plates, *supra* note 796

⁷⁹⁸ 2012 State and Federal Benefit Information, *supra* note 776 at 13

⁷⁹⁹ 2012 State and Federal Benefit Information, *supra* note 776 at 13

⁸⁰⁰ Military Family Relief Fund, *supra* note 466

Gross Income cannot exceed two (2) times the U.S. Poverty Guidelines. The hardship incurred by the applicant must be a reasonable and logical consequence of the applicant's service in the Armed Forces or the National Guard. The request must directly impact the applicant's most central and basic living needs.⁸⁰¹

11.15.2.2.7. *Benefit Provided.* Funds may be used for: food, housing, utilities, medical expenses, basic transportation, childcare, education & employment assistance, other family support expenses or any other items will be considered on a case by case basis. Funds may NOT be used for: personal debts and loans to include, but not limited, for credit cards, payday loans, student loans, loans from family & friends, etc., phone, internet, and cable bill, reimbursement of expenses already paid, legal expenses and court costs to include, but not limited for attorney retainer & fees, tickets, child support, income taxes, etc. The lifetime maximum in total assistance that can be given to the applicant is \$2,500.⁸⁰²

11.15.2.2.8. *How to Apply for Military Family Relief Fund.* For more information on applying for assistance, please visit: <https://www.in.gov/dva/2329.htm>. The military member or their family member will be directed to the application packet found at:
<https://www.in.gov/dva/files/2019%20IDVA%20MFRF%20APPLICATION.pdf>

Once the packet is complete, send it to:
Indiana Department of Veterans Affairs
Attn: Military Family Relief Fund
302 W. Washington St. Room E-120
Indianapolis, Indiana 46204

OR

Fax it to 317-232-7721

OR contact their County Veterans' Service Officer or the Indiana Department of Veterans Affairs (317-232-3910).⁸⁰³

11.15.2.3. *Jury Duty.* Service members who are serving on active duty are exempt from serving on a jury in any court of Indiana.⁸⁰⁴

11.15.2.4. *Peddlers, Vendors, or Hawkers License.* Any wartime veteran who has an honorable discharge is entitled to a Peddlers, Vendors, or Hawkers License free of charge in all Indiana cities and counties. To apply, the veteran should contact their county auditor.⁸⁰⁵

⁸⁰¹ *Military Family Relief Fund, supra* note 466

⁸⁰² *Military Family Relief Fund, supra* note 466

⁸⁰³ *Military Family Relief Fund, supra* note 466

⁸⁰⁴ IC § 10-16-16-1

⁸⁰⁵ IC § 25-25-2-1

11.15.2.5. Resident Disabled Veteran Hunting & Fishing License. Any Indiana resident who is rated as service-connected disabled by the VA may purchase a hunting and fishing license in Indiana for a reduced fee. To apply, the veteran must complete the Application for Reduced Fee Hunting and Fishing License for Disabled Veterans available from their County Veterans' Service Officer, the Department of Natural Resource offices, or the Indiana Department of Veterans Affairs.⁸⁰⁶

11.15.2.6. Hoosier Golden Passport. A Hoosier Golden Passport provides unlimited admission to all Indiana State owned parks, recreation areas, reservoirs, forests, historic sites, museums, memorials and other Department of Natural Resource (DNR) facilities. The pass is good for one calendar year. Veterans who are eligible for a Disabled American Veteran license plate may purchase the Hoosier Golden Passport for \$18, which is half off the regular price.⁸⁰⁷

⁸⁰⁶ *Resident Veteran Hunting and Fishing License*, IN.GOV, <https://www.in.gov/dva/2382.htm> (last visited Apr. 27, 2020)

⁸⁰⁷ *Golden Hoosier Passport*, IN.GOV, <https://www.in.gov/dva/2389.htm> (last visited Apr. 27, 2020)

12. Servicemembers' Civil Relief Act (SCRA)

12.1. Overview. The Servicemembers' Civil Relief Act was enacted in 2003; formerly, this act was the Soldiers' & Sailors' Civil Relief Act of 1940.⁸⁰⁸ The Act is intended to ease the burden for "those who dropped their affairs to answer their country's call."⁸⁰⁹ The SCRA has procedural protections and substantive protections.⁸¹⁰ Generally, the SCRA protections have the following common elements:

12.1.1. Persons Protected. The SCRA protects:

- Active-duty military members, including reservists and National Guard. But in most states, National Guard members are only protected if they are on federal orders, not state orders, for more than 30 days even if the state active duty orders are federally funded.⁸¹¹ However, Indiana has enacted its own Servicemembers' Civil Relief Act, which may offer the same protections to National Guard Members. Indiana's Servicemembers' Civil Relief Act is discussed in Section 12.4.
- Dependents, in some cases. Dependents means spouse, children, or any person who the military member provided more than ½ of the individual's support for 180 days before applying for relief.⁸¹²

12.1.2. When the SCRA Protections apply. The SCRA Protections begin when the military member enters active duty service, whether inducted into active duty service or called up from reserves or National Guard. The protections normally end when the military member is released from active duty, though many provisions extend protection beyond this date.⁸¹³

12.1.3. "Material Effect." Many of the SCRA provisions require "material effect" before the provision may protect the military member.⁸¹⁴ Regardless of the right or obligation at issue, it is often necessary to show that the military member's military service has materially affected the member's rights or legal standing.⁸¹⁵ For instance, a military member's service materially affects them from appearing in a legal action if they are stationed in Germany, but this usually would not be the case if the military member's duty station is a mile from the courthouse.⁸¹⁶ In most cases, mere membership in the military is not enough to invoke an SCRA

⁸⁰⁸ *The Servicemembers Civil Relief Act (SCRA)*, US DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Apr. 28, 2020)

⁸⁰⁹ *Le Maistre v. Leffers*, 333 U.S. 1,6 (1948) (citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943))

⁸¹⁰ See 50 U.S.C. §§ 3901-4043 (2015)

⁸¹¹ *Overview of the SCRA*, AMERICAN BAR ASSOCIATION,

https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/servicemembers_civil_relief_act/overview/#q3 (last visited Apr. 28, 2020)

⁸¹² 50 U.S.C. § 3911 (2015)

⁸¹³ *The Servicemembers Civil Relief Act – SCRA*, MILITARY.COM, <https://www.military.com/benefits/military-legal-matters/scra/servicemembers-civil-relief-act-overview.html> (last visited Apr. 28, 2020)

⁸¹⁴ *Overview of the SCRA*, *supra* note 811

⁸¹⁵ *Overview of the SCRA*, *supra* note 811

⁸¹⁶ *Stays of Proceedings*, AMERICAN BAR ASSOCIATION,

https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/servicemembers_civil_relief_act/legal_proceedings/stays_of_proceedings/ (last visited Apr. 28, 2020)

provision.⁸¹⁷

- 12.1.4. Waiver.** The SCRA protections may be waived. However, the waiver must be:
- In a writing separate from the obligation or liability.
 - Executed during the period of military service.
 - Limited to the specific litigation at hand, not any future litigation that might follow. For example, a military member might waive their SCRA rights for an initial divorce decree, but this does not waive any subsequent litigation to enforce or interpret the divorce decree.
 - Foreseeable, voluntary, and intentional.⁸¹⁸

12.1.5. Jurisdiction & Proceedings. The SCRA is applicable to all civil courts and administrative proceedings. But it is not applicable to criminal proceedings. For purposes of federal jurisdiction, the Act does not generally present a federal question.⁸¹⁹

12.2 SCRA Procedural Protections. The SCRA provides the following procedural protections in all civil proceedings:

- 12.2.1. Default Judgment Protection.** Default Judgments that violate the SCRA are voidable, NOT void.⁸²⁰ For this procedural protection to apply, the Default Judgment must have been entered during the military member's military service or within 60 days after separation from active duty.⁸²¹ The military member has 90 days from the end of their active duty to reopen/set aside a default judgment.⁸²² To reopen/set aside a default judgment:
- The military member must not have appeared in the case; requesting a stay may be considered an appearance in the case, unless the request was made by a court-appointed attorney who has not made contact with the military member.⁸²³
 - Military service must be shown to have materially affected military member's ability to defend themselves in the action.⁸²⁴
 - The military member must have a meritorious or legal defense to the action or some part of it. This does not mean the military member would have prevailed in the action.⁸²⁵

⁸¹⁷ *The Servicemembers Civil Relief Act (SCRA): Section-by-Section Summary*, CONGRESSIONAL RESEARCH SERVICE (Mar. 25, 2019), 6, <https://fas.org/sgp/crs/natsec/R45283.pdf>

⁸¹⁸ 50 U.S.C. § 3918 (2015)

⁸¹⁹ R. Chuck Mason, *The Servicemembers Civil Relief Act (SCRA): An Explanation*, CONGRESSIONAL RESEARCH SERVICE (Aug. 27, 2014), 4, <https://www.justice.gov/crt-military/file/797396/download>

⁸²⁰ *Protection Against Default Judgment*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/servicemembers_civil_relief_act/legal_proceedings/protection_against_default_judgment/ (last visited Apr. 28, 2020)

⁸²¹ *Protection Against Default Judgment*, *supra* note 820

⁸²² *Protection Against Default Judgment*, *supra* note 820

⁸²³ Paul K. Charlton, *The Servicemembers Civil Relief Act (SCRA)*, US ATTORNEY'S OFFICE, 3, https://www.justice.gov/sites/default/files/usao-az/legacy/2011/01/07/Servicemembers_Civil_Relief_Act.pdf (last visited Apr. 28, 2020)

⁸²⁴ Charlton, *supra* note 823 at 4

⁸²⁵ Charlton, *supra* note 823 at 4

In Indiana, a Motion for a Default Judgment, IN ST Trial Procedure Rule 55, requires an affidavit that indicates that the non-moving party is or is not in military service or it could not be determined after some investigation.⁸²⁶ This requirement applies to any civil action in which the defendant has not made an appearance.⁸²⁷ If the non-moving party is in military service, then the court must appoint an attorney before a default judgment may be entered.⁸²⁸ The court-appointed attorney must attempt to find the military member and should request a stay of proceedings.⁸²⁹

12.2.2. Stay of Proceedings Provision. A Stay of Proceedings is available to a military member, regardless of whether they appeared in the action.⁸³⁰ Additionally, a military member may request a Stay of Proceedings, regardless of whether they are the plaintiff or the defendant.⁸³¹ A Stay must be requested while the military member is on active duty or within 90 days after active duty.⁸³² A military member's request for stay does NOT constitute an appearance in the action or a waiver of any substantive or procedural defense.⁸³³

To request a stay of proceedings, a military member must send a notice to the court explaining that their military service materially affects their ability to appear and when they can appear.⁸³⁴ Further, the notice must include a letter/statement from the member's commander stating that military duty prevents the military member from appearing and that military leave is NOT authorized.⁸³⁵

For a Stay of Proceedings, material effect is the critical inquiry.⁸³⁶ If material effect is shown, then the court should grant a stay of proceedings for at least 90 days.⁸³⁷ But additional stays may be requested, if necessary.⁸³⁸

12.2.3. Stay of Execution of Judgments & Stay or Vacation of Attachments/ Garnishments Provisions. A military member may request either a Stay of Execution of a Judgment or a Stay or Vacation of an Attachment or Garnishment if the action or proceeding began before, during, or within 90 days after active duty. While the SCRA requires a court to grant the Stay, the court must find that the military member's ability to comply with the judgment or order is materially affected by military service.⁸³⁹

⁸²⁶ 50 U.S.C. § 3931 (2015)

⁸²⁷ Id. at § 3931(a)

⁸²⁸ Id. at § 3931(b)(2)

⁸²⁹ Id.

⁸³⁰ 50 U.S.C. § 3932 (2015)

⁸³¹ Mason, *supra* note 819 at 9

⁸³² Id. at § 3932(a)

⁸³³ Id. at § 3932(c)

⁸³⁴ Id. at § 3932(b)(2)(A) (2015)

⁸³⁵ Id. at § 3932(b)(2)(B)

⁸³⁶ Id. at § 3931(b)(2)

⁸³⁷ Id.

⁸³⁸ Id. at § 3932(d)

⁸³⁹ 50 U.S.C. § 3934 (2015)

12.2.4. Tolling of the Statute of Limitations Provision. A military member's active duty service time may not be included when computing the time period in which a military member may bring an action.⁸⁴⁰ This SCRA provision applies to the redemption of real property sold/forfeited to enforce an obligation, tax, or assessment.⁸⁴¹ But this provision is not applicable to US internal revenue laws.⁸⁴² Additionally, this provision does not require a showing of material effect before it may be invoked.⁸⁴³ The US Supreme Court has held that even though this protection also applies to career military members, that a claim of laches might be successful.⁸⁴⁴

12.2.5. Garnishment of Pay Protection. A military member may defend against their pay from being garnished if they can make a showing of material effect by reason of their military service. Upon this showing, the court can stay the attachment or garnishment. This applies to a garnishment action that was brought against a military member before, during, or 90 days after the beginning of the member's active duty service.⁸⁴⁵

12.3. SCRA Substantive Protections. The substantive protections of the SCRA involve Title III protections or contractual protections, which include evictions, leases, installment contracts, and mortgage, as well as other financial protections.⁸⁴⁶

All Title III substantive protections apply to dependents.⁸⁴⁷ However, some protections require a showing that military service materially affect the military member's or their dependent's ability to comply with the obligation.⁸⁴⁸ Criminal sanctions against those who knowingly take part in a proceeding (Misdemeanor) and civil actions may be brought (wrongful eviction, conversion, etc.).⁸⁴⁹

The provisions differ regarding when the protection applies and, in some cases, depend on when the obligation was entered.⁸⁵⁰ Most of the provisions allow some relief to the opposing party if justice & equity requires it.⁸⁵¹

12.3.1. Protection from Eviction for Nonpayment of Rent. The SCRA protects a military member or a military member's dependent from eviction for non-payment

⁸⁴⁰ 50 U.S.C. § 3936 (2015)

⁸⁴¹ Id. at § 3936(b)

⁸⁴² Id. at § 3936(c)

⁸⁴³ *Conroy v. Aniskoff*, 507 U.S. 511 (1993).

⁸⁴⁴ Id. at 514

⁸⁴⁵ Id. at § 3934

⁸⁴⁶ *The Servicemembers Civil Relief Act (SCRA)*, *supra* note 817 at 14

⁸⁴⁷ *The Servicemembers Civil Relief Act (SCRA)*, *supra* note 817 at 14

⁸⁴⁸ *The Servicemembers Civil Relief Act (SCRA)*, *supra* note 817 at 2

⁸⁴⁹ 50 U.S.C. § 3912 (2015)

⁸⁵⁰ *Servicemembers Civil Relief Act*, MILITARY ONE SOURCE, <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/servicemembers-civil-relief-act> (last visited Apr. 28, 2020)

⁸⁵¹ Id. at §§ 3901-4043 (2015)

of rent.⁸⁵² This provision only applies while the military member is on active duty and does not apply to any time periods after active duty service ends.⁸⁵³ The protection only applies to rental units that are being used as a residence and the monthly rent cannot be more than \$3,990.90 (as of January 1, 2020).⁸⁵⁴ This amount is adjusted annually and can be found in the federal register (to find the most current maximum monthly rent amount under the SCRA, try an Internet search of “Federal Register Publication of Housing Price Inflation Adjustment Under 50 U.S.C. App. § 531”).⁸⁵⁵ This provision does not preclude an eviction, but it allows for a 90-day stay upon a showing of material effect.⁸⁵⁶ Additionally, upon a showing of material effect, the court may adjust the obligation owed.⁸⁵⁷

12.3.2. Protection to allow termination of a Lease of Premises. The SCRA allows a military member or their dependent to terminate a residential, business, or agricultural lease at any time after the member enters active duty or after the date that the member receives orders of a permanent change of station (PCS) or a deployment of 90 days or more.⁸⁵⁸ The military member or their dependent must provide written notice.⁸⁵⁹ Once notice is provided, the termination of the lease is effective 30 days after the first date in which the next rental payment is due.⁸⁶⁰

12.3.3. Protection to allow termination of an Auto Lease. This SCRA provision works just like leases of premises above, except the deployment must be 180 days or more or for permanent change of station, the move must be either:

- From Continental US to outside Continental US, or
- From outside the Continental US to either outside Continental US or Continental US⁸⁶¹

12.3.4. Rights of Families of Servicemembers KIA/Catastrophic Injury. Families of Servicemembers killed or catastrophically injured while in military service have a statutory right to terminate the Servicemember’s automotive or dwelling lease upon their death or injury, without a termination penalty.⁸⁶²

12.3.5. Protection from repossession of property purchased under an Installment Contract. This SCRA provision applies only to Installment Contracts created before the military member began active duty service.⁸⁶³ It protects against

⁸⁵² 50 U.S.C. § 3951 (2015)

⁸⁵³ 50 U.S.C. § 3951(a)

⁸⁵⁴ *SCRA Rental and Eviction Protection*, MILITARY.COM, <https://www.military.com/benefits/military-legal-matters/scra/scra-rental-and-eviction-protection.html> (last visited Apr. 7, 2020)

⁸⁵⁵ Publication of Housing Price Inflation Adjustment Under 50 U.S.C. App. § 531, NATIONAL ARCHIVES, <https://www.federalregister.gov/documents/2020/01/24/2020-01202/publication-of-housing-price-inflation-adjustment> (last visited Apr. 28, 2020)

⁸⁵⁶ 50 U.S.C. § 3951(b)(1) (2015)

⁸⁵⁷ *Id.* at § 3951(b)(2)

⁸⁵⁸ 50 U.S.C. § 3955 (2015)

⁸⁵⁹ *Id.* at § 3955(c)(1)(A)

⁸⁶⁰ *Id.* at § 3955(d)(1)

⁸⁶¹ *Id.* at § 3955(b)(2)(B)(ii)

⁸⁶² *National Defense Authorization Act for Fiscal Year 2020*, *supra* at § 547

⁸⁶³ 50 U.S.C. § 3952 (2015)

repossession of either real or personal property unless the court has issued an order, including any repossession rights that might be allowed under the contract that do not require a court order.⁸⁶⁴ Upon a showing of material effect, the court must stay proceedings.⁸⁶⁵ However, at some point, the Court may order repossession.⁸⁶⁶ If the Court orders repossession, it may order repayment of all or part of installments or deposits.⁸⁶⁷

12.3.6. Protection from sale, foreclosure, or repossession of property purchased under a Mortgage Agreement. The provision applies to purchases of real or personal property before the military member began active duty service.⁸⁶⁸ Under this provision, a sale, foreclosure, or repossession is not valid unless there is either a court order or waiver from the military member.⁸⁶⁹ This protection extends for 12 months after active duty service.⁸⁷⁰ Upon proof of continuing material effect of military duty, the Court must stay the proceedings and/or adjust the obligation owed.⁸⁷¹

12.3.7. Other Financial Protections. The SCRA provides financial protections to military members who are called to active duty and are entitled to claim their rights under the SCRA.⁸⁷²

12.3.7.1. 6% Interest Rate Cap. Any obligation, including jointly held with spouse, incurred **BEFORE** active duty may not be charged more than 6% interest during active duty.⁸⁷³ Any interest over 6% on a debt is forgiven; the interest is not deferred.⁸⁷⁴ This protection applies even to Bankruptcy Chapter 13 Plan payments.⁸⁷⁵ The term “interest” is broadly defined and includes service charges, renewal charges, fees, or any other charges.⁸⁷⁶ To invoke the protection, the military member must provide written notice and a copy of their orders to the creditor no later than 180 days after active duty service.⁸⁷⁷ The Court may grant a creditor relief from the interest rate cap if the Court determines that the military member’s service does not materially affect their ability to fulfill their obligation.⁸⁷⁸

12.3.7.2 Protection from Fines/Penalties on Contracts. If an action on a contract is

⁸⁶⁴ *Installment Contracts for Purchase or Lease*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/servicemembers_civil_relief_act/benefits_and_protections/installment_contracts_for_purchase_or_lease/ (last visited Apr. 28, 2020)

⁸⁶⁵ *Id.* at § 3952(c)(2)

⁸⁶⁶ *Id.* at § 3952(c)(3)

⁸⁶⁷ *Id.*

⁸⁶⁸ 50 U.S.C. § 3953 (2015)

⁸⁶⁹ *Id.* at § 3953(c)

⁸⁷⁰ *The Servicemembers Civil Relief Act (SCRA)*, *supra* note 817 at 15

⁸⁷¹ *Id.* at § 3953(b)

⁸⁷² *Servicemembers Civil Relief Act*, *supra* note 850

⁸⁷³ 50 U.S.C. § 3937 (2015)

⁸⁷⁴ *Id.* at § 3937(a)(2)

⁸⁷⁵ Roy L. Kaufman, *The SCRA and Bankruptcy: Does it Apply?*, SERVICEMEMBERS CIVIL RELIEF ACT CENTRALIZED VERIFICATION SERVICE, <https://www.servicememberscivilreliefact.com/blog/bankruptcy-and-the-servicemembers-civil-relief-act/> (last visited Apr. 28, 2020)

⁸⁷⁶ 50 U.S.C. App. § 527(d)(1)

⁸⁷⁷ *Id.* at § 527(b)(1)

⁸⁷⁸ *Id.* at § 527(c)

stayed under the SCRA, no fines or penalties under the contract may be charged.⁸⁷⁹ If there is no stay and a fine or penalty was imposed, a court can relieve enforcement upon a showing of military service when the fine or penalty was incurred, and that military service materially affected the military member's ability to perform the obligation.⁸⁸⁰

12.3.7.3 Protection from future financial transactions being affected because SCRA Rights were exercised. This provision protects a military member who exercised their rights from the following:

- Denying or revoking credit⁸⁸¹
- Changing terms of existing credit arrangements⁸⁸²
- Adverse report on credit report⁸⁸³
- Refusing to insure⁸⁸⁴
- Identifying that the military member is in the Reserves or National Guard⁸⁸⁵
- Changing the terms or conditions required for insurance⁸⁸⁶
- **Violation of these provisions will be enforceable by the Department of Justice or by private right of action. For more information, please visit: <https://www.justice.gov/servicemembers>**
- **For more information on the SCRA, see: https://www.americanbar.org/groups/legal_services/milvets/aba_home_from/information_center/servicemembers_civil_relief_act/overview/.**

12.4. Indiana Servicemembers Civil Relief Act. Indiana service members of all military components and, in limited circumstances (e.g., evictions, lease terminations, foreclosures, and installment contract terminations) their dependents are afforded all federal SCRA protections.⁸⁸⁷ In 2015, the Indiana General Assembly, led by Senator Jim Arnold, unanimously passed bipartisan legislation that includes additional SCRA protections from obligations that are not covered under the federal SCRA.⁸⁸⁸

12.4.1. Extended Eligibility under the Indiana Servicemembers Relief Act. All Indiana service members, regardless of duty station, who are called to full time duty, including: full-time training duty, annual training duty, and attendance at a school designated as a service school by federal law or by the Secretary of the military

⁸⁷⁹ 50 U.S.C. App. § 523 (2015)

⁸⁸⁰ Id. at § 523(b)(1)-(2)

⁸⁸¹ 50 U.S.C. app. § 518 (2015)

⁸⁸² Id. at § 518(2)(A)

⁸⁸³ Id. at § 518(3)

⁸⁸⁴ Id. at § 518(4)

⁸⁸⁵ Id. at § 518(5)

⁸⁸⁶ Id. at § 518(6)

⁸⁸⁷ *Indiana Judges Guide: Servicemembers Civil Relief Act (SCRA)*, IU ROBERT H. MCKINNEY SCHOOL OF LAW, 2, https://mckinneylaw.iu.edu/practice/clinics/_docs/IndianaJudgesGuide.pdf (last visited Apr. 9, 2020); Ind. Code § 10-16-20-3

⁸⁸⁸ *Arnold Legislation to Become Law*, INDIANA SENATE DEMOCRATS, <https://www.indianasenatedemocrats.org/arnold-legislation-to-become-law/> (last visited Apr. 9, 2020)

department concerned are eligible for these additional SCRA protections.⁸⁸⁹ In the case of an National Guardsman, if the servicemember is called to active duty by the President in a national emergency or by any state governor for a period of more than 30 days, they may also use these protections.⁸⁹⁰

12.4.2. Unique Protections and Requirements for Certain Contracts. Servicemembers may also terminate certain contracts at any time after they receive military orders to relocate for a period of service of at least 90 days to a location that does not support the contact.⁸⁹¹ This applies to any contract for: telecommunication services, Internet services, television services, athletic club or gym memberships, or satellite radio services.⁸⁹² In the case of a contract termination for these services, the service member must give to the service provider a written or electronic notice of the termination as well as a copy of their active duty orders.⁸⁹³ The service provider may not impose an early termination charge.⁸⁹⁴ The servicemember is still liable for any tax or any other obligation or liability that was due or unpaid at the time they give notice of their intent to terminate the contract.⁸⁹⁵ If the servicemember resubscribes to the service during the 90 period after they return from active duty, the service provider may not impose any charges or fees outside of what fees are customary for installation or acquisition of the equipment for any other subscriber.⁸⁹⁶ Upon notice of the termination, the service provider is obligated to refund to the service member all fees paid for services that extend past the termination date of the contract.⁸⁹⁷

12.4.3. Enforcement. The General Assembly gave the Attorney General's Office jurisdiction under the act to respond to violations of the Indiana SCRA.⁸⁹⁸ In the event that the Attorney General's Office brings a civil action against a service provider that is in violation of the Indiana SCRA, the court may:

- Issue an Injunction;
- Order the person or provider to make a payment of that was unlawfully received or required a refund to one or more service members;
- Order the person or provider to pay the state the reasonable costs of the Attorney General's investigation and prosecution related to the action; and
- Order the person to pay a civil penalty of not greater than \$5,000 per violation. However, a court may not proceed if relief from the violation has already been granted under the federal SCRA.⁸⁹⁹

⁸⁸⁹ IC § 10-16-20-2 (A)(i)-(iii)

⁸⁹⁰ *Indiana Judges Guide*, *supra* note 887 at 2

⁸⁹¹ IC § 10-16-20-4(a)

⁸⁹² *Id.* at § 10-16-20-4(b)(1)-(5)

⁸⁹³ *Id.* at § 10-16-20-4(c)

⁸⁹⁴ *Id.* at § 10-16-20-4(d)

⁸⁹⁵ *Id.* at § 10-16-20-4(e)

⁸⁹⁶ *Id.* at § 10-16-20-4(f)

⁸⁹⁷ *Id.* at § 10-16-20-4(g)

⁸⁹⁸ *Arnold Legislation to Become Law*, *supra* note 887

⁸⁹⁹ IC § 10-16-20-5(1)-(4)

13. **Uniformed Services Employment and Reemployment Rights Act (USERRA)**

13.1. Overview. The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides employment and reemployment rights to military members who leave their civilian job to serve in the military.⁹⁰⁰ While this law typically applies to Reservists and National Guard members, it also applies to active duty military members who served one enlistment period on active duty.⁹⁰¹

13.1.1. Applicability. USERRA applies to a military member's civilian job as long as the job that they left was reasonably expected to continue indefinitely or for a significant period of time.⁹⁰² If the job was only temporary, there may be no reemployment rights.⁹⁰³ The law applies not only to private employers, but also to federal, state, and local governments.⁹⁰⁴

13.1.2. Qualifying Military Service. The law is very broad and applies to all branches of the military.⁹⁰⁵ It applies to both active duty and inactive duty.⁹⁰⁶ It applies to Reservists and National Guard members.⁹⁰⁷ It applies to both voluntary service and involuntary service.⁹⁰⁸ It applies to both active duty training and inactive duty training.⁹⁰⁹ It even applies to the time that a civilian is away from work for examinations, such as the ASVAB, to determine if they are fit for military service.⁹¹⁰

13.1.3. Maximum amount of time in military service. In most cases, five years is the maximum amount of time that a military member may be gone on military service and still be entitled to reemployment with a single employer.⁹¹¹ If a military member changes employers while they are in the Reserves or National Guard, for instance, then the five-year period begins again.⁹¹² This five-year period is the cumulative total time of military service, regardless of whether this time is served all at once or in smaller increments.⁹¹³

But this period may be longer if their initial period of required service for their military career field is longer than five years.⁹¹⁴ For instance, if they enlisted in

⁹⁰⁰ *Uniformed Services Employment and Reemployment Rights Act of 1994*, US Department of Justice, <https://www.justice.gov/crt-military/uniformed-services-employment-and-reemployment-rights-act-1994> (last visited Apr. 28, 2020)

⁹⁰¹ 20 C.F.R. § 1002.103

⁹⁰² 20 C.F.R. § 1002.139(c)

⁹⁰³ *Id.*

⁹⁰⁴ 20 C.F.R. § 1002.1

⁹⁰⁵ 20 C.F.R. § 1002.6

⁹⁰⁶ *Id.*

⁹⁰⁷ *Frequently Asked Questions*, EMPLOYER SUPPORT OF THE GUARD AND RESERVE, <https://www.esgr.mil/USERRA/Frequently-Asked-Questions> (last visited Apr. 29, 2020)

⁹⁰⁸ *Frequently Asked Questions*, *supra* note 907

⁹⁰⁹ *Frequently Asked Questions*, *supra* note 907

⁹¹⁰ 38 U.S.C. 4303(13) (2011)

⁹¹¹ 20 C.F.R. § 1002.99

⁹¹² *Uniformed Services Employment and Reemployment Rights (USERRA)*, US ATTORNEY'S OFFICE, 6, https://www.justice.gov/sites/default/files/usao-az/legacy/2011/01/07/USERRA_Handbook.pdf (last visited Apr. 29, 2020); *see also* 20 C.F.R. § 1002.101

⁹¹³ *Id.* at § 1002.99

⁹¹⁴ *Id.* at § 1002.103

regular active duty and they were *required* to enlist for six years when they initially enlisted, then the maximum period of time that they could be away from their civilian job would be six years.⁹¹⁵ It is important to note that weekend drills and annual training for National Guard or Reserve service are not counted against the five-year period.⁹¹⁶

13.2. Military Member Requirements. To be eligible for reemployment, a military member must provide notice before active duty and report back to work within a reasonable time after being released from active duty, as follows:

13.2.1. Provide Notice before military service. To be eligible for reemployment, a military member must provide their employer with notice before they leave for military service.⁹¹⁷ While verbal notice is sufficient to retain employment rights, written notice is best and the military member should provide as much advance notice as possible.⁹¹⁸ Reservists and National Guard Members should provide their employer with their drill schedule as soon as it is posted at the beginning of the year – and they should remind their employer of their drill weekends a week or so before each drill weekend.⁹¹⁹

There may be times when the military member’s unit provides late notice of military duty or when military necessity makes it impossible for the military member to give advance notice.⁹²⁰ In either case, these are exceptions to the notice requirement and the military member will need to demonstrate that they received late notice from their unit or that military necessity prevented them from providing notice.⁹²¹

13.2.2. Report back to work within required time period. Once a military member’s military service has ended, they must report back to their place of employment. The timing of reporting back to their employer depends on how long their military service was:

- If they served less than 31 days, then they must return to work on the first working day after they are released from service.
- If they served 31 to 180 days, then they must return within 14 days after they completed their military service.
- If they served more than 180 days, then they must return within 90 days after they complete military service.⁹²²

⁹¹⁵ *Id.*

⁹¹⁶ *Uniformed Services Employment and Reemployment Rights (USERRA)*, *supra* note 911

⁹¹⁷ *Vets USERRA Fact Sheet 3*, US DEPARTMENT OF LABOR, https://www.dol.gov/agencies/vets/programs/userra/userra_fs (last visited Apr. 29, 2020)

⁹¹⁸ 20 C.F.R. § 1002.85

⁹¹⁹ *Employer Support of the Guard and Reserve Tip for Guard and Reserve Service Members*, EMPLOYER SUPPORT OF THE GUARD AND RESERVE, <https://www.esgr.mil/Portals/0/Docs/Tips%20for%20guard.pdf> (last visited Apr. 29, 2020)

⁹²⁰ 20 C.F.R. § 1002.86

⁹²¹ 32 C.F.R. § 104.3

⁹²² 20 C.F.R. § 1002.115

There are exceptions to these time requirements for cases in which it would be impossible or very difficult for a military member to meet the requirements.⁹²³

13.3. Employer Requirements to reemploy a military member. Provided that the military member has met the requirements, the employer must reemploy them.⁹²⁴ The following outlines the employer's responsibilities.

13.3.1. Reemploy the military member within a reasonable time. The timing of when an employer must reemploy a military member depends on the particular circumstances. The longer the military member was away for military service, the greater leeway an employer may have to reemploy them.⁹²⁵ However, an employer may not delay reemployment, unless it can show a good reason for the delay.⁹²⁶

13.3.2. Reemploy the military member in the same position if practicable or another position for which the military member is qualified. As a general rule, if the military member served in the military for 1 to 90 days, then the military member must be given their previous job back.⁹²⁷ If, for some reason, the military member is no longer qualified for their job, their employer must try to re-qualify the military member for that job.⁹²⁸ If the military member served 90 days or more, then the military member is not necessarily guaranteed their previous job, but they must be employed in a position of similar seniority, status, and pay.⁹²⁹ If the military member cannot become qualified for any such job, then they must be employed in some other position that they are qualified to perform.⁹³⁰ If the military member has become disabled during military service so it is impossible or difficult for them to perform their previous job, then the employer must make reasonable efforts to accommodate the disability.⁹³¹ If accommodation is not possible, then the military member must be employed in some other position they are qualified to perform.⁹³²

13.3.3. Retain seniority as if the military member never left. Any rights related to seniority must be provided to the military member as if they had never been gone.⁹³³ For example, benefits such as pay raises and job promotions, which are tied to seniority, must be given to the military member as if they had remained employed throughout the period of their military service.⁹³⁴

⁹²³ 20 C.F.R. § 1002.116

⁹²⁴ *Frequently Asked Questions About the Uniformed Services Employment and Reemployment Rights Act*, MILITARY ONE SOURCE, <https://www.militaryonesource.mil/national-guard/employment-support/uniformed-services-employment-and-reemployment-rights-act-faqs#reemployed> (last visited Apr. 29, 2020)

⁹²⁵ 38 U.S.C. § 4313

⁹²⁶ *Petty v. Metro Gov't of Nashville-Davidson County*, 538 F.3d 431 (6th Cir. 2008)

⁹²⁷ 20 C.F.R. § 1002.196

⁹²⁸ 20 C.F.R. § 1002.197(a)

⁹²⁹ *Id.* at § 1002.197(b)

⁹³⁰ *Id.* at § 1002.197(c)

⁹³¹ 20 C.F.R. § 1002.226(a)

⁹³² *Id.*

⁹³³ 20 C.F.R. § 1002.193(a)

⁹³⁴ *Id.*

- 13.3.4. Provide the same status, pay, and other benefits that the military member would have earned if they had never left their job to serve.** For instance, if a military member would have gained the seniority to qualify them for more vacation time had they not left for military service, then the employer must allow them the additional vacation time.⁹³⁵ This is different than accruing vacation time while the military member was gone for military service.⁹³⁶ Whether the military member accrues vacation time while they are away from their job depends on how other employees are treated during leaves of absence.⁹³⁷ If other employees accrue vacation during leaves of absence (jury duty, sick leave, disability leave, family leave, etc.) of *similar* length, then the military member must be able to accrue vacation while they are serving in the military.⁹³⁸ The bottom line is that the military member cannot be penalized because of their military service.⁹³⁹
- 13.3.5. Retain pension rights.** Many pension plans have what is known as “break-in-service” rules. This means that an employee loses their pension rights if they are not employed for a specified period of time. But those provisions cannot be applied to a military member’s military service. When a military member returns to work after military service, they must be treated as if they did not leave their job.⁹⁴⁰
- 13.3.6. Provide the military member with the option to continue their health insurance providing they pay the premiums.** If a military member leaves their job to serve in the military, the employer must give them the opportunity to continue their health insurance coverage for up to 18 months.⁹⁴¹ If the military member serves 30 days or less, they cannot be required to pay more than the normal employee’s share of the premium.⁹⁴² If a military member serves longer than 30 days, the employer may require the military member to pay up to 102% of the full cost of continuing the insurance coverage.⁹⁴³ However, if a military member is on federal active duty (as opposed to state active duty for National Guard), the military member and their family are most likely eligible medical care under TRICARE.⁹⁴⁴ This is available for not only regular active duty, but also for Reservists and National Guard.⁹⁴⁵ For more information about TRICARE for Reserves and National Guard, see <https://www.tricare.mil/Plans/Eligibility/NGRMandFamilies>

⁹³⁵ 20 C.F.R. § 1002.153

⁹³⁶ *Managing Military Leave and Military Family Leave*, SHRM, <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/managingmilitaryleaveandmilitaryfamilyleave.aspx> (last visited Apr. 29, 2020)

⁹³⁷ *Managing Military Leave and Military Family Leave*, *supra* note 936

⁹³⁸ *Managing Military Leave and Military Family Leave*, *supra* note 936

⁹³⁹ *Id.* at § 1002.153

⁹⁴⁰ 20 C.F.R. § 1002.259

⁹⁴¹ *Employment Rights of the National Guard and Reserve*, US DEPARTMENT OF JUSTICE, 11, <https://www.justice.gov/sites/default/files/usao-ednc/legacy/2011/04/29/EmploymentRights.pdf> (last visited Apr. 29, 2020)

⁹⁴² *Employment Rights of the National Guard and Reserve*, *supra* note 941

⁹⁴³ *Employment Rights of the National Guard and Reserve*, *supra* note 941

⁹⁴⁴ *When Activated*, *supra* note 528

⁹⁴⁵ *Eligibility*, *supra* note 520

13.3.7. Cannot terminate without cause during prescribed timeframes. Depending on how long the military member was on active duty, there are different periods of time in which an employer cannot fire a military member unless there is cause:

- If the military member served between 31 and 180 days, then they cannot be fired without cause for a period of 180 days after the date that they were reemployed.⁹⁴⁶
- If the military member served for more than 180 days, then they cannot be fired without cause for one year after the date that they were reemployed.⁹⁴⁷

13.3.8. Exceptions. USERRA has the following exceptions:

- If a military member received a dishonorable, bad conduct, or other than honorable discharge, or they were otherwise separated from service under unfavorable circumstances, they are not entitled to be reemployed under USERRA.⁹⁴⁸
- An employer will not be required to reemploy a military member if circumstances have changed so as to make it impossible or unreasonable for the employer to reemploy the military member or if reemployment would impose an undue hardship on the employer. However, hiring someone else to fill the military member's position while they were serving is not enough to meet this exception. To take advantage of this exception, the employer has the burden of proving impossibility, unreasonableness, or undue hardship.⁹⁴⁹

13.4. Reporting USERRA Violations. Among other things, an employer cannot fail to hire, fail to reemploy, discharge, pay less money, or otherwise discriminate in the terms, conditions, and privileges of employment because of a military member's past, current, or future military service.⁹⁵⁰ While USERRA does not provide an express statute of limitations for bringing a claim under the Act, USERRA claims are subject to a general *four-year* statute of limitations for federal claims stemming from laws enacted after December 1, 1990.⁹⁵¹ If a military member believes that their rights have been violated, then they may take the following actions:

13.4.1. Contact the National Committee for Employer Support of Guard and Reserve (ESGR). This DOD organization will assist not only Guard and Reserve members, but also active duty military members.⁹⁵² They can be reached at 1-800-336-4590 or online at www.esgr.mil.⁹⁵³ The ESGR works as a neutral mediator between the employer and military member to resolve the issue.⁹⁵⁴ If the ESGR is

⁹⁴⁶ 20 C.F.R. § 1002.247(a)

⁹⁴⁷ 20 C.F.R. § 1002.247(b)

⁹⁴⁸ 20 C.F.R. § 1002.135

⁹⁴⁹ 20 C.F.R. § 1002.139

⁹⁵⁰ 20 CFR 1002.18 - 23

⁹⁵¹ 20 C.F.R. § 1002.311

⁹⁵² *Mission and End State*, EMPLOYER SUPPORT OF THE GUARD AND RESERVE, <https://www.esgr.mil/About-ESGR/Mission-and-End-State> (last visited Apr. 29, 2020)

⁹⁵³ *Contact*, EMPLOYER SUPPORT OF THE GUARD AND RESERVE, <https://www.esgr.mil/About-ESGR/Contact> (last visited Apr. 29, 2020)

⁹⁵⁴ *USERRA Contact*, EMPLOYER SUPPORT OF THE GUARD AND RESERVE, <https://www.esgr.mil/USERRA/USERRA-Contact> (last visited Apr. 29, 2020)

unsuccessful, they will advise the military member on what they can do.⁹⁵⁵ Normally, the ESGR will advise the military member to file a complaint with the U.S. Department of Labor.⁹⁵⁶ The Department of Labor has the authority to enforce the USERRA.⁹⁵⁷

13.4.2. *The military member may file a suit in federal court against their employer.* If successful, the military member can receive damages for any lost wages or benefits and can be reinstated to their job if they were discharged. If the military member can show that the employer willfully violated the law, the employer can be forced to pay the military member a sum of money equal to twice the lost wages and benefits.

For more Information about USERRA – The following links provide additional information about USERRA:

- <https://www.esgr.mil/> (National Committee for Employer Support of Guard and Reserve (ESGR)).
- <https://www.dol.gov/agencies/vets/programs/userra> (Department of Labor’s USERRA page)
- <https://www.roa.org/page/lawcenter> (Reserve Officers Association Law Center)

14. *Military & Veteran Divorce Issues*

⁹⁵⁵ *USERRA 101, EMPLOYER SUPPORT OF THE GUARD AND RESERVE*, https://www.esgr.mil/Portals/0/Volunteer%20Resources/Training/USERRA/USERRA_101.pdf?ver=2018-06-08-160143-020 (last visited Apr. 29, 2020)

⁹⁵⁶ *USERRA 101, supra* note 955

⁹⁵⁷ *Your Rights Under USERRA the Uniformed Services Employment and Reemployment Rights Act*, US DEPARTMENT OF LABOR, <https://www.dol.gov/agencies/vets/programs/userra/aboutuserra> (last visited Apr. 29, 2020)

14.1. Military/Veteran Divorce Overview. Marriage problems are pervasive across all branches of the United States Military.⁹⁵⁸ Across all military fields and ranks the average age for divorce is 30 and roughly 41% of first marriages end in divorce.⁹⁵⁹ This issue is exacerbated by Military Deployments.⁹⁶⁰ Deployed Soldiers, Airmen, Sailors, and Marines are between 8% and 15% more likely to have a marriage end in divorce.⁹⁶¹ Mental health issues also place an additional strain on marriages with at least 20% of Servicemembers that served in Iraq and Afghanistan reporting symptoms of post-traumatic stress disorder and depression.⁹⁶² Even non-deployed military members face a higher rate of divorce by virtue of marrying too young and moving too often.⁹⁶³ As a result, legal practitioners must place an impetus on understanding the consequences of divorce in reference to military service.

14.2. Sections in this Manual that are applicable to divorce:

- Section 3 – Military Pay
- Section 4 – Leave and Earnings Statement (LES)
- Section 5 – Military Retirement & Pension
- Section 6 – Medical Discharge & Retirement
- Section 7 – Thrift Savings Plan
- Section 11 – Veterans’ Benefits
- Section 11.7.5 – Survivor Benefit Plan (SBP)
- Section 11.8.2 – TRICARE
- Section 12 – Servicemembers’ Civil Relief Act (SCRA)

14.2.1. Family Support United States Army. The frenetic pace of the military often places undue stress on families.⁹⁶⁴ Couple this stress with military spouses potentially being abandoned by the servicemember, military family support issues arise.⁹⁶⁵ In response to a growing number of servicemembers who did not support their spouses while going through divorce or separation, each branch created their own policies that require service members to financially support family members in the absence of a written agreement or court order to govern.⁹⁶⁶ Army Regulation (AR) 608-99 states, in part, that upon a complaint to a service member’s command team:

- The Command must place a family support requirement on the service

⁹⁵⁸ Carl Forsling, *The Military’s Problem with Marriage*, TASK AND PURPOSE (Apr. 5, 2016), <https://taskandpurpose.com/family-relationships/militarys-problem-marriage>

⁹⁵⁹ Paul Kari, *Americans in this field have the highest rate of divorce by age 30*, MARKET WATCH, <https://www.marketwatch.com/story/employees-in-this-field-have-the-highest-rate-of-divorce-2017-07-13> (last visited Mar. 23, 2020).

⁹⁶⁰ *How Deployment Stress Affects Families*, MILITARY.COM, <https://www.military.com/deployment/effects-deployment-families.html> (last visited Apr. 29, 2020)

⁹⁶¹ Paul Kari, *supra* note 959

⁹⁶² Terri Tanielan ET AL, *Invisible Wounds, Mental Health and Cognitive Care Needs of America’s Returning Veterans*, https://www.rand.org/pubs/research_briefs/RB9336.html (last visited Mar. 23, 2020).

⁹⁶³ Paul Kari, *supra* note 959

⁹⁶⁴ *Strengthening the Military Family Readiness System for a Changing American Society*, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION, <https://www.ncbi.nlm.nih.gov/books/NBK547605/> (last visited Apr. 29, 2020)

⁹⁶⁵ *Rights and Benefits of Abandoned Military Spouses*, MILITARY ONE SOURCE, <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/rights-and-benefits-for-abandoned-military-spouses> (last visited Apr. 29, 2020)

⁹⁶⁶ *Rights and Benefits of Abandoned Military Spouses*, *supra* note 965

member when the parties have no agreement in place and there is no civil support order.⁹⁶⁷

- Payments are based on the annual Basic Allowance for Housing Reserve Component/Transit (BAH RC/T) Chart (See section 14.2.2 for BAH RC T Chart). BAH RC/T is a non-locality housing allowance for members in particular circumstances, for example, reservists on active duty for 30 or fewer days.⁹⁶⁸ It also applies when a member is in transit from selected areas where no prior BAH rate exists (such as overseas).⁹⁶⁹ It does not vary by geographic location.⁹⁷⁰ BAH RC/T is published annually and is determined by increasing the previous year's rates by the national average percentage growth of housing costs.⁹⁷¹
- Failure to adhere to this order is punishable under the Uniform Code of Military Justice (UCMJ).⁹⁷²

14.2.2. 2020 NON-LOCALITY BAH RATES – Effective 1 January 2020

PAY GRADE	Partial	Without Dependents	With Dependents	Differential*
O-10	\$50.70	\$1,756.50	\$2,108.10	\$359.40
O-9	\$50.70	\$1,756.50	\$2,108.10	\$359.40
O-8	\$50.70	\$1,756.50	\$2,108.10	\$359.40
O-7	\$50.70	\$1,756.50	\$2,108.10	\$359.40
O-6	\$39.60	\$1,610.40	\$1,897.50	\$305.70
O-5	\$33.00	\$1,551.00	\$1,612.20	\$295.50
O-4	\$26.70	\$1,437.00	\$1,612.20	\$196.80
O-3	\$22.20	\$1,152.30	\$1,334.10	\$196.50
O-2	\$17.70	\$912.90	\$1,138.50	\$231.60
O-1	\$13.20	\$783.60	\$1,019.10	\$250.20
O3E	\$22.20	\$1,243.50	\$1,434.00	\$205.80
O2E	\$17.70	\$1,057.80	\$1,293.90	\$246.30
O1E	\$13.20	\$920.10	\$1,196.10	\$288.60
W-5	\$25.20	\$1,460.70	\$1,557.30	\$122.70
W-4	\$25.20	\$1,296.60	\$1,427.70	\$151.20

⁹⁶⁷ U.S. DEP'T OF ARMY, REG. 608-99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY para. 2-1(b), (2003) [hereinafter AR 608-99]

⁹⁶⁸ *Different Types of BAH*, DEPARTMENT OF DEFENSE, Military Compensation, https://militarypay.defense.gov/Pay/Allowances/BAH_Types/ (last visited Apr. 7, 2020)

⁹⁶⁹ *Different Types of BAH*, *supra* note 968

⁹⁷⁰ *Different Types of BAH*, *supra* note 968

⁹⁷¹ *Different Types of BAH*, *supra* note 968

⁹⁷² AR 608-99, *supra* note 967 at para. 1-6

PAY GRADE	Partial	Without Dependents	With Dependents	Differential*
W-3	\$20.70	\$1090.20	\$1,308.60	\$228.30
W-2	\$15.90	\$967.50	\$1,202.10	\$241.20
W-1	\$13.80	\$811.50	\$1,041.00	\$233.40
E-9	\$18.60	\$1,064.40	\$1,369.50	\$308.10
E-8	\$15.30	\$978.30	\$1,263.30	\$288.90
E-7	\$12.00	\$901.50	\$1,172.10	\$334.50
E-6	\$9.90	\$833.10	\$1,083.00	\$323.40
E-5	\$8.70	\$749.40	\$975.00	\$275.40
E-4	\$8.10	\$651.90	\$847.20	\$237.60
E-3	\$7.80	\$606.00	\$787.80	\$195.30
E-2	\$7.20	\$577.80	\$750.90	\$260.40
E-1 > 4	\$6.90	\$577.80	\$750.90	\$308.10
E-1 < 4	\$6.90	\$577.80	\$750.90	\$308.10

NOTES*

*BAH RC/Transit rates are adjusted by the average change in housing costs; BAH-DIFF rates are adjusted by the amount of the basic pay raise.

14.2.3. In Kind Payments. If the Servicemember pays for rent/mortgage and essential utilities, those amounts are subtracted from the regulatory requirement.⁹⁷³ These are known as in-kind payments.⁹⁷⁴

14.2.4. Family Support United States Navy. The United States Navy also has family support guidelines that apply in the absence of a court order or a mutually agreed-upon signed agreement between the spouses as to what constitutes an appropriate amount of support. These guidelines are NOT set in stone. The amount can increase or decrease according to the circumstances of each Sailor's situation, their spouse's income, and a host of other factors. Servicemembers are advised to consult with their chain of command to ensure the amount of support satisfies the command's expectations.⁹⁷⁵

Relationship and Number of Dependents	Amount
Spouse Only	1/3 Gross Pay
Spouse and 1 Child	1/2 Gross Pay

⁹⁷³ AR 608-99, *supra* note 967 at para. 2-9(d)

⁹⁷⁴ AR 608-99, *supra* note 967 at para. 2-9(e)

⁹⁷⁵ *Navy Family Support*, LEGAL ASSISTANCE DEPARTMENT REGION LEGAL SERVICE OFFICE SOUTHWEST, https://www.jag.navy.mil/legal_services/documents/NAVY_FAMILY_SUPPORT_Mar_2016.pdf (last visited Apr. 29, 2020)

Spouse and 2 or more children	3/5 Gross Pay
One minor child and no spouse	1/6 Gross Pay
Two minor children and no spouse	1/4 Gross Pay
Three or more children and no spouse	1/3 Gross Pay

- Gross Pay ONLY includes the Sailor’s base pay and their housing allowance. It does not include hazardous duty pay, sea or foreign duty pay, incentive pay, or basic allowance for subsistence.⁹⁷⁶
- Upon receiving a complaint of nonsupport, a command is required to interview the member and inform the member of the Navy’s policy regarding support of one’s dependents.⁹⁷⁷
- If the nonsupport continues, a command may consider the use of nonjudicial and administrative measures, to include but not limited to, officer fitness reports (fitreps), enlisted evaluations, administrative separation, and non-judicial punishment. These guidelines are not intended to be punitive and may not be used as a basis for any judicial proceeding. However, because the sailor receives BAH at the dependent rate, it is intended to be used for the sailor’s family. Misuse of BAH funds may constitute BAH fraud, which is punishable at court-martial. Failure to comply with a State Court Order to Support can result in Contempt of Court, monetary fines and/or jail time.⁹⁷⁸
- The United States Navy does not recognize in kind payments; however, Navy regulations indicate that the amount can increase or decrease depending on the circumstances of each Sailor’s situation.⁹⁷⁹

14.2.5. Family Support United States Air Force. Airmen will provide financial support to a spouse or child or any other relative for which the member receives additional allowances for support.⁹⁸⁰ Airmen must also comply with the financial support provisions of a court order or written support agreement.⁹⁸¹ In the absence of a financial support agreement or a court order containing a financial support provision and until such an agreement is signed or such an order is issued, military members will provide a pro-rata share, as follows:⁹⁸²

- When the term “pro-rata share” is used with regard to Basic Allowance for Housing non-locality with dependents, the amount of each such share of Non- Locality Basic Allowance for Housing – with dependents is calculated using the following equation:

⁹⁷⁶ Navy Family Support, *supra* note 975

⁹⁷⁷ Navy Family Support, *supra* note 975

⁹⁷⁸ Navy Family Support, *supra* note 975

⁹⁷⁹ U.S. DEP’T OF NAVY, MILPERSMAN 1754-030(2) (2006)

⁹⁸⁰ U.S. DEP’T OF AIR FORCE, INSTR. 36-2906, PERSONAL FINANCIAL RESPONSIBILITY para.4.1 (30 July 2018) [hereinafter AFI36-2906]

⁹⁸¹ AFI36-2906, *supra* note 980 at 4.1

⁹⁸² AFI36-2906, *supra* note 980 at 4.1.1.

$\text{Pro-rata share} = \frac{1}{\text{Total number of supported family members}} \times \text{Applicable Non-Locality Basic Allowance for Housing - with Dependent Rate}$

- The “total number of supported family members” in the denominator of the fraction above includes all family members (regardless of residence), except the following:
 - A member’s former spouse, regardless of whether the member is providing financial support to the former spouse.⁹⁸³
 - A member’s present spouse who is on active duty in one of the military services, unless financial support is required by a court order or written financial support agreement.⁹⁸⁴
 - A family member for whom the military member is not required to provide financial support under this Instruction or for whom the military member has been released by his or her squadron commander from the requirement to provide financial support.⁹⁸⁵
- The United States Air Force does not define what constitutes an adequate level of support, but Squadron Commanders will consider in kind payments in each individual determination.⁹⁸⁶
- A Squadron Commander may release a member under his or her command from the requirement to provide support only in the situations described in Section 14.2.8 below.

14.2.6. Family Support United States Marine Corps.

- In the absence of a court order or separation agreement, the amount payable upon a request by a family member is calculated based on a fraction of BAH (Basic Allowance for Housing) or OHA (Overseas Housing Allowance) coupled with a minimum dollar amount per family member.:

Number of Dependents Entitled to Support	Minimum Amount of Monthly Support Per Requesting Family	Share of BAH/OHA Per Requesting Family Member
1	\$350.00	1/2
2	\$286.00	1/3
3	\$233.00	1/4
4	\$200.00	1/5

⁹⁸³ AFI36-2906, *supra* note 980 at 4.1.2.1

⁹⁸⁴ AFI36-2906, *supra* note 980 at 4.1.2.2

⁹⁸⁵ AFI36-2906, *supra* note 980 at 4.1.2.3

⁹⁸⁶ Carl O. Graham, *Air Force Family Support Requirements*, MILITARY DIVORCE GUIDE, <https://www.military-divorce-guide.com/family-support/air-force-family-support-requirements> (last visited Apr. 30, 2020)

5	\$174.00	1/6
6	\$152.00	1/7

Under no circumstances may a Marine be required to pay more than 1/3 of his or her gross pay which includes base pay and all allowances.⁹⁸⁷

14.2.7. Family Support United States Coast Guard. When there is no court order or agreed upon level of support, the following scale is used:

RELATIONSHIPS AND NUMBER OF DEPENDENTS	SUPPORT
Spouse Only	BAH difference plus 20 percent of basic pay
Spouse and one minor or handicapped child	BAH difference plus 25 percent of basic pay
Spouse and two or more minor or handicapped children	BAH difference plus 30 percent of basic pay
One minor or handicapped child	16.7 percent (1/6) of basic pay
Two minor or handicapped children	25 percent (1/4) of basic pay
Three or more minor or handicapped children	33 percent (1/3) of basic pay

For this scale, BAH difference is defined as the difference between the Basic Allowance for Housing with dependents rate and the Basic Allowance for Housing without dependents rate as calculated for the member.⁹⁸⁸

14.2.8. Relief from Family Support. The service member will be responsible for family support until a divorce is finalized or an agreement is in place barring few exceptions. There are no exceptions for child support.

For example, in the case of an Active Duty Soldier with the United States Army or an Airmen with the United States Air Force, a Battalion Commander (Army) or Squadron Commander (Air Force) has the discretion to release the servicemember from the regulatory requirement in the event that:

1. A support order was issued by a court without jurisdiction.
2. A court order was issued without a financial support provision.
3. The income of the spouse exceeds the military pay of the soldier or airman.
4. The soldier or airman has been the victim of substantial abuse.
5. The supported family member is in jail.
6. Regulatory support has been provided to the spouse for 18 months.
7. The supported child is in custody of another who is not the lawful custodian.⁹⁸⁹

⁹⁸⁷ U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION para. 15005 (31 Aug. 1999) (C3, 15-5, 10 Feb. 2014) [hereinafter LEGADMINMAN].

⁹⁸⁸ U.S. COAST GUARD, COMMANDANT INSTR. 1600.2, DISCIPLINE AND CONDUCT art. 2.E.3.c (29 Oct. 2018) [hereinafter COMDTINST 1600.2]

⁹⁸⁹ AR 608-99, *supra* note 967 at para. 2-14; *see also* AFI36-2906, *supra* note 980 at 4.1.2.3 – 4.1.2.3.6

The United States Marine Corps allows for the member's commanding officer (rank of Colonel or higher) to release them from the regulatory requirement if:

1. The income of the spouse exceeds the military pay of the marine.
2. The marine has been the victim of physical abuse by the spouse, substantiated by a Family Advocacy Program or a Court.
3. The marine has provided 12 months of continuous support.
4. The marine is paying regular or recurring obligations (e.g. rent or consumer debts) of the family members of sufficient magnitude and duration to justify relief.⁹⁹⁰

14.2.9. Child Custody. Currently, all 50 states have at least one meaningful provision that protects the rights of service members in custody cases.⁹⁹¹ Indiana law reflects the following provisions:

- Past, current or possible future absences due to military service should not serve as the sole basis for altering a custody order in place prior to the absence.
- No permanent orders altering existing custody arrangements should be entered while the custodial parent is unavailable due to military service.
- The custody order in place before the absence of a military parent should be reinstated within a set time upon the return of the military parent, absent proof that the best interests of the child would be undermined. The non-absent parent should bear the burden of proof.⁹⁹²

14.2.10. Uniform Deployed Parents Custody and Visitation Act (UDPCVA). A birth parent who is scheduled to deploy can arrange non-parent visitation with their child prior to deployment.⁹⁹³ Upon the motion of a parent who has received military deployment orders, the court may delegate the parent's parenting time, or a part of the parent's parenting time, during the time the parent is deployed to a person who has a close and substantial relationship with the parent's child if the court finds that delegating the parent's parenting time is in the best interests of the child.⁹⁹⁴ The order delegating parenting time automatically terminates after the parent returns from deployment.⁹⁹⁵ A court may terminate an order delegating parenting time if the court determines that the delegated parenting time is no longer in the best interests of the child.⁹⁹⁶

14.2.11. Division of Military Related Assets. Under Indiana Law, the retirement pay must be "vested" to be treated as a marital asset in a divorce proceeding. If the service member has not served 20 years as of the separation date, under Indiana Law, the

⁹⁹⁰ LEGADMINMAN, *supra* note 987 at C3, 15-7

⁹⁹¹ *Child Custody Considerations for Members of the Military*, MILITARY ONE SOURCE, <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/child-custody-considerations-for-members-of-the-military> (last visited Apr. 30, 2020)

⁹⁹² *See Hazelett v. Hazelett*, 119 N.E. 3d 153 (Ind. Ct. App. 2019)...[T]rial court abused its discretion under Indiana Code § 31-17-2-21.3(a) when it awarded the mother sole legal custody of the child because it considered the father's absence due to his military service as a factor in its initial custody determination. *See also* IC 31-17-2-21.3.

⁹⁹³ IC § 31-14-13-6

⁹⁹⁴ IC § 31-17-2-21.1

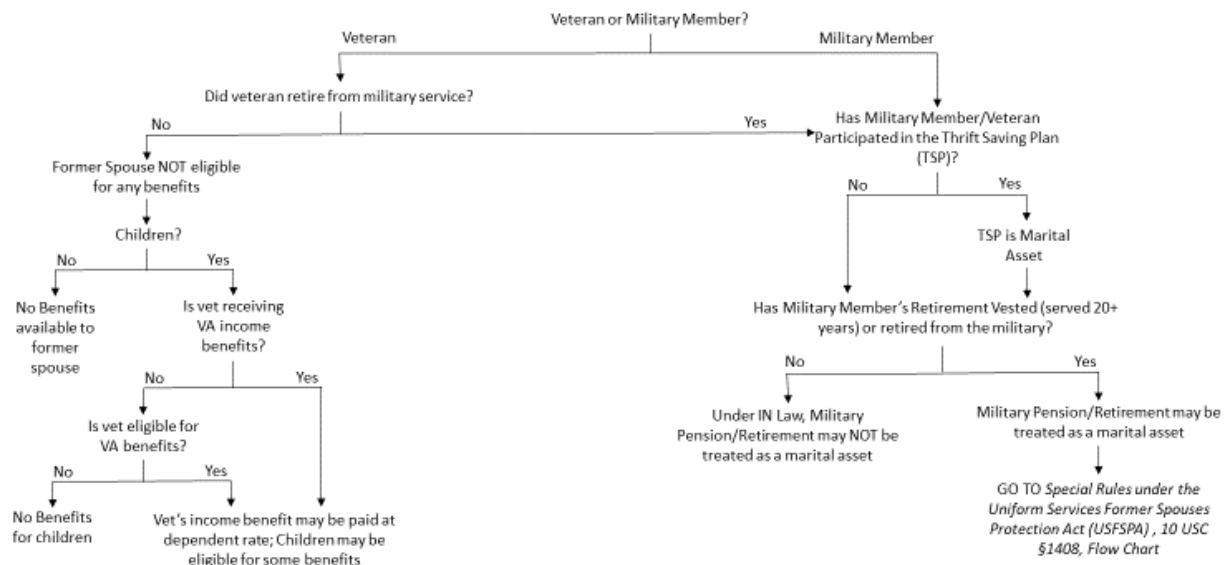
⁹⁹⁵ *Id.*

⁹⁹⁶ *Id.*

military retired pay cannot be certain, meaning it is NOT vested and it is NOT treated as a marital asset. Conversely, if the service member has served 20 years as of the separation date, under Indiana Law, the military retirement may be treated as a marital asset. Once vested, a court can distribute military retired pay “in a just and reasonable manner.”⁹⁹⁷

14.2.11.1. Inclusions and Exclusions. A Military Thrift Savings Plan (TSP) is a retirement savings and investment plan that is like a 401(k) plan.⁹⁹⁸ It can be treated as a vested marital asset.⁹⁹⁹ The LES, blocks 72 and 73, will identify whether the military member has participated in the TSP; military retirees will need to request a statement (See <https://www.dfas.mil/customerservice/lesrequest.html>). Military disposable retired pay does NOT include VA service-connected disability payments.¹⁰⁰⁰ A state court may not order a veteran to indemnify a divorced spouse for the loss in the divorced spouse's portion of the veteran's retirement pay caused by the veteran's waiver of retirement pay to receive service-related disability benefits.¹⁰⁰¹

Military / Veteran Divorce in Indiana Division of Assets/Benefits Eligibility Flow Chart



⁹⁹⁷ IC 31-15-7-4(b)4 & IC 31-9-2-98(b)(2)-(3); See also *Kirkman v. Kirkman*, 555 N.E.2d 1293 (Ind. 1990)

⁹⁹⁸ What is the Thrift Savings Plan (TSP)?, *supra* note 275

⁹⁹⁹ *Divorce, Annulment, and Legal Separation*, THRIFT SAVINGS PLAN, <https://www.tsp.gov/LifeEvents/personal/spouse/separation.html> (last visited Apr. 30, 2020)

¹⁰⁰⁰ *Mansell v. Mansell*, 490 U.S. 581 (1989)

¹⁰⁰¹ *Howell v. Howell*, 137 U.S. 1400 (2017)

14.2.12. Uniform Services Former Spouse Protection Act (USFSPA). The division of military-related assets is governed by the Uniform Services Former Spouse Protection Act (USFSPA).¹⁰⁰² The USFSPA authorizes states to treat military disposable retired pay as a marital asset.¹⁰⁰³ This means that a Military Pension or retired pay can be considered marital property.¹⁰⁰⁴ USFSPA also allows for a former spouse to be covered by the Survivor Benefit Plan (SBP) (See Section 11.7.5 of Military Competency Manual). In addition, this allows former spouses who meet certain criteria to keep some DoD benefits like Post Exchange, Commissary, and Medical Benefits.¹⁰⁰⁵

14.2.13. The 10/10 Rule. The “10/10 Rule” determines whether the former spouse’s portion of retired pay as outlined in the divorce decree may be paid by Defense Financing & Accounting Service (DFAS) or must be paid by the retiree.¹⁰⁰⁶ Generally, if the marriage lasted at least 10 years *AND*, during the marriage, the retiree performed at least 10 years of *creditable* service, then DFAS may pay the former spouse his or her portion of the disposable retired pay directly.¹⁰⁰⁷ A Qualified Domestic Relations Order (QDRO) is NOT required, but it will be accepted.¹⁰⁰⁸ A divorce decree must comply with 10 USC §1408 & DoD 7000.14-R, Vol 7B, Chapter 29 (implementing regulation).¹⁰⁰⁹ Note that the last two pages of this chapter contains sample verbiage that divides the retired pay, including formulas, to include in the order.

The maximum amount that can be paid under USFSPA is 50% of the service member’s income.¹⁰¹⁰ DFAS will pay a former spouse the monthly amount or amounts awarded in the pertinent court order up to the 50% limit.¹⁰¹¹ The implementing regulation requires DFAS to construe all percentage awards as a percentage of disposable retired pay, which is gross retired pay less authorized deductions.¹⁰¹² Also, according to the implementing regulation, percentage awards will automatically receive a proportionate share of the member’s cost-of-living adjustments (COLAs), but COLAs are not available for fixed dollar amount awards, even if COLAs were awarded in the court order.¹⁰¹³

¹⁰⁰² See 10 USC §1408, the statute enables but does not mandate states to treat and divide disposable military retired pay as marital property, pursuant to state property law

¹⁰⁰³ *Military Benefits for Former Spouses: Legislation and Policy Issues*, CONGRESSIONAL RESEARCH SERVICE, 2, <https://fas.org/sgp/crs/misc/RL31663.pdf> (last visited Apr. 30, 2020)

¹⁰⁰⁴ *Military Benefits for Former Spouses*, *supra* note 1003 at 13

¹⁰⁰⁵ *Rights and Benefits of Divorced Spouses in the Military*, MILITARY ONE SOURCE, <https://www.militaryonesource.mil/family-relationships/relationships/relationship-challenges-and-divorce/rights-and-benefits-of-divorced-spouses-in-the-military> (last visited Apr. 30, 2020)

¹⁰⁰⁶ Kristi Muse, *How Divorce Can Affect Your Military Pay*, THE MILITARY WALLET, <https://themilitarywallet.com/divorce-can-affect-military-pay/> (last visited Apr. 30, 2020)

¹⁰⁰⁷ Muse, *supra* note 1006

¹⁰⁰⁸ *FAQs About Qualified Domestic Orders*, US DEPARTMENT OF LABOR, <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/qdro-overview.pdf> (last visited Apr. 30, 2020)

¹⁰⁰⁹ DoD Financial Management Regulation 7000.14-R, Volume 7B, Chapter 29-13, https://comptroller.defense.gov/Portals/45/documents/fmr/current/07b/07b_29.pdf (last visited Apr. 30, 2020)

¹⁰¹⁰ *Maximum Payment Amount*, DEFENSE FINANCE AND ACCOUNTING SERVICE, <https://www.dfas.mil/garnishment/usfspa/maximumpay.html> (last visited Apr. 30, 2020)

¹⁰¹¹ *How Much Will a Former Spouse Receive Under USFSPA?*, DEFENSE FINANCE AND ACCOUNTING SERVICE, <https://www.dfas.mil/garnishment/usfspa/faqs.html> (last visited Apr. 30, 2020)

¹⁰¹² *How Much Will a Former Spouse Receive Under USFSPA?*, *supra* note 1011

¹⁰¹³ *How Much Will a Former Spouse Receive Under USFSPA?*, *supra* note 1011

14.2.14. The 20/20/20 Rule. The “20/20/20 Rule” determines whether the former spouse is entitled to DoD benefits. If the marriage lasted at least 20 years, **AND** the military member/retiree performed at least 20 years of creditable service, **AND** there is at least 20 years overlap of the marriage and military service, then the former spouse is eligible for:

- Health care (under TRICARE) if the former spouse is NOT entitled to employer-sponsored health care.
- A dependent ID card, which entitles the former spouse to use base facilities – commissary, exchange, and Morale, Welfare, & Recreation (MWR)

If a former spouse who is eligible for DoD benefits under the 20/20/20 rule remarries BEFORE reaching the age of 55, then he or she loses the benefits.¹⁰¹⁴

14.2.15. The 20/20/15 Rule. The “20/20/15” Rule is used to determine whether the former spouse is entitled to *transitional* DoD benefits.¹⁰¹⁵ If the marriage lasted at least 20 years, **AND** the military member/retiree performed at least 20 years of creditable service, **AND** there is at least 15 years overlap of the marriage and military service, then the former spouse is eligible for Health care (under TRICARE) if the former spouse is NOT entitled to employer-sponsored health care for one year ONLY.¹⁰¹⁶

14.2.16. Divorce Decree. The divorce decree must be filed with DFAS within one year from entry.¹⁰¹⁷ The Divorce Decree must be regular on its face and provided by a court of competent jurisdiction, meaning the military member/retiree is domiciled in the state **OR** resides in the state (other than because of military service) **OR** Consents to the jurisdiction.¹⁰¹⁸ If the member is on active duty, the order must show that the member’s rights under the SCRA were complied with.¹⁰¹⁹

14.2.17. Divorce Decree & Retired Pay Award. For a retired pay award, the Divorce Decree must be expressed as: a fixed dollar amount, but there will be no cost-of-living adjustments **OR** A percentage of the *disposable* retired pay; cost-of-living adjustments will be made automatically **OR** As a formula or hypothetical if the member is not yet entitled to receive retired pay.¹⁰²⁰

14.2.18. Survivor Benefit Plan in the Context of Divorce. If the marriage lasted for at least one year, the former spouse is eligible to be a Survivor Benefit Plan (SBP) beneficiary.¹⁰²¹ Although a member/retiree may voluntarily elect to designate a

¹⁰¹⁴ *Rights and Benefits of Divorced Spouses in the Military*, *supra* note 1005

¹⁰¹⁵ 10 U.S.C. §1072(2)(G)&(H) (2011)

¹⁰¹⁶ *Id.*

¹⁰¹⁷ *SBP Beneficiary*, DEFENSE FINANCE AND ACCOUNTING SERVICE, <https://www.dfas.mil/garnishment/FormerSpouseSBPDeemedElection.html> (last visited Apr. 30, 2020)

¹⁰¹⁸ 10 U.S.C. §1408(c)(4) (2012)

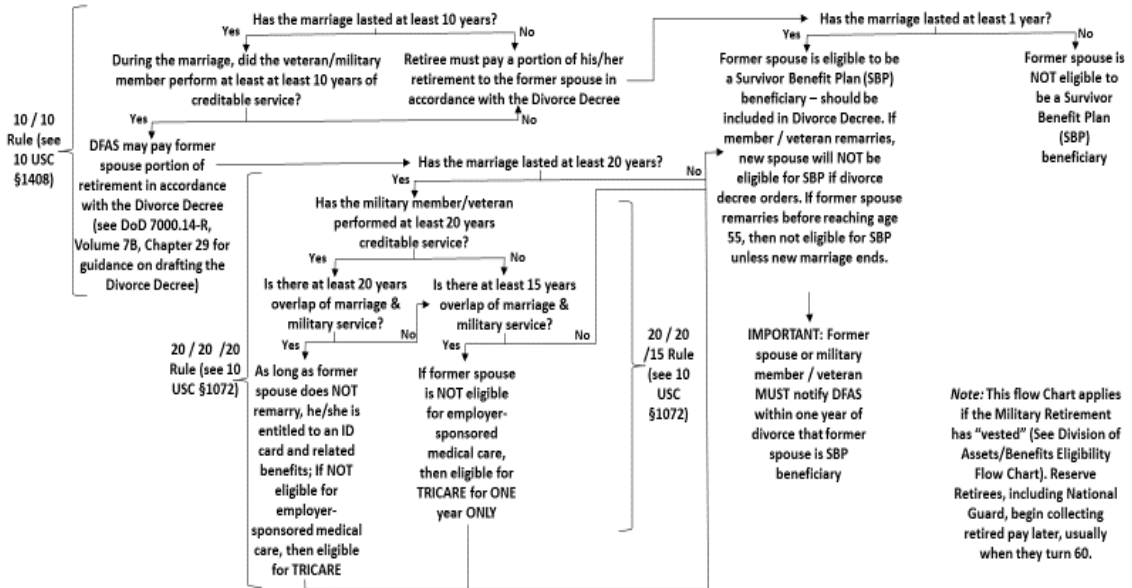
¹⁰¹⁹ *Id.* at §1408(b)(1)(D)

¹⁰²⁰ DoD 7000.14-R, Volume 7B, Chapter 29 provides great detail on how the formula should be expressed. Figure 1 on pages 29-27 and 29-28 provide examples of specific wording for the divorce decree.

¹⁰²¹ 10 U.S.C. §1447(7)-(8) (2012)

former spouse to be his or her SBP beneficiary, this voluntary election may be stopped at any time (i.e. member / retiree remarries).¹⁰²² If the Divorce Decree orders that the former spouse will be a SBP beneficiary, then if the member / retiree remarries, then the NEW spouse will NOT be eligible to be a SBP beneficiary.¹⁰²³ The designation cannot be changed unless the former spouse remarries before reaching the age of 55.¹⁰²⁴ If a former spouse's new marriage ends, then the SBP can be reinstated (BUT no other benefits are reinstated).¹⁰²⁵

Special Rules Under the Uniform Services Former Spouses Protection Act (USFSPA), 10 USC §1408, Flow Chart



IMPORTANT: Former spouse or military member / veteran MUST notify DFAS within one year of divorce that former spouse is SBP beneficiary

Note: This flow Chart applies if the Military Retirement has "vested" (See Division of Assets/Benefits Eligibility Flow Chart). Reserve Retirees, including National Guard, begin collecting retired pay later, usually when they turn 60.

14.2.19. Apportionment & Garnishment. VA Benefits can only be garnished if the debt is to the Federal Government or to a custodial parent for child support.¹⁰²⁶ These “special apportionment” payments can be made directly through the VA only if: the custodial parent can show a hardship, the payment will not cause an undue hardship on the veteran or his or her family (typically apportionment of more than 50% of benefits is considered an undue hardship), and it can be shown that a veteran is not providing for his or her dependents (usually proven by showing noncompliance with a court order).¹⁰²⁷

Child support can be collected from DoD Military or Retired Pay if there is a court

¹⁰²² *Changing or Stopping Your Coverage*, DEFENSE FINANCE AND ACCOUNTING SERVICE, <https://www.dfas.mil/retiredmilitary/provide/sbp/change.html> (last visited Apr. 30, 2020)

¹⁰²³ *Changing or Stopping Your Coverage*, *supra* note 1022

¹⁰²⁴ *Stopping Survivor Benefits Program*, *supra* note 455

¹⁰²⁵ Ostrom, *supra* note 457

¹⁰²⁶ M21-1, Part III, Subpart v, Chapter 3, Section D - Garnishment of Disability Compensation in Lieu of Military Retired Pay (MRP) to Pay Alimony or Child Support, VA.GOV, [https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000020136/M21-1,-Part-III,-Subpart-v,-Chapter-3,-Section-D---Garnishment-of-Disability-Compensation-in-Lieu-of-Military-Retired-Pay-\(MRP\)-to-Pay-Alimony-or-Child-Support#1](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/55440000001018/content/554400000020136/M21-1,-Part-III,-Subpart-v,-Chapter-3,-Section-D---Garnishment-of-Disability-Compensation-in-Lieu-of-Military-Retired-Pay-(MRP)-to-Pay-Alimony-or-Child-Support#1) (last visited Apr. 30, 2020)

¹⁰²⁷ 38 C.F.R. § 3.451

order that awards child support ONLY if the former spouse and military member were previously married.¹⁰²⁸ In cases of Child Support Arrearages, the moving party must submit a recent court order (within the last two years) that lists the total arrearages.¹⁰²⁹ The moving party can collect current retired pay award payments, but not retired pay award arrearages.¹⁰³⁰

¹⁰²⁸ DoD Financial Management Regulation 7000.14-R, Volume 7B, Chapter 29-8, https://comptroller.defense.gov/Portals/45/documents/fmr/archive/07barch/07b_29_Jul13.pdf (last visited Apr. 30, 2020)

¹⁰²⁹ DoD Financial Management Regulation 7000.14-R, *supra* note 1028 at 29-8

¹⁰³⁰ DoD Financial Management Regulation 7000.14-R, *supra* note 1028 at 29-9

15. Resources for Attorneys

15. General Resources.

- 15.1.1. *Dictionary of Military Terms.*** The Department of Defense (DoD) web site provides a dictionary of military terms:
<https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf>
- 15.1.2. *To find a VA-accredited Attorney.*** Search the VA's Office of General Counsel's Attorney Search Web Site: <http://www.va.gov/ogc/apps/accreditation/index.asp>
- 15.1.3. *American Bar Association (ABA) Resources for VA Claimants/Advocates.*** The ABA provides the following resources:
- The American Bar Association Initiative on Veterans Affairs provides publications, articles, and links for veteran claimants or their representatives: https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/Military_Pro_Bono/aba-veterans-claims-and-assistance-network/
 - The American Bar Association's Standing Committee on Legal Assistance for Military Personnel (LAMP) provides resources for attorneys who represent military members:
http://www.americanbar.org/groups/legal_assistance_military_personnel.html
- 15.1.4. *The National Veterans Legal Services Program (NVLSP).*** This organization assists veterans and VA lawyers. You can purchase legal treatises, VA regulations, and CLE materials at their website: www.nvlsp.org
- 15.1.5. *Stateside Legal.*** This LSC organization provides information for attorneys and legal help for military members, veterans and their families:
www.statesidelegal.org
- 15.1.6. *The American Veterans and Service Members Survival Guide.*** This online resource is a detailed guide to representing service members. Information included ranges from benefit claims to family law issues:
<https://www.nvlsp.org/images/products/survivalguide.pdf>
- 15.1.7. *The US Department of Justice.*** This DOJ web site provides links to federal laws affecting service members and veterans: <https://www.justice.gov/servicemembers>
- 15.1.8. *The Federal Benefits for Veterans, Dependents & Survivors Book.*** This online document, published by the VA, contains a summary of the federal benefits for which veterans may be eligible:
https://www.va.gov/opa/publications/benefits_book/2019_Federal_Benefits_for_Veterans_Dependents_and_survivors.pdf

15.1.9. The Consumer Financial Protection Bureau’s Office of Servicemembers’ Affairs. This organization protects military members finances:
<http://www.consumerfinance.gov/servicemembers/>

15.2. VA-Accreditation Continuing Legal Education (CLE) Resources.

15.2.1. Indiana Continuing Legal Education Forum (ICLEF). ICLEF provides a VA-accreditation course annually: <http://iclef.org/>

15.2.2. The ABA. The ABA provides a on demand CLE courses in Military Service and the Law:
https://www.americanbar.org/groups/legal_assistance_military_personnel/events_cle/

15.2.3. Elder Counsel. Elder Counsel provides VA Accreditation Course, both online and live: <http://www.eldercounsel.com/>

15.2.4. Veterans Information Services, Inc. Veterans Information Services, Inc. offers educational online webinars on VA accreditation:
<http://info4vets.com/Webinars.html>.

15.3 Resources for Veterans

15.3.1. Family Assistance Specialist with the National Guard: These specialists are located throughout the state. They assist all veterans regardless of branch or era that the veteran served. They keep a current list of resources available for veterans. These resources are local, state, and federal resources, both monetary and non-monetary. The Family Assistance Specialists can also help a veteran complete applications for resources as required. They will stay on the case until the crisis is averted. The Family Assistance Specialist contact information are:

Central Indiana	Northern Indiana	Southern Indiana
711 N. Pennsylvania St. Indianapolis, IN 46204 Office: 317-247-3300 x 85449 Cell: 317-650-7750	2501 E. 15th Ave. Gary, IN 46402 Office: 317-247-3300 x88053 Cell: 317-650-8319	3300 E. Division St. Evansville, IN 47714 Office: 812-469-4021 x 87320 Cell: 317-650-7392
9920 E. 59th St. Indianapolis, IN 46216 Office: 317-247-3300 x87697 Cell: 317-650-8412	130 W. Cook Rd. Ft. Wayne, IN 46825 Office: 260-490-0221 x 87221 Cell: 317-650-8945	2909 Grant Line Rd. New Albany, IN 47150 Office: 812-949-3963 x 88748 Cell: 317-650-7756

Central Indiana	Northern Indiana	Southern Indiana
401 N. Country Club Rd. Muncie, IN 47303 Office: 765-289-6105 x 88661 Cell: 317-650-1859	315 East Markland Avenue Kokomo, IN 46901 Office: 765-457-1598 x 88179 Cell: 317-650-9409	2160 Arnold St. Columbus, IN 47203 Office: 317-247-3300x 85101 Cell: 317-650-7402
2000 Hwy 54 E. Linton, IN 47441 Office: 812-847-9894 x 85551 Cell: 317-650-1829	5218 Haggerty Lane Lafayette, IN 47905 Office: 765-447-0759 x 87516 Cell: 317-650-1498	3008 Old Hospital Rd. Bldg. 230 Edinburgh, IN 46124 Office: 812-526-1341 Cell: 317-650-7741
1405 S. Washington St. Crawfordsville, IN 47933 Office: 765-362-6505 x 85124 Cell: 317-650-8366		

15.3.2. Supportive Services for Veterans & Families (SSFV): This is a VA grant provided to organizations who administer the grant. Money is provided to a veteran in need if they are in imminent danger of becoming homeless. These funds are restricted to a much stricter test than other sources of money. Grantors in Indiana are:

- LAYFETTE TRANSITIONAL HOUSING CENTER – Serving Benton, Carroll, Clinton, Fountain, Montgomery, Tippecanoe and White counties
 615 North 18th Street, Suite 102
 Howarth Center
 Lafayette, IN 47904
 (765) 423-4880
<http://www.lthc.net>
lthc@lthc.net
- BRIDGES COMMUNITY SERVICES – Serving Blackford, Delaware, Grant, Henry, Howard & Tipton Counties
 318 West 8th Street
 Muncie, IN 47302
 (765) 282-3948
<http://www.bridgescs.org>
- VOLUNTEERS OF AMERICA OF INDIANA – Serving Marion, Grant, Morgan, Johnson, Shelby, Monroe, Brown, Bartholomew, Greene, Lawrence, Knox, Daviess, Gibson, Pike, Dubois, Posey, Vanderburgh, Warrick, Spencer, and Perry Counties

Confidential address, but offices in Evansville & Indianapolis
(855) 840-4862 SSVF Intake (Toll-Free)

<http://www.voain.org>

- INTECARE – Serving Marion, Madison, Hamilton, Hancock, Boone, Shelby, Johnson, Vigo, Clay Counties
Confidential address, but office is in Indianapolis
(855) 896-4345 (Toll-Free)
<http://www.intecare.org>
- COMMUNITY ACTION OF NORTHEAST INDIANA/BRIGHTPOINT – Serving Adams, Allen, Blackford, Cass, DeKalb, Delaware, Elkhart, Fulton, Grant, Henry, Howard, Huntington, Jay, Kosciusko, LaGrange, Marshall, Miami, Noble, Pulaski, Randolph, Steuben, St. Joseph, Tipton, Wabash, Wells, and Whitley Counties
227 E. Washington Blvd
PO BOX 10570
Fort Wayne, IN 46853
To ask questions about SSFV, call (260) 423-3546, ext. 285
<https://mybrightpoint.org/index.php/get-help/family-self-sufficiency/supportive-services-for-veteran-families/>
- HOOSIER VETERANS ASSISTANCE FOUNDATION (HVAF) – Serving Marion County
964 North Pennsylvania Street
Indianapolis, IN 46204
(317) 951-0688
<http://www.hvaf.org>
hvaf@hvaf.org

15.3.3. HOMELESS HOTLINE: 1-877-4AID VET (877-424-3838). If you are working with veteran who is homeless or at risk of homelessness, the VA has a hotline to call. The national hotline will dispatch the nearest homeless team to the veteran.