IV. VETERANS BENEFITS

INTRODUCTION
All laws relating to veterans benefits administered by VA have been codified in title 38, United States Code (USC), “Veterans Benefits.” Related regulations issued by the Secretary of Veterans Affairs are contained in title 38, Code of Federal Regulations (CFR), “Pensions, Bonuses and Veterans Relief.” Specific entitlement and eligibility criteria for the various benefits programs are set forth in these volumes.

Monetary benefits to veterans and their dependents are tax-exempt and may be classified into three general categories: Compensation, Dependency and Indemnity Compensation (DIC) and Pension. With these categories are other programs which will be dealt with in the appropriate sections of this guide.

PERIODS OF WARTIME SERVICE

WWI April 6, 1917 to November 11, 1918
WWII December 7, 1941 to December 31, 1946
Korean Conflict June 27, 1950 to January 31, 1955
Vietnam Era August 5, 1964 (Feb. 28, 1961, for veterans who served “in country” before Aug. 4, 1964) to May 7, 1975
Gulf War August 2, 1990 – TBA

TYPE OF DISCHARGE
Veterans separated with Honorable and General (Under Honorable Conditions) discharges are eligible for most VA benefits. Former members separated with Under Other Than Honorable Conditions (Undesirable), Bad Conduct and Dishonorable discharges are not eligible without a favorable VA administrative decision determining their service was not under dishonorable conditions. However, in addition for those who entered service after September 7, 1980, he/she must have served a minimum of 24 months of continuous active duty, or the full period for which they were called to active duty. It does not apply if the person was discharged for a service-connected disability.

WAR PERIODS
Eligibility for certain veterans benefits may be contingent upon active service in the U.S. Armed Forces during one or more periods of war. Veterans serving in more than one period of war may combine their active duty days to make the 90 days required for certain VA benefits.

PEACETIME SERVICE
Service during peacetime includes all periods of active duty other than wartime service. Certain VA, other Federal and state benefits are available to peacetime veterans.

Note
Veterans who served honorably with at least one day on active duty during any of these war periods are eligible for membership in The American Legion. Veterans who served in military operations in Lebanon, Grenada or Panama are also eligible for Legion membership, but, for VA purposes, they do not meet the definition of a “wartime”
veteran. Individuals on active duty are eligible for membership in The American Legion, if they served honorably for at least one day during any of the above periods.

DEFINITIONS

Veteran
A person who served in the active military, naval, or air service of the Armed Forces of the United States and who was released or discharged under conditions other than dishonorable.

Veterans Benefits
Applies to programs of benefits and services administered by the Department of Veterans Affairs, in accordance with criteria authorized by Congress and set forth in title 38, United States Code (38 USC), “Veterans Benefits.” Specific entitlement and eligibility requirements are set forth in title 38, Code of Federal Regulations (38 CFR), “Pensions, Bonuses, and Veterans Relief.”

Types of benefits include: service-connected disability compensation and Dependency and Indemnity Compensation, nonservice-connected disability and death pension benefits, burial; medical care; education assistance, including vocational rehabilitation; guaranty home loans and government life insurance. In addition, individuals called to active duty in the Armed Forces have certain rights and protection under the “Soldiers’ and Sailors’ Civil Relief Act.”

Period of War
Those periods which the President and the Congress have declared to be wartime service.

Veteran of Any War
Any veteran who served on active duty in the Armed Forces during a period of war.

Armed Forces
The United States Army, Navy, Marine Corps, Air Force and Coast Guard, including the reserve components.

Compensation
The monthly payment made to a veteran because of a service-connected disability or disease.

Dependency and Indemnity Compensation (DIC)
A monthly payment made to a surviving spouse, children, or parent(s): (a) because of a service-connected death occurring after December 31, 1956, or (b) pursuant to the election of a widow, child or parent, in the case of the death occurring before January 1, 1957.

Nonservice-connected Disability
The disability or death was not incurred or aggravated in line of duty during active military service.

Pension
A monthly payment - based on financial need - to a veteran, widow, or children for nonservice-connected disability or death.
**Spouse**
Includes the husband of a female veteran and “widow” includes the widower of a female veteran. For the purpose of this definition, a husband or widower is in the same status as a wife or widow of a male veteran and is eligible to receive the same benefits, if otherwise entitled, in a claim for pension, compensation, Dependency and Indemnity Compensation, or survivors education assistance.

**Surviving Spouse**
A person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death, where there was no separation due to the fault of the spouse and who has not remarried since the death of the veteran.

**Child**
A person who is unmarried and:

a. who is under the age of 18 years and who is, a legitimate child, a legally adopted child, a stepchild who is a member of the veteran’s household or was a member at the time of his death, or an illegitimate child but only if acknowledged by the veteran in writing or if he has been decreed father of the child, or is otherwise shown by evidence satisfactory to the Secretary of Veterans Affairs to be the father of the child; or

b. who, before attaining the age of 18 years, became permanently incapable of self-support; or

c. who, after attaining the age of 18 years and until completion of education or training (but not after attaining the age of 23), is pursuing a course of instruction in an approved educational institution.

**Parent**
A natural father or a mother, or father or mother through adoption, or an individual who for a period of at least one year stood in the relationship of parent to a veteran at any time prior to his or her entry into active service.

**State Veterans Home**
A facility established by a state (other than a possession) for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. The term also includes such a home which furnishes nursing home care for veterans.

**Retirement**
Benefits are provided for officers and enlisted personnel of the Armed Forces, based on the length of service, disability, or age.
CLASSIFICATION OF SERVICE
The following duty classifications qualify for benefit purposes:

Active Duty
1. Full-time duty in the Armed Forces, other than active duty for training
2. Full-time duty as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration (formerly the Coast and Geodetic Survey and Environmental Science Services Administration)
3. Service as a cadet at the United States Military, Air Force or Coast Guard Academies, or as a midshipman at the United States Naval Academy
4. Authorized travel to and from the above duty or service
5. Full-time duty as a member of the Women’s Airforce Service Pilots (WASP) or other similarly designated groups who have been held to have rendered active military service
6. Period immediately following date of release from active duty as required to proceed to home of record by the most direct route, or in any case until midnight of the day of release.

Active Duty for Training (ACTDUTRA)
1. Full-time duty performed by reserves for training purposes
2. Full-time duty of commissioned officers of the Reserve Corps of the Public Health Service for training purposes
3. Full-time duty performed by members of the National Guard or Air National Guard of any state, other than Federal duty
4. Service for a period of 14 days or more in the Reserve Officers Training Corps (ROTC) for annual training duty.

MERCHANT MARINE
Pursuant to PL 95-202, on January 7, 1988, the Secretary of Defense declared certain Merchant Marine services as qualifying for Department of Veterans Affairs benefits. To receive recognition, each member of the “American Merchant Marine in Oceangoing Service during the Period of Armed Conflict December 7, 1941, to August 15, 1945,” must meet the following eligibility criteria:

1. Was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the U.S. Coast Guard or Department of Commerce (Merchant Mariner’s Document/Certificate of Service), or as a civil servant employed by U.S. Army Transport Service (later redesignated U.S. Army Transportation Corps, Water Division) or the Naval Transportation Service; and
2. Served satisfactorily as a crew member during the period of armed conflict, December 7, 1941, to August 15, 1945, aboard:
a. Merchant vessels in “oceangoing,” i.e., foreign, inter-coastal, or coastal or coastwise service (46 USC 10301 & 10501) and further, to include “near foreign” voyages between the United States and Canada, Mexico, or the West Indies via ocean routes; or

b. Public vessels in oceangoing service or foreign waters.

A “Certificate of Release or Discharge from Active Duty,” DD Form 214, plus a discharge certificate, or, an Honorable Service Certificate/Report of Casualty shall be provided each qualifying member of the Merchant Marine, the U.S. Army Transport Service and the U.S. Naval Transportation Service upon receipt of application from the member and upon verification of credible service in accordance with service directives. Total active duty service shall be the summation of each foreign, near foreign, coastal and inter-coastal voyage within the period of armed conflict of World War II. Inclusive dates of each creditable voyage shall be reflected on the DD Form 214. For qualifying members taken prisoner of war while on active duty, credible service shall extend to date of repatriation or date of death while a prisoner of war.

The form “Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty With the Armed Forces of the United States,” DD Form 2168, available through any VA regional office or by visiting www.va.gov, is to be used by applicants seeking a discharge certificate.

**Note**

Merchant Mariners are now eligible for American Legion membership. If any questions as to individual qualifications for membership exist, the application and substantiating documentation (DD-214), or copies thereof, should be forwarded to the National Judge Advocate in Indianapolis.

**CIVILIAN GROUPS EXTENDED VETERANS STATUS**

A number of groups who have provided military-related service to the United States have been granted veteran status. For the service to qualify, the Secretary of Defense must certify that the group provided active military service. Individual members must be issued a discharge by the Secretary of Defense to qualify for VA benefits. Service in the following groups has been certified as active military service for VA benefit purposes:

1. Women’s Airforce Service Pilots (WASP)
2. Signal Corps Female Telephone Operators Unit in WWI
3. Engineer Field Clerks
4. Women’s Army Auxiliary Corps (WAAC)
5. Quartermaster Corps female clerical employees serving with the American Expeditionary Forces in WWI
6. Civilian employees of Pacific naval air bases who actively participated in the defense of Wake Island during WWII
7. Reconstruction aides and dietitians in WWI
8. Male civilian ferry pilots
9. Wake Island defenders from Guam
10. Civilian personnel assigned to OSS secret intelligence
11. Guam Combat Patrol
12. Quartermaster Corps members of the USS Keswick crew on Corregidor during WWII
13. U.S. civilians who participated in the defense of Bataan
14. U.S. merchant seamen who served on blockships in support of Operation Mulberry in the WWII invasion of Normandy
15. American Merchant Marines in oceangoing service during WWII
16. Civilian Navy IFF radar technicians who served in combat areas of the Pacific during WWII
17. U.S. civilians of the American Field Service who served overseas in WWI
18. U.S. civilians of the American Field Service who served overseas under U.S. armies and U.S. army groups in WWII
20. Civilian crewmen of U.S. Coast and Geodetic Survey vessels who served in areas of immediate military hazard while conducting cooperative operations with and for the U.S. Armed Forces between Dec. 7, 1941, and Aug. 15, 1945
21. Members of the American Volunteer Group (Flying Tigers) serving between Dec. 7, 1941, and July 18, 1942
22. U.S. civilian flight crew and aviation ground support employees of United Air Lines who served overseas under a contract with Air Transport Command between Dec. 14, 1941, and Aug. 14, 1945
23. U.S. civilian flight crew and aviation ground support employees of Transcontinental and Western Air, Inc. (TWA), who served overseas under a contract with the Air Transport Command between Dec. 14, 1941, and Aug. 14, 1945
24. U.S. civilian flight crew and aviation ground support employees of Consolidated Vultee Aircraft Corp. (Consairway Division) who served overseas under a contract with Air Transport Command between Dec. 14, 1941, and Aug. 14, 1945
25. U.S. civilian flight crew and aviation ground support employees of Pan American World Airways and its subsidiaries and affiliates, who served overseas under a contract with the Air Transport Command and Naval Air Transport Service between Dec. 14, 1941, and Aug. 14, 1945
26. Honorably discharged members of the American Volunteer Guard, Eritrea Service command between June 21, 1942, and March 31, 1943
27. U.S. civilian flight crew and aviation ground support employees of Northwest Airlines who served overseas under a contract with Air Transport Command from Dec. 14, 1941, through Aug. 14, 1945

28. U.S. civilian female employees of the U.S. Army Nurse Corps who served in the defense of Bataan and Corregidor in 1942

29. The U.S. flight crew and aviation ground support employees of Northeast Airlines Atlantic Division, who served overseas under a contract with the Air Transport Command during the period Dec. 7, 1941, through Aug. 14, 1945

30. U.S. civilian flight crew and aviation ground support employees of Braniff Airways who served overseas in the North Atlantic or under the jurisdiction of the North Atlantic Wing, Air Transport Command (ATC), during the period Feb. 26, 1942 through Aug. 14, 1945
V. HEALTH CARE BENEFITS

ELIGIBILITY
Eligibility for most VA benefits is based on discharge from active military service under honorable conditions. Active service means full-time service as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the Public Health Service, the Environmental Services Administration or the National Oceanic and Atmospheric Administration.

Prior to September 1, 1980, a veteran must have served one (1) day or more to be eligible to receive VA health care. Active duty time cannot be for training purposes only. After this date, a veteran must have served 24 consecutive months of active duty to be eligible for this care. Reservists ordered to active duty (active duty time cannot be for training purposes only) must serve the full period for which they were called or ordered to active duty.

The Veterans Health Care Eligibility Reform Act of 1996 established a standard health benefits plan – a “Uniform Benefits Package.” To receive health care under this program, most veterans must first be enrolled. There are some exceptions. See HEALTH CARE ENROLLMENT.

SPECIAL CATEGORIES FOR MEDICAL CARE

MERCHANT MARINE SEAMEN
Merchant Marine seamen who served in World War II may qualify for veterans benefits. When applying for medical care, seamen must present their DD Form 214 discharge certificate from the Department of Defense to the VA medical facility. VA regional offices can assist in obtaining this certificate (also, see the section on Merchant Marines in chapter IV of this Guide).

ALLIED VETERANS
VA is authorized to provide medical care to veterans of nations allied or associated with the United States during World War I or World War II. Such treatment is available at any VA medical facility if authorized and reimbursed by the foreign government. VA also is authorized to provide hospitalization, outpatient and domiciliary care to former members of the armed forces of Czechoslovakia or Poland, who participated during World Wars I and II in armed conflict against an enemy of the United States, if they have been citizens of the United States for at least 10 years.

GULF WAR, AGENT ORANGE AND IONIZING RADIATION

Registry Programs
VA has developed databases called “registries” to help analyze the type of health conditions being reported by veterans who served in the Gulf War (August 2, 1990 to a date not yet established), claim exposure to Agent Orange during the Vietnam War (January 9, 1962, to May 7, 1975), claim exposure to atomic radiation, or were treated
with nasopharyngeal (NP) radium during military service. These veterans are provided with free, comprehensive medical examinations, including laboratory and other diagnostic tests deemed necessary by an examining physician to determine health status. On September 5, 2000, in response to the Department of Defense disclosure that approximately 80,000 American troops stationed along the demilitarized zone between North and South Korea in 1968 and 1969 may have been exposed to Agent Orange, VA expanded its Agent Orange Registry program to include veterans who served in Korea during that time period. Other veterans who may have been exposed to dioxin or other toxic substances in a herbicide or defoliant during the conduct of or as a result of testing, transporting or spraying of herbicides for military purposes also are eligible to participate in the Agent Orange registry program.

Eligible veterans do not have to be enrolled in VA health care to participate in registry examinations. Examination results, along with reviews of the veterans’ military service and exposure histories, are entered into the registries. Registry participants are advised of the results of their examinations in personal consultations and by letters. Veterans wishing to participate should contact the nearest VA health care facility for an examination.

**Treatment**

VA provides treatment to any Gulf War veteran who has a medical condition that may be the result of Gulf War service. VA also provides medical treatment to any Vietnam Era veteran who, while serving in Vietnam, may have been exposed to dioxin or to a toxic substance in a herbicide or defoliant used for military purposes, for conditions related to such exposure. Health care services also are available for medical conditions VA recognizes as related to a veteran’s exposure to ionizing radiation. "Atomic veterans" are those who participated in atmospheric nuclear tests conducted in the 1940s, '50s and '60s or were held captive in Japan or participated in the occupation of Hiroshima and Nagasaki. Additionally, under new rules enacted in March 2002, those who were at underground tests on Amchitka Island, Alaska, before January 1, 1974, and those who were assigned to certain nuclear weapons plants in Kentucky, Ohio and Tennessee are also recognized as "atomic veterans." The new regulation also added cancers of the bone, brain, lung, colon and ovary to the list of conditions presumed related to exposure to ionizing radiation.

**WOMEN VETERANS**

Women veterans are eligible for the same VA benefits as male veterans. Services and benefits for women veterans are gender-specific and include breast and pelvic examinations and other general reproductive health care services. Preventive health care provided includes counseling, contraceptive services, menopause management, PAP smears and mammography. Referrals are made for services that VA is unable to provide.

VA health care professionals provide counseling and treatment to help women overcome psychological trauma resulting from personal and sexual assault during military service. Care also is provided for any injury, illness or psychological condition resulting from such trauma.
To ensure privacy for women veterans, VA medical centers have made structural changes. Women Veterans Coordinators are available at all VA facilities to assist women veterans seeking treatment and benefits.

In 1994, Congress passed legislation authorizing VA to establish a Center for Women Veterans. The center collaborates with other Federal departments on issues related to women veterans, develops materials on VA benefits programs and health care services, and conducts outreach to make women veterans aware of these services. Their web site, www.va.gov/womenvet, offers women veterans direct access to the Center for Women Veterans where they can express concerns, ask questions and provide feedback about VA benefits and services.

**HOMELESS VETERANS**

A number of VA benefits are aimed at helping veterans “at risk” for becoming homeless, including disability compensation, pension and educational benefits. VA also provides health and rehabilitation programs for homeless veterans. VA’s Homeless Chronically Mentally Ill (HCMI) Program provides health exams, treatment, referrals and ongoing case management to homeless veterans with mental health problems. The Domiciliary Care for Homeless Veterans (DCHV) Program provides biopsychosocial treatment and rehabilitation. VA has a growing number of Compensated Work Therapy/Therapeutic Residence group homes, special day treatment centers and Comprehensive Homeless Centers.

VA’s Homeless Providers Grant and Per Diem Program assists nonprofit and local government agencies to establish housing or service centers for homeless veterans. Grants are awarded for the construction, acquisition or renovation of facilities. VA also has joined with the Department of Housing and Urban Development, the Social Security Administration, veterans service organizations and community nonprofit groups to assist homeless veterans. For information on benefits for homeless veterans, contact the nearest VA facility.

**MEDICAL CARE FOR DEPENDENTS AND SURVIVORS**

CHAMPVA, the Civilian Health and Medical Program of the Department of Veterans Affairs, provides reimbursement for most medical expenses – inpatient, outpatient, mental health, prescription medication, skilled nursing care and durable medical equipment (DME). To be eligible for CHAMPVA, you cannot be eligible for TRICARE (formerly called CHAMPUS) and you must be in one of these categories:

- the spouse or child of a veteran who has been rated 100% permanently and totally disabled for a service-connected disability by a VA regional office; or

- the surviving spouse or child of a veteran who died from a VA-rated service-connected disability, or who, at the time of death, was rated 100% permanently and totally disabled; or

- the surviving spouse or child of a military member who died in the line of duty, not due to misconduct (in most of these cases, these family members are eligible for TRICARE, not CHAMPVA).

To be eligible for CHAMPVA benefits over age 65, you must also meet the following conditions (adjusted margin):
• if you turned 65 before June 5, 2001, and only have Medicare Part A, you will be eligible for CHAMPVA without having to have Medicare Part B coverage.

• if you turned 65 before June 5, 2001, and have Medicare Parts A and B, you must keep both Parts to be eligible.

• if you turn age 65 on or after June 5, 2001, you must be enrolled in Medicare Parts A and B to be eligible.

To apply for benefits, contact the VA Health Administration Center (HAC), P.O. Box 65023, Denver, CO 80206 or call 1-800-733-8387 or check the HAC’s web site at www.va.gov/hac.

Many VA medical centers provide services to CHAMPVA beneficiaries under the “CHAMPVA Inhouse Treatment Initiative” (CITI) program. Services provided under this program are space-available after the needs of veterans are met. Services may be episodic, that is, they may not be available at all times, nor may the same services be available from day to day. CHAMPVA beneficiaries who use a CITI facility have no cost-share for the services they receive.

OVERSEAS MEDICAL BENEFITS - THE FOREIGN MEDICAL PROGRAM

The Foreign Medical Program (FMP) is a program for veterans who live or travel overseas. Under the FMP, Veterans Affairs will pay 100% of the charges for any health care the veteran needs that is associated with a service-connected disability.

Services in most foreign countries must be authorized by the Foreign Medical Program Office, P.O. Box 65021, Denver, CO 80206-9021, U.S.A. The phone number is: 303-331-7590. Services in Canada must be authorized by the VA Medical Center in White River Junction, VT 05009-0001, U.S.A. The phone number is: 802-296-6379. Services in the Philippines must be authorized by the VA office in Pasay City. The phone number is: 011-632-833-4566.
THE UNIFORM BENEFITS PACKAGE

Public Law 104-262, the “Veterans’ Health Care Eligibility Reform Act of 1996,” simplified the process to receive services and paved the way for a standard health benefits plan, VA’s “Uniform Benefits Package,” which emphasizes preventive and primary care and offers a full range of outpatient and inpatient services that include:

- Preventive services, including immunizations, screening tests and health education and training classes
- Primary health care
- Diagnosis and treatment
- Surgery, including outpatient surgery
- Mental health and substance abuse treatment
- Home health care
- Respite, hospice and palliative care
- Urgent and limited emergency care services in VA facilities
- Drugs and pharmaceuticals
- Nursing home care

Nursing Home Care

Nursing care in VA or private nursing homes may be provided for veterans who are not acutely ill and not in need of hospital care. VA will provide needed nursing home care to any veteran in need of such care for a service-connected (SC) disability and to any veteran who needs such care and who has a combined SC disability rating of 70 percent or more. In addition, if space and resources are available, VA may also provide VA nursing home care to other veterans who may be subject to copayments based on their ability to pay. Veterans with a SC disability are given first priority for nursing home care. Applicants who may be provided nursing home care without an income eligibility assessment include veterans with a compensable, SC disability; and veterans who were exposed to and require nursing home care for a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, or for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 USC 1710(e).

PL 106-117, the “Veterans Millennium Healthcare and Benefits Act,” created additional provisions to the “Uniform Benefits Package” that went into effect on May 29, 2000. A restricted emergency care benefit provides a safety net for some enrolled veterans who have no other means of paying a private facility emergency bill. VA will be the “payor of last resort” for emergency services rendered for nonservice-connected conditions at non-VA facilities for qualifying veterans. Specified criteria must be met, such as, but not limited to:

- veterans must be enrolled and have been provided care by a VA provider within the last 24 months
- the emergency must be life threatening as determined by a prudent lay person
- there is no other form of health care or legal recourse to cover the expenses
- VA or other Federal facilities were not reasonably available at the time of the emergency event
Veterans should contact their local facility or a DSO to verify their eligibility for this benefit.

**Restrictions Apply to Hearing Aids and Eyeglasses**
Hearing aids and eyeglasses usually require a service-connected disability rating of 10% or more. They are usually not provided to nonservice-connected veterans for generally-occurring hearing or vision loss. Veterans should contact the nearest health care facility to determine their entitlement.

**Services Not a Part of the “Uniform Benefits Package”**
An enrolled veteran may be eligible for some services that are not part of the “Uniform Benefits Package.” These services were not changed by the Eligibility Reform legislation and a veteran must still qualify for them on a case-by-case basis and specific restrictions apply to each. The services include:

- Limited nursing home care
- Limited domiciliary care
- Limited non-VA hospitalization or health care services for veterans with special eligibility
- Limited dental care
- Readjustment counseling
- Adult day health care
- Homeless programs
- Sexual trauma counseling

In addition, VA has comprehensive specialized programs for blind rehabilitation and the treatment of veterans with spinal cord injury.

**READJUSTMENT COUNSELING**
Readjustment counseling is provided at Vet Centers to help veterans resolve war-related psychological traumas and to help them achieve a successful post-war readjustment to civilian life. Vet Centers are located in local communities, attempting to access the veteran population in settings that are as stress-free as possible. Assistance typically includes readjustment counseling, spouse/significant others counseling, alcohol/drug abuse counseling, employment assistance, psychological services, benefits counseling and homeless veteran assistance. Counseling also is provided to all veterans who have experienced acts of sexual assault or harassment while on active duty. In addition to counseling, the Vet Centers provide extensive community outreach and brokering of services for veterans. Eligible for counseling are veterans who served on active duty in a combat theater during WW II, the Korean Conflict, the Vietnam Era, the Gulf War, or the campaigns in Lebanon, Grenada, Panama, Somalia, Bosnia and Kosovo. Vietnam Era veterans not in the war zone: August 5, 1964 - May 7, 1975, are eligible as long as they access care at a Vet Center by December 31, 2004.

One common readjustment problem is post-traumatic stress disorder, or PTSD. This refers to such symptoms as nightmares, intrusive recollections or memories, flashbacks, anxiety or sudden reactions after exposure to traumatic conditions. Readjustment difficulties may affect functioning in school, family or work. In areas distant from Vet Centers or VA medical facilities, veterans may obtain readjustment counseling from...
private-sector professionals who are on contract with VA. To locate a contract provider, contact the nearest Vet Center.

HEALTH CARE ENROLLMENT
To receive health care, veterans generally must be enrolled. Veterans do not have to be enrolled if they: (1) have a service-connected (SC) disability of 50 percent or more; (2) want care for a compensable disability during the twelve-month period following discharge; or (3) want care for a SC disability. To allow for better planning in the use of health care resources, however, these three categories of veterans also are urged to enroll.

A veteran may apply for enrollment at any VA health care facility or veterans benefits office at any time, in any year. A form, “Application for Health Benefits,” VA Form 10-10EZ, must be completed and can be submitted in person or by mail. Make sure the application form is signed, otherwise, it can not be processed for enrollment. Application forms can be obtained by visiting, calling or writing any VA health care facility or veterans benefits office, or by calling toll-free 1-877-222-VETS (8387). Application via the Internet is also possible. Additional information on enrollment, including enrollment forms and on-line applications, can be found on the Web at http://www.va.gov. Again, this form requires a signature, and a signed copy of the form must be sent to VA before enrollment is completed. Follow the instructions under SIGNATURE NEEDED.

As enrollment was established, an application for care may have been automatically processed for some veterans. Due to long waiting lists for initial appointments for new enrollees, modification of the enrollment process during 2002 has made those veterans rated 50% or greater eligible for their initial appointment within 30 days. For a new VA patient, the application for enrollment will be generated automatically as part of the patient registration process at the first visit to a VA health care facility. VA will send a letter from the VA Health Eligibility Center notifying the veteran of his/her priority group. However, this letter is not necessary to initially receive treatment. Check with the local VA health care facility if there is uncertainty about a veteran’s enrollment status.

Once enrolled, most veterans will remain enrolled from year to year without further action on their part. However, certain veterans are required to provide income information to determine their priority level. These veterans will be mailed VA Form 10-10EZ for completion on an annual basis for re-enrollment. Failure to update this information could adversely affect a veteran’s enrollment status.

ENROLLMENT LEVELS
Priority groups were established to help ensure that VA resources are allocated to veterans with the highest priority of care. Enrollment levels are set according to the following eight Priority Groups established by Congress:

1. Veterans with service-connected conditions rated 50 percent or more disabling
2. Veterans with service-connected conditions rated 30 or 40 percent disabling
3. Veterans who are former POWs, veterans with disabilities rated 10 and 20 percent and veterans awarded special eligibility for disabilities incurred in treatment. Veterans
awarded a Purple Heart are placed into enrollment priority group 3 unless qualified for classification under a higher priority group (i.e., priority group 1 or 2)

4. Veterans who are receiving Aid and Attendance or housebound benefits and veterans who have been determined by VA to be catastrophically disabled

5. Nonservice-connected veterans and service-connected veterans rated zero percent, noncompensable disabled, whose annual income and net worth are below the established dollar thresholds

6. All other eligible veterans who are not required to make copayments for their treatment. This includes World War I and Mexican Border War veterans, veterans receiving care for disorders associated with exposure to toxic substances or environmental hazards while in service and compensable zero percent service-connected veterans. This group also includes veterans seeking care for disorders associated with service in the Gulf War and for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998

7. Veterans who agree to pay specified copayments with income and/or net worth above the VA Means Test and below the U.S. Department of Housing and Urban Development (HUD) geographic index

This category is further prioritized into the following Subcategories:
   a) Noncompensable zero percent service-connected veterans who were enrolled in the VA Health Care System on a specified date and who have remained enrolled since that date
   c) Nonservice-connected veterans who were enrolled in the VA Health Care System on a specified date and who have enrolled since that date
   e) Noncompensable zero percent service-connected veterans not included in Subpriority a above
   g) Nonservice-connected veterans not included in Subpriority c above

8. Veterans who agree to pay specified copayments with income and/or net worth above the VA Means Test and the HUD geographic index

This category is further prioritized into the following Subcategories:
   a) Noncompensable zero percent service-connected veterans enrolled as of January 14, 2003 and who have remained enrolled since that date
   c) Nonservice-connected veterans enrolled as of January 14, 2003 and who have remained enrolled since that date
   e) Noncompensable zero percent service-connected veterans applying for enrollment after January 14, 2003
   g) Nonservice-connected veterans applying for enrollment after January 14, 2003

FINANCIAL ASSESSMENT

Nonservice-connected veterans and those rated 0% non-compensable service-connected are subject to the VA “means test” provisions of the enrollment application. The “means test” eligibility assessment includes information about Social Security, U.S. Civil Service retirement, U.S. Railroad Retirement, military retirement, unemployment insurance, any other retirement income, total wages from all employers, interest and dividends, workers’ compensation, black lung benefits and any other gross income for the calendar year prior to application for care. Also considered are assets such as the market value of stocks,
bonds, notes, individual retirement accounts, bank deposits, savings accounts and cash. In making the assessment, the income of the patient’s spouse and dependent children also are considered.

“Means test” thresholds are adjusted annually and announced in January. Veterans below the means test threshold are enrolled in Priority Group 5 based on their inability to defray the cost of their care. Veterans above the VA threshold but below the HUD geographic index are enrolled in Priority Group 7 and must agree to pay specified copayments for their treatment. Veterans whose income and net worth are above the HUD index can declare on the 10-10EZ their agreement to make copayments without reporting the specifics of their income and net worth, and will be assigned to Priority Group 8.

COPAYMENTS

Nonservice-connected (NSC) veterans with income and net worth above either “means test” threshold and zero percent service-connected noncompensable veterans needing care for any NSC disability are subject to the following copayments:

- The provisions of title 38, United States Code (USC) 1710(f) provide that the copayment for inpatient hospital care during any 365-day period is:
  1. The lesser of:
     a. The inpatient Medicare deductible for the first 90 days of care and one-half of the inpatient Medicare deductible for each subsequent 90 days of care during a 365-day period; or
     b. VA’s cost of providing the care and
  2. $10 for every day the veteran receives inpatient hospital care.

- As a result of PL 106-117, the “Veterans Millennium Healthcare and Benefits Act,” VA has developed a copayment structure for extended care (both institutional and non-institutional). There will be an annual cap on veteran total copayments. The copayments for institutional care will be determined by the veteran's ability to pay but will not exceed $97 per day beginning after the 20th consecutive day of admission. The outpatient copayment will be $5 per visit.

- A three-tiered copayment system will be effective for all services provided on an outpatient basis. The copayments will be based on primary care visits ($15), specialty care visits ($50) and visits with no copayment designations as determined by VA’s Decision Support System (DSS) stop-codes. The use of these stop-code designations and the related copayments are consistent for all facilities. Medical centers will not have any authority to charge a different copayment for services.

  a. If a veteran has one or more primary care encounters on the same day and no specialty care encounter on that day, the primary care copayment for one visit is charged for that day. If a veteran has one or more primary care encounters and one or more specialty care encounters on the same day, the specialty care copayment for one visit is charged for that day.

  b. If a veteran is required to make a copayment for extended care services that were provided either directly by VA or obtained for VA by contract on the same day as having an outpatient visit, the outpatient copayment will not be charged. The extended care copayment will be charged for those extended care services.
PRESCRIPTIONS
Veterans receiving medication for nonservice-connected conditions are responsible for a prescription copayment. The fee is $7.00 for each 30-day supply or less of medication received. There is an annual cap on total prescription copayments of $840.

Veterans rated service-connected 50% or more are exempt from prescription copayments. Other veterans may be exempt based on their income if it is below the maximum annual “Rate of Pension,” as defined below:

Prescription Copayment Threshold
Veteran with no dependents - $9,690
Veteran with 1 dependent - $12,692
Add $1,653 for each additional dependent

INSURANCE COMPANY BILLING
When applying for medical care, all veterans will be asked to provide information pertaining to health insurance coverage, including policies held by spouses. VA is authorized to submit claims to insurance carriers for the recovery of costs for medical care provided to nonservice-connected veterans and service-connected veterans for non-service-connected conditions. Veterans will not be held responsible for the deductible requirements and copayments established by their insurance carriers. They also will not be responsible for portions of an insurance claim not covered by the policy. Veterans above certain income levels, however, are responsible for VA copayments as required by Federal law.

Veterans with a billing problem should contact the Medical Care Cost Funds (MCCF) office at the treating VA medical center.

BENEFICIARY TRAVEL
Veterans may be eligible for payment or reimbursement for travel costs to receive VA medical care. Mileage reimbursement is paid at $.11 per mile and is subject to a deductible of $3 for each one-way and an $18 per month maximum cap. Two exceptions to the deductible are travel for a compensation or pension examination and travel by special modes of transportation, such as an ambulance or a specially equipped van. Beneficiary travel payments may be made to the following:

a. Veterans whose service-connected disabilities are rated at 30 percent or more
b. Veterans traveling for treatment of a service-connected condition
c. Veterans who receive a VA pension
d. Veterans traveling for scheduled compensation or pension examinations
e. Veterans whose income does not exceed the maximum VA pension rate
f. Veterans whose medical condition requires use of a special mode of transportation, if the veteran is unable to defray the costs and travel is pre-authorized. If the medical condition is a medical
emergency, travel need not be pre-authorized when a delay to obtain authorization would be hazardous.

For special mode transportation purposes, VA regulation 38 CFR 17.143(e) defines a veteran as “unable to defray the cost of travel” if:

A veteran or other person shall be considered unable to defray the expenses of travel if

a. Annual income for the year immediately preceding the application for benefits does not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or

b. The person is able to demonstrate that due to circumstances such as loss of employment, or incidence of a disability, income in the year of application will not exceed the maximum annual rate of pension which would be payable if the person were eligible for pension; or

c. The person has a service-connected disability rated at least 30 percent; or

d. The person is traveling in connection with treatment of a service-connected disability.
VI. DISABILITY CLAIMS

ROLE OF THE POST SERVICE OFFICER
The Post Service Officer’s (PSO) primary responsibility is to help the Department Service Officer (DSO) protect a claimant’s interests. This means doing nothing that could have an adverse effect on his/her claim, including providing information or advice that may not be accurate or proper.

The Post Service Officer should work with and through The American Legion Department Service Officer and the staff of Legion-accredited representatives located at the VA regional office in the filing of any claim or evidence in support of a claim or appeal. Similarly, the PSO should strongly advise claimants that it is to their advantage to cooperate with and work through the DSO. Only the DSOs and their staff have direct access to a claimant’s VA claims folder (“C-file”) and can take official action on the claimant’s behalf.

CODE OF PROCEDURE
The VA&R Commission has established certain formal policies and procedures which Post Service Officers and Department Service Officers should follow in any claim for VA benefits. This “Code of Procedure” safeguards the interests of the National Organization, the Departments and Posts in carrying out The American Legion’s program of service to veterans and their families.

The following are essential elements of the Code:

POWER OF ATTORNEY (VA FORM 21-22)
This form, “Appointment of Veterans Service Organization as Claimant’s Representative” or “POA,” notifies the Department of Veterans Affairs (VA) what organization is officially authorized to represent a particular claimant. VA recognizes one organization at a time as a claimant’s representative.

With certain exceptions, a POA may be accepted from:

a. the veteran or, if incompetent, the veteran’s legal guardian, wife, parent, near relative, or manager of an institution in which the veteran is maintained;

b. a deceased veteran’s dependents or designated beneficiaries, or, if incompetent, the fiduciary;

c. persons entitled to reimbursement for expenses incurred in connection with the veteran’s last illness and burial.

LIMITATIONS OF REPRESENTATION
There are certain limitations that may affect The American Legion’s efforts to assist a claimant:

1. Character of Discharge: Almost always, an “Honorable” or “General under Honorable Conditions” is required to be eligible for most VA benefits. The DSO should be consulted about less than honorable discharges.

2. Representation and Power of Attorney: American Legion “representation” can only be provided by a professional service officer who has been “accredited” by the VA General Counsel. To obtain Legion representation and all related services requires the filing of VA Form 21-22, “Appointment of Veterans Service Organization as Claimant’s
Representative.” Once the form is a part of the VA record, VA will provide the DSO with a copy of all correspondence sent to the claimant.

**Note**

It is contrary to the policy of The American Legion to accept POA from any person whose interests are detrimental or adverse to those of the veteran regardless of the fact The American Legion does not hold the veteran’s POA.

It is also contrary to the policy of The American Legion to participate in a “contested claim,” that is, one in which there are two persons seeking or claiming the same benefit, such as two former spouses.

**PROHIBITION ON THE SOLICITATION OF A FEE FOR SERVICE**

Any American Legion service officer who directly or indirectly solicits, contracts for, or receives any fee or compensation, or wrongfully withholds from any claimant or beneficiary any part of a benefit due, shall by law be fined or imprisoned for not more than one year or both.

**CONFIDENTIAL NATURE OF VA RECORDS**

Under the Privacy Act, any information or records in a VA claim may not be disclosed by any American Legion service officer without the claimant’s expressed authorization.

**CLAIM FORMS, DOCUMENTATION AND CORRESPONDENCE**

Post Service Officers should not hold such material. To avoid delays and potentially lost benefits, all claims or correspondence submitted to the PSO should be immediately directed to the DSO at the VA regional office having jurisdiction over the geographic area where the claimant lives.

*It is also important that no material or evidence ever be submitted directly to VA.* Should a benefit claim be denied, the PSO should advise claimants to contact the DSO right away, before initiating an appeal or taking further action on their claim.

**DISABILITY CLAIMS PROCEDURE**

**Service-connected Disability**

VA pays compensation (“comp”) for a current condition or disability that is related to the veteran’s period of active military service. Sufficient evidence must be submitted to show that the claimed disability was incurred during (i.e., acquired) or aggravated (made worse) by military service. The disability does not have to be related to combat. Income or assets do not affect the payment of compensation benefits.

There are five ways that service connection can be awarded:

1. There is a current condition which can be directly linked to a recorded injury that happened or a disease suffered from while the veteran was in service; or

2. There is a current condition whose symptoms began shortly after discharge, usually within one year of separation. VA can consider that the condition began during service; or

3. There is a current condition that existed before entry into service and which became worse or was aggravated while in service; or
4. There is a current condition that was caused or aggravated by a service-connected condition; or

5. There is a current condition that began years after discharge from service but was caused by something that happened during service, such as cancer related to exposure to radiation, asbestos, or Agent Orange.

VA may also recognize a current condition as if it were service-connected when:

a. The condition resulted from an injury or aggravation as the result of faulty VA medical care or involvement in a VA vocational rehabilitation program.

b. The loss, or loss of use, of one of a pair of organs (such as a kidney, lung, eye, or ear) or an extremity (hand or foot) is service-connected and the other paired organ or extremity becomes disabled as the result of a nonservice-connected cause.

Evidence Needed to Establish a Claim for Service Connection
The Post Service Officer can help the veteran assist the Department Service Officer in developing the necessary background information and supporting evidence.

It may be to the veteran’s advantage to know what information is contained in his or her service medical records (SMRs) or in the C-file, if one exists. The veteran is entitled to a copy of any of these records. Service medical records can be requested by submitting Standard Form 180, “Request Pertaining to Military Records,” or a letter with identifying information to the National Personnel Records Center (NPRC), 9700 Page Ave., St. Louis, MO 63132-5100. The Department Service Officer can provide this form. The veteran can also request a copy of the C-file by sending a letter to the VA regional office that says: “I am exercising my rights under the Privacy Act to obtain a free copy of all my VA records.”

The basic requirements for a claim for service connection are:

a. There must be a currently diagnosed medical or psychiatric condition or disability; and

b. There is information or records that “something” happened in service – an injury or disease was incurred or aggravated – or shortly after separation; and

c. There is medical opinion linking the current diagnosis with what happened in service.

FILING A CLAIM FOR SERVICE CONNECTION
In filing an initial claim for service connection, the veteran is required to submit VA Form 21-526, “Application for Compensation or Pension.” The Post Service Officer can assist the veteran in completing this form and compiling the additional supporting documentation that should be submitted to the Department Service Officer for review before it is formally filed with VA.

The following is a list of some of the important documents and information that will be helpful in preparing a “formal claim”:
• A copy of the DD-214, “Certificate of Release or Discharge from Active Duty”

• Copies of any service medical records or other service records

• Copies of any private medical records

• Information on all dependents, including Social Security numbers and copy of marriage certificate(s), divorce decree(s) and children’s birth certificates

• A statement describing in detail what happened in service, history of symptoms and in-service and post-service treatment, if any, as well as names of individuals with knowledge of this and how this is related to the claimed current disability

• A statement, if possible, from people (family, friends, co-workers) who observed your symptoms since service

• Information on any application for non-VA disability benefits (Social Security, Workmen’s Compensation, etc.); and

• A full account of family income and assets - this is needed to help the Department Service Officer determine if a claim for nonservice-connected disability pension should also be pursued, as possibly a greater benefit.

It may take some time for the veteran to fully complete the VA Form 21-526 and obtain the additional needed evidence. To protect the veteran’s interest and establish the earliest possible date of claim for future benefit payment purposes, the Post Service Officer should advise the veteran to file an “informal claim” through the Department Service Officer. An informal claim can be a simple letter that basically says:

“I am applying for service connection for ....... and any other benefits to which I may be entitled. Additional evidence to be submitted at a later date. Signed...”

The veteran then has one year within which to file a formal application (VA Form 21-526) along with the necessary evidence.

**COMPUTING COMPENSATION BENEFITS**

Once VA recognizes that a current condition is service-connected, a determination must be made as to the severity of the current disability and an appropriate percentage rating from zero to one hundred percent assigned. The amount of compensation payable is based on the disability percentage for ratings of ten through one hundred. Veterans rated 30% or more are entitled to an additional dependent’s allowance.

A zero percent evaluation is non-compensable, since the condition is considered non-disabling. However, it is still valuable, because the veteran is entitled to free VA inpatient and outpatient medical treatment for that condition. It also entitles the veteran to other advantages.

**CLAIMING AN INCREASE IN A SERVICE-CONNECTED DISABILITY**

Once VA has determined that a disability is service-connected, the veteran can “reopen” the claim at any time he or she believes the disability has worsened or is more severe, seeking a higher disability rating and increased compensation.
CAUTION: The Post Service Officer should advise the veteran that, as a result of the request for re-evaluation, VA may determine the current level is now more severe as claimed, is essentially unchanged, or that it has improved and can reduce the veteran’s rating and compensation benefits.

The DSO should be consulted before the veteran takes any action to reopen his or her claim.

WHAT IF A CLAIM FOR SERVICE CONNECTION OR AN INCREASED RATING IS DENIED
If a claim has been denied, the Post Service Officer should contact the Department Service Officer for information and guidance, before advising the veteran to take any action. There are several possible options: file an appeal (see Chapter VIII, “The Appeals Procedure”), request a personal hearing at the regional office, or try to get additional evidence to reopen the claim.

A personal hearing before a VA Decision Review Officer at the regional office can be requested to hear testimony from the veteran on his or her claim. Additional evidence can also be submitted at that time. The Department Service Officer will provide representation at this hearing. The Post Service Officer should advise the veteran to contact the Department Service Officer to discuss the personal hearing option. If the veteran does not file a Notice of Disagreement (for more on the Notice of Disagreement see Chapter VIII, “The Appeals Procedure”) or request a personal hearing within one year of the denial notice, the denial decision becomes final.

REOPENING A PREVIOUSLY DENIED CLAIM
In order for VA to “reopen” a finally denied claim, i.e., take another look at the case, the veteran must submit “new and material evidence.” “New” means additional medical evidence or other records, which have not been previously considered and “material” means that it directly relates to the issue in the claim. If the VA regional office determines this evidence is both new and material, the entire claim will be reviewed and re-adjudicated. If benefits are granted, they would be paid based on the new effective date of the reopened claim. If reopening is denied, this can be appealed. The veteran should be advised to consult with the Department Service Officer before initiating an appeal.

NONSERVICE-CONNECTED DISABILITY PENSION
VA nonservice-connected disability pension is an income support program available to those veterans who:

a. Served 90 or more continuous days of active duty, one of which was during wartime; and
b. Have established financial need; and
c. Are age 65 or permanently and totally disabled.

VA will evaluate all of the veteran’s disabilities in determining whether he or she is totally disabled, including if the veteran is able to perform substantial work and whether the total disability is permanent or not.

Evidence Needed to Support a Claim for Nonservice-connected Disability Pension
The Post Service Officer can help the Department Service Officer in developing the following supporting information and documentation in support of the claim for pension:

- A copy of the “Certificate of Release or Discharge from Active Duty” (DD-214)
- A copy of any private medical records, including a written account of all medical expenses that were not covered by insurance for the last 12 months and an estimate of those medical expenses which would not be covered by insurance in the next 12 months
• A statement of income from all sources and assets (net worth), excluding residence

• A list of all dependents, including spouse and minor children or children in college, along with Social Security numbers, marriage certificate(s) and divorce decree(s)

• If available, a copy of the decision from Social Security finding the veteran permanently and totally disabled; and

• A statement by the veteran indicating the reasons why he or she is permanently and totally disabled and when this occurred.

If VA denies entitlement to pension, the veteran has the right to appeal. However, before any action is taken to initiate an appeal, the Post Service Officer should consult the Department Service Officer for guidance.
VII. SURVIVORS BENEFITS

DEPENDENCY AND INDEMNITY COMPENSATION

Dependency and Indemnity Compensation (DIC) payments may be available for surviving spouses, unmarried children under 18, helpless children, those between 18 and 23 if attending a VA-approved school and low-income parents of servicemembers or veterans who died from:

a. a disease or injury incurred or aggravated while on active duty or active duty for training; or

b. an injury incurred or aggravated in line of duty while on inactive duty training; or

c. a service-connected disability.

DIC payments also may be authorized for survivors of veterans who were totally service-connected disabled at time of death but whose deaths were not the result of their service-connected disability. Payments under this provision are subject to offset by the amount received from judicial proceedings brought against VA on account of the veteran’s death. The survivor qualifies if:

a. the veteran was receiving compensation for a disability continuously rated totally disabling for a period of 10 or more years immediately preceding death (or would have been receiving such compensation except for clear and unmistakable error in a VA or BVA decision). NOTE: clear and unmistakable error has a special legal meaning, please consult your DSO; or

b. the veteran was receiving compensation for a disability continuously rated totally disabling for a period of not less than five years from the date of discharge from military service (or would have been receiving such compensation except for clear and unmistakable error in a VA or BVA decision); or

c. the veteran was a former prisoner-of-war who died after September 30, 1999, and who was receiving compensation for a disability rated totally disabling for at least one year immediately preceding death (or would have been receiving such compensation except for clear and unmistakable error in a VA or BVA decision).

For DIC eligibility, death cannot be the result of willful misconduct. Also, the veteran’s discharge must have been under conditions other than dishonorable. If a spouse remarries, eligibility for DIC benefits may be restored if the marriage is terminated later by death or divorce.

DIC PAYMENTS TO SURVIVING SPOUSE

Surviving spouses of veterans who died on or after Jan. 1, 1993, receive $948 a month for 2003. For a spouse entitled to DIC based on the veteran’s death prior to Jan. 1, 1993, the amount paid is $948 a month or the amount based on the veteran’s pay grade, whichever is higher.
DIC PAYMENTS TO PARENTS AND CHILDREN
The monthly payment for parents of deceased veterans depends upon their income. There are additional DIC payments for dependent children. Where there is no surviving spouse, an unmarried child under age 18, or between the ages of 18 and 23 and attending school, may be eligible.

SPECIAL PROVISIONS RELATING TO MARRIAGE
Whenever a widow/widower of a veteran files for gratuitous death benefits under laws administered by VA, it must be established that she/he, without knowledge of any legal impediment, entered into a marriage with the veteran which, but for a legal impediment, would have been valid. It must also be shown that the widow/widower cohabited with the veteran one or more years immediately before his or her death, or for any period of time if a child was born of the purported marriage or was born to them before such marriage. The purported marriage shall be deemed to be a valid marriage, but only if no claim has been filed by a legal widow of such veteran who is found to be entitled to such benefits. No duplicate payments shall be made.

Where a widow has been legally married to a veteran more than once, the date of original marriage will be used in determining whether the statutory requirement as to the date of marriage has been met. Validity of a marriage for the purpose of all laws administered by VA will be considered according to the law of the place where the parties resided at the time of the marriage, or the law of the place where the parties resided when the right to benefits accrued.

The marriage of a child of a veteran shall bar recognition of such child as the dependent child of the veteran for benefits purposes.

SPINA BIFIDA ALLOWANCE
Individuals with Spina Bifida who are children of Vietnam veterans are eligible for vocational training, health care and a monthly allowance. Contact a VA regional office to apply for medical treatment or benefit payments. The monthly allowance is set at three levels based on the degree of disability suffered by the child. The three levels are based on neurological manifestations that define the severity of disability: impairment of the functioning of the extremities, impairment of bowel or bladder function and impairment of intellectual functioning.

SPECIAL ALLOWANCES
Surviving spouses and parents receiving DIC may be granted a special allowance to pay for Aid and Attendance by another person if they are patients in a nursing home or require the regular assistance of another person. Surviving spouses receiving DIC may be granted a housebound special allowance if they are permanently housebound.

RESTORED ENTITLEMENT PROGRAM FOR SURVIVORS
Survivors of veterans who died of service-connected causes incurred or aggravated prior to Aug. 13, 1981, may be eligible for special benefits. This benefit is similar to the benefits for students and surviving spouses with children between ages 16 and 18 that were eliminated from Social Security benefits. The benefits are payable in addition to any other benefits to which the family may be entitled. The amount of benefit is based on information provided by the Social Security Administration.
DEATH PENSION
Surviving spouses and unmarried children of deceased veterans with wartime service may be eligible for a pension based on need. Spouses must not have remarried and children must be under age 18, or under age 23 if attending a VA-approved school. Pension is not payable to those with estates large enough to provide maintenance. The veteran must have been discharged under conditions other than dishonorable and must have had 90 days or more of active military service, at least one day of which was during a period of war, or a service-connected disability justifying discharge for disability. If the veteran died in service but not in line of duty, benefits may be payable if the veteran had completed at least two years of honorable service. Children who became incapable of self-support because of a disability before age 18 may be eligible for a pension as long as the condition exists, unless the child marries or the child’s income exceeds the applicable limit. A surviving spouse who is a patient in a nursing home, is in need of the regular Aid and Attendance by another person or is permanently housebound may be entitled to higher income limitations or additional benefits.

The “Improved Pension” program provides a monthly payment to bring an eligible person’s income to a support level established by law. The payment is reduced by the annual income from other sources such as Social Security paid to either the surviving spouse or dependent children. Medical expenses may be deducted from countable income. Pension is not payable to those who have assets that can be used to provide adequate maintenance.

DEPENDENTS EDUCATION
Educational assistance benefits are available to spouses who have not remarried or for those who have remarried and that marriage was terminated and children of:

a. Veterans who died or are permanently and totally disabled as the result of a disability arising from active service in the Armed Forces
b. Veterans who died from any cause while rated permanently and totally disabled from service-connected disability
c. Servicemembers listed for more than 90 days as currently missing in action or captured in line of duty by a hostile force
d. Servicemembers listed for more than 90 days as currently detained or interned by a foreign government or power

Benefits may be awarded for pursuit of associate, bachelor or graduate degrees at colleges and universities - including independent study, cooperative training and study abroad programs. Courses leading to a certificate or diploma from business, technical or vocational schools also may be taken. Benefits may be awarded for apprenticeships, on-job training programs and farm cooperative courses. Benefits for correspondence courses under certain conditions are available to spouses only. Secondary-school programs may be pursued if the individual is not a high-school graduate. An individual with a deficiency in a subject may receive tutorial assistance benefits if enrolled half-time or more. Deficiency, refresher and other training also may be available. Payments are made monthly. A person may receive educational assistance for full-time training for up to 45 months or the equivalent in part-time training. Children generally must be between 18 and 26 to receive education benefits, though extensions may be granted.
EDUCATIONAL LOANS
Loans may be available to spouses who qualify for educational assistance. For information contact a VA Education Regional Processing Office at 1-888-GI-Bill 1 (888-442-4551).

HOME Loan Guaranty
A VA loan guaranty to acquire a home may be available to an unremarried spouse or a spouse who has remarried but that marriage was terminated to a veteran or servicemember who died as a result of service-connected disabilities, or to a spouse of a servicemember who has been officially listed as missing in action or as a prisoner of war for more than 90 days. Spouses of those listed as prisoners of war or missing in action are limited to one loan.

MONTGOMERY GI BILL (ACTIVE DUTY) DEATH BENEFIT
VA will pay a special Montgomery GI Bill death benefit to a designated survivor in the event of the service-connected death of an individual while on active duty or within one year after discharge or release. The deceased must either have been entitled to educational assistance under the Montgomery GI Bill program or a participant in the program who would have been so entitled but for the high school diploma or length-of-service requirement. The amount paid will be equal to the participant’s actual military pay reduction less any education benefits paid.
VIII. THE APPEALS PROCEDURE

THE BOARD OF VETERANS APPEALS AND THE U.S. COURT OF APPEALS FOR VETERANS CLAIMS

BACKGROUND
Any decision by VA can be appealed! As with any other type of claims action, it is important that the claimant and the Post Service Officer work with and through the Department Service Officer (DSO). Examples of unfavorable action that can be appealed are:

- denial of service connection for a veteran’s disability or death
- rating assigned for a veteran’s service-connected disability
- the effective date VA benefits are paid
- denial of pension benefits due to excess net worth
- denial of medical care or payment of medical care at VA expense

APPEAL TO THE BOARD OF VETERANS APPEALS (BVA)
An appeal is initiated by filing a letter with the regional office which simply states, “I disagree with the VA decision(s) dated (specify date) which denied the claim for (list specific issues to be appealed).” This letter is a “Notice of Disagreement” or NOD. There is no specific VA form for this purpose. The NOD is the first step in an appeal. It must be postmarked within one year of the date of the VA regional office’s letter notifying of its decision, otherwise, that decision becomes final. If the filing deadline is missed, the claimant’s only option is to try to reopen the claim with new and material evidence that has not been previously considered by VA.

The second step in an appeal is for the regional office to issue to the claimant a Statement of the Case (SOC). This should describe in some detail the evidence considered, the laws that apply to the claim and the reason(s) why the claim was denied. If additional evidence is submitted, a Supplemental Statement of the Case (SSOC) will be issued.

The third step in the appeals process involves VA Form 9, “Appeal to the Board of Veterans’ Appeals.” This form is included with the Statement of the Case. The claimant has 60 days from the date stamped on the cover letter of the Statement of the Case or one year from the date of the regional office decision, whichever is later, to file a Form 9. In some cases, where additional evidence is submitted after the time limits expire, a 60-day extension to file a Form 9 may be allowed. The rules are complicated, so it is very important for the claimant to work with an accredited veteran’s service officer toward submitting his or her Form 9 on time.

On the Form 9 it is not necessary for the claimant to make any statements about what specifically is wrong with the regional office’s decision. Many appeals have been lost because the veteran (or his representative) made an inappropriate or irrelevant argument...
on the Form 9. The claimant should simply restate the issues on appeal along with a short explanation of why he or she believes they deserve the benefits sought. VA Form 9 has a box in which to indicate whether or not a personal hearing is requested at the Board of Veterans’ Appeals in Washington, D.C., before a Traveling Section of the Board at the regional office or a video conference hearing at the RO with a Board member in Washington, D.C. Travel to any such hearing is at the claimant’s expense.

The fourth step in the appeal is a review by The American Legion’s Appeals Unit. After the case is received at the Board of Veterans’ Appeals in Washington, DC from the regional office, it will be referred to the Legion appeals staff for a thorough review for error, omission, lack of development, etc., and preparation of a written appeals brief.

The final step in the appeal is a decision by the BVA. A written decision is issued which discusses the evidence considered, the applicable law and regulations and the reasons and bases for the Board’s decision. There are four possible outcomes:

- the appeal is granted
- the appeal is denied
- the appeal is remanded to the VA regional office for further development and re-adjudication
- the appeal can be dismissed, due to the claimant’s death or, rarely, an inadequate VA Form 9

A BVA denial is not the end of the process. The veteran/claimant still has options:

- A Motion for Reconsideration may be filed with the Chairman of the Board of Veterans’ Appeals. There is no time limit. When there is a reasonable possibility that the Board made an error in applying the law to the facts of a case, the Chairman may appoint either a single or panel of Boardmember(s) to reconsider the appeal. Specific allegations of legal error must be made in the Motion; simply expressing disagreement with the Board’s decision is not enough to win reconsideration.

- A Motion for Revision based upon clear and unmistakable error (CUE) may be filed with the Chairman of the Board of Veterans’ Appeals. There is no time limit. CUE is defined where either the correct facts, as they were known at the time, were not before the adjudicator, or the statutory or regulatory provisions extant at the time were incorrectly applied. Specific allegations must be made in the motion. See your DSO for assistance.

- The previously denied claim may be reopened with new and material evidence; however, the effective date will be the date of the claim to reopen. At this writing, the laws and regulations concerning new and material evidence are changing. Please consult your DSO for the most current information.

- The veteran may appeal to the U.S. Court of Appeals for Veterans Claims.

U.S. COURT OF APPEALS FOR VETERANS CLAIMS

- Unfavorable decisions of the Board of Veterans’ Appeals may be appealed to the U.S. Court of Appeals for Veterans Claims (CAVC or Court) in Washington, D.C. The Court is independent of the Department of Veterans Affairs. Only claimants may seek a review by the Court; VA may not appeal BVA decisions by CAVC. Either party may appeal a CAVC decision to the U.S. Court of Appeals for the Federal Circuit and to the U.S. Supreme Court.

- The Notice of Appeal must be filed within 120 days of the date on the BVA decision and legal representation, including pro se (when a veteran represents himself), must be declared within 30 days from the issuance of a docket number. The American Legion does not represent claimants at the
Court, but does support the Veteran’s Pro-Bono Consortium (http://www.vetsprobono.org). This is a small group of attorneys who donate their time to represent a limited number of veterans who cannot afford to hire a lawyer. The Consortium will automatically screen the cases of appellants who have filed a Declaration of Financial Hardship along with their Notice of Appeal to the Court. Claimants who do not wish to go to the Court pro se should consult their DSO for information about representation at the Court. Also, the Court’s website (http://www.vetapp.uscourts.gov) has a listing of both attorney and non-attorney authorized practitioners.

- The Court’s decisions are published in West’s “Veterans Appeals Reporter” and in the WESTLAW and LEXIS on-line services. Decisions may also be found at the Court’s informative website (above), which among other things, explains the appeals process and enables the user to search case dockets, to read the Rules of Practice and Procedure and to download various forms.

- The Court’s address is: U.S. Court of Veterans Appeals for Veterans Claims, 625 Indiana Ave., NW, Suite 900, Washington, D.C. 2004-2950.