



*DEPARTMENT OF VETERANS AFFAIRS*  
**Veterans Benefits Administration**  
**Washington, D.C. 20420**

March 3, 2009

Director (00/21)  
All VA Regional Offices and Centers

In Reply Refer To: 211  
Fast Letter 09- 15

SUBJ: Overview of Changes Made By Public Law 110-389, the Veterans' Benefits Improvement Act of 2008.

## **Purpose**

On October 10, 2008, the President signed the Veterans' Benefits Improvement Act of 2008. This letter provides guidance regarding those statutory changes that impact delivery of VA disability benefits.

### **Overview of Changes**

#### **TITLE I--COMPENSATION AND PENSION MATTERS**

##### **Section 101. REGULATIONS ON CONTENTS OF NOTICE TO BE PROVIDED CLAIMANTS BY THE DEPARTMENT OF VETERANS AFFAIRS REGARDING THE SUBSTANTIATION OF CLAIMS.**

This section amends Title 38, United States Code (U.S.C.), Section 5103(a) to allow the Secretary to prescribe by regulation, the requirements relating to the content of the required notice to be provided under 38 U.S.C. § 5103(a) based on whether the claim concerned is an original claim, a claim for reopening a prior decision on a claim, or a claim for an increase in benefits.

The regulations will apply with respect to notices provided to claimants on or after the effective date of such regulations.

VBA ACTION: Regulations are being drafted. Guidance and revisions to the Veterans Claims Assistance Act letters will be provided when the regulations are effective.

##### **Section 102. JUDICIAL REVIEW OF ADOPTION AND REVISION BY THE SECRETARY OF VETERANS AFFAIRS OF THE SCHEDULE OF RATINGS FOR**

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#### DISABILITIES OF VETERANS.

This section amends 38 U.S.C. § 502 to allow judicial review for an action relating to the adoption or revision of the schedule of ratings for disabilities adopted under 38 U.S.C. § 1155. This involves changes to the rating schedule by rulemaking, not how the rating schedule is used to evaluate a specific veteran.

VBA ACTION: None.

#### **Section 103.** CONFORMING AMENDMENT RELATING TO NON-DEDUCTIBILITY FROM VETERANS' DISABILITY COMPENSATION OF DISABILITY SEVERANCE PAY FOR DISABILITIES INCURRED BY MEMBERS OF THE ARMED FORCES IN COMBAT ZONES.

This section ensures conformity for revisions to 38 U.S.C. § 1161 and 10 U.S.C. § 1212, as amended by the section 1646 of the Wounded Warrior Act (title XVI of Public Law 110-181). Section 1161 of title 38 is revised by striking “as required by section 1212(c) of title 10” and inserting “to the extent required by section 1212(d) of title 10.” Section 1212 of title 10 addresses disability severance pay and section 1212(d) discusses not deducting from compensation severance pay for disabilities incurred in combat zones.

VBA Action: All references to 10 U.S.C. § 1212(c) regarding severance pay for disabilities incurred in combat zones will be revised to 10 U.S.C. § 1212(d).

#### **Section 105.** EXTENSION OF TEMPORARY AUTHORITY FOR THE PERFORMANCE OF MEDICAL DISABILITY EXAMINATIONS BY CONTRACT PHYSICIANS.

This section extends the temporary authority in section 704(c) of the Veterans Benefits Act of 2003, Public Law 108-183, to provide disability examinations by contract physicians from December 31, 2009 to December 31, 2010.

VBA Action: None.

#### **Section 106.** ADDITION OF OSTEOPOROSIS TO DISABILITIES PRESUMED TO BE SERVICE-CONNECTED IN FORMER PRISONERS OF WAR WITH POST-TRAUMATIC STRESS DISORDER.

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This section amends 38 U.S.C. § 1112(b)(2), about presumptions relating to certain diseases and disabilities in former prisoners of war, is amended by adding osteoporosis as a presumptive disability if the Secretary determines that the veteran has post-traumatic stress disorder (PTSD).

VBA Action: Any claim for service connection for osteoporosis by a former prisoner of war, received on or after October 10, 2008, may be granted if the veteran also has PTSD and the other requirements of 38 U.S.C. § 1112(b) are met (see also Title 38, Code of Federal Regulations (CFR), Section 3.307).

Unrelated to the Veterans' Benefits Improvement Act of 2008, VA has also drafted an interim final rulemaking adding osteoporosis as a presumptive disability to 38 CFR § 3.309(c)(2) for former prisoners of war. When published, the former prisoner of war will be entitled to service connection for osteoporosis based in his/her internment even without a diagnosis of PTSD. The other requirements of 38 CFR §§ 3.307 and 3.309(c)(2) must also be met. This presumption will be effective the date of publication of the rulemaking. Additional guidance will be provided when the rulemaking is published.

We are advising you of both actions because each will have a different effective date.

## **TITLE II--MODERNIZATION OF DEPARTMENT OF VETERANS AFFAIRS DISABILITY COMPENSATION SYSTEM**

### **Subtitle A--Benefits Matters**

#### **Section 211. AUTHORITY FOR TEMPORARY DISABILITY RATINGS.**

This section creates a new statute: 38 U.S.C. § 1156, Temporary disability ratings, that provides for a temporary disability rating for a veteran who submits a claim within one year from discharge or release from active duty. The statutory provisions are similar to current 38 CFR § 4.28, Pre-stabilization rating from date of discharge from service, and 38 CFR § 4.129, Mental disorders due to traumatic stress. However, the statute requires the claim to have been filed not more than 365 days after discharge from active duty. The regulation requires the rating to be assigned in the immediate post-discharge period. Additionally, under the statute, the Secretary may extend a temporary disability rating assigned to a veteran beyond the applicable termination date if the Secretary determines that such an extension is appropriate.

VBA Action: None. 38 CFR § 4.28 and 38 CFR § 4.129 will be revised to reflect statutory language and time periods.

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## **Section 212. SUBSTITUTION UPON DEATH OF CLAIMANT.**

This section creates a new statute: 38 U.S.C. § 5121A, Substitution in case of death of claimant. It provides that if a claimant dies while a claim or appeal for any benefit under a law administered by the Secretary is pending, a living person who would be eligible to receive accrued benefits due to the claimant under section 5121(a) of this title may, not later than one year after the date of the death of the claimant, request to be substituted as the claimant for the purposes of processing the claim to completion.

The new statute allows a person who could be considered an accrued benefits claimant to substitute for a deceased claimant to continue adjudication of the deceased claimant's claim.

Effective Date- The provisions of the new statute apply with respect to the claim of any claimant who dies on or after October 10, 2008.

VBA Action: Regulations will be revised to include the new provision. Pending regulatory change, for requests to be substituted for a deceased claimant:

- A written claim for substitution must be filed within one year of the date of death of the claimant whose claim is at issue.
- The claimant who requests to be substituted must be someone who would be eligible under 38 CFR 3.1000, Entitlement under 38 U.S.C. § 5121 to benefits due and unpaid upon death of a beneficiary.
- Continue adjudication of the claim as if the original claimant was not deceased.
- If evidence required to substantiate the claim cannot be obtained due to the original claimant's death, the claim shall be rated based on the evidence of record. If an examination is required, consider 38 CFR § 3.655, Failure to report for Department of Veterans Affairs examination.
- The date of claim for the request for substitution will be the date the written request for substitution is received in VA.
- Any representation by a service organization, attorney or agent prior to death does not transfer to the substituted representative. If the individual desires representation he/she must execute a new power of attorney. When a request for substitution is received the new claimant should be advised of this fact.

## **TITLE III--LABOR AND EDUCATION MATTERS**

While there are a number of provisions in this section, the following sections potentially affect service center actions.

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### **Subtitle B--Education Matters**

**Section 321** amends 38 U.S.C. § 3512 to modify the period of eligibility for survivors' and dependents' educational assistance of certain spouses of individuals with service-connected disabilities total and permanent in nature.

This section changed the delimiting date (eligibility period) for one class of spouses who become eligible when the veteran has service-connected disabilities that are total and permanent in nature (P&T). That group is the spouses of veterans who become P&T disabled no later than three years after discharge. Those spouses have 20 years instead of 10 years to use their benefits. The 20-year eligibility period beginning date is the date the disability was so determined to be a total disability permanent in nature.

VBA Action for Subtitle B: The Education Service will update its guidance.

### **Subtitle C--Vocational Rehabilitation Matters**

**Section 331** amends 38 U.S.C. § 3105 by providing for a waiver of the 24-month limitation on program of independent living services and assistance for veterans with a severe disability incurred in the post-9/11 global operations period.

VBA Action for Subtitle C: The Vocational Rehabilitation and Employment Service will update its guidance.

## **TITLE IV--INSURANCE MATTERS**

**Section 402** amends 38 U.S.C. § 1965 to add stillborn children as insurable dependents under Servicemembers' Group Life Insurance.

**Section 403** amends 38 U.S.C. § 1967 to include certain members of Individual Ready Reserve for Servicemembers' Group Life Insurance.

VBA Action for Title IV: The Insurance Service will update its guidance.

## **TITLE V--HOUSING MATTERS**

While there are a number of provisions in this section, the following sections potentially affect service center actions.

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**Section 501** provides for a temporary increase in maximum loan guaranty amount for certain housing loans guaranteed by the Secretary.

VBA Action for Title V: The Loan Guaranty Service will update its guidance.

## **Reports and Studies**

The Veterans' Benefits Improvement Act of 2008 included provisions requiring VA to undertake several significant studies and provide reports. These studies and report requirements do not directly affect service center actions.

**Section 104.** REPORT ON PROGRESS OF THE SECRETARY OF VETERANS AFFAIRS IN ADDRESSING CAUSES FOR VARIANCES IN COMPENSATION PAYMENTS FOR VETERANS FOR SERVICE-CONNECTED DISABILITIES.

Not later than October 9, 2009, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report describing the progress of the Secretary in addressing the causes of unacceptable variances in compensation payments for veterans for service-connected disabilities.

**Section 213.** REPORT ON COMPENSATION OF VETERANS FOR LOSS OF EARNING CAPACITY AND QUALITY OF LIFE AND ON LONG-TERM TRANSITION PAYMENTS TO VETERANS UNDERGOING REHABILITATION FOR SERVICE-CONNECTED DISABILITIES.

Not later than May 8, 2009, the Secretary of Veterans Affairs shall submit to Congress a report on the findings of the Secretary as a result of the following studies:

- (1) The most recent study of the Secretary on the appropriate levels of disability compensation to be paid to veterans to compensate for loss of earning capacity and quality of life as a result of service-related disabilities.
- (2) The most recent study of the Secretary on the feasibility and appropriate level of long-term transition payments to veterans who are separated from the Armed Forces due to disability while such veterans are undergoing rehabilitation for such disability.

**Section 221.** PILOT PROGRAMS ON EXPEDITED TREATMENT OF FULLY DEVELOPED CLAIMS AND PROVISION OF CHECKLISTS TO INDIVIDUALS SUBMITTING CLAIMS.

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(a) The Secretary of Veterans Affairs shall carry out a pilot program to assess the feasibility and advisability of providing expeditious treatment of fully developed compensation or pension claims to ensure that such claims are adjudicated not later than 90 days after the date on which such claim is submitted as fully developed.

(b) The Secretary shall carry out a pilot program to assess the feasibility and advisability of providing to a claimant for whom the Secretary is required under 38 U.S.C. 5103(a), to provide notice of required information and evidence to such claimant and such claimant's representative, if any, a checklist that includes information or evidence required to be submitted by the claimant to substantiate the claim.

(c) Reports:

(1) First initial report: Not later than September 10, 2009, the Secretary shall submit to Congress a report on the pilot programs under subsection (a) and subsection (b).

(2) Second interim report: Not later than September 10, 2012, the Secretary shall submit to Congress a report on the pilot program under subsection (b).

(3) Final report: Not later than 180 days after the completion of each pilot program carried out under this section, the Secretary shall submit to Congress a final report on the feasibility and advisability of continuing or expanding the respective pilot program.

**Section 224. INDEPENDENT ASSESSMENT OF QUALITY ASSURANCE PROGRAM.**

(a) The Secretary shall enter into a contract with an independent third-party entity to conduct, during the three-year period beginning on October 10, 2008, an assessment of the quality assurance program.

(b) Report to Congress: Not later than October 10, 2012, the Secretary of Veterans Affairs shall submit to Congress a report containing the results and findings of the independent third-party entity described in 38 U.S.C. § 7731(c)(1), with respect to the assessment conducted under section 7731(c)(1).

**Section 225. CERTIFICATION AND TRAINING OF EMPLOYEES OF THE VETERANS BENEFITS ADMINISTRATION RESPONSIBLE FOR PROCESSING CLAIMS.**

Development of Certification Examination: The Secretary shall provide for an examination of appropriate employees and managers of the Veterans Benefits Administration who are responsible for processing claims for compensation and pension benefits under the laws administered by the Secretary.

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**Section 226. STUDY OF PERFORMANCE MEASURES FOR CLAIMS ADJUDICATIONS OF THE VETERANS BENEFITS ADMINISTRATION.**

- (a) Study of Work Credit System and Work Management System Required: The Secretary of Veterans Affairs shall conduct a study on the effectiveness of the current employee work credit system and work management system of the Veterans Benefits Administration of the Department of Veterans Affairs.
- (b) Report to Congress: Not later than October 31, 2009, the Secretary shall submit to Congress a report on the study conducted and the components required to implement an updated system for evaluating employees of the Veterans Benefits Administration.
- (c) Evaluation of Certain Veterans Benefits Administration Employees Responsible for Processing Claims for Compensation and Pension Benefits: Not later than 210 days after the date on which the Secretary submits to Congress the required report, the Secretary shall establish an updated system for evaluating the performance and accountability of employees of the Veterans Benefits Administration who are responsible for processing claims for compensation or pension benefits. Such system shall be based on the findings of the study conducted by the Secretary.

**Section 227. REVIEW AND ENHANCEMENT OF USE OF INFORMATION TECHNOLOGY IN VETERANS BENEFITS ADMINISTRATION.**

- (a) Review and Comprehensive Plan: Not later than October 9, 2009, the Secretary of Veterans Affairs shall
- (1) conduct a review of the use of information technology in the Veterans Benefits Administration with respect to the processing of claims for compensation and pension benefits; and
  - (2) develop a comprehensive plan for the use of such technology in processing such claims so as to reduce subjectivity, avoidable remands, and regional office variances in disability ratings for specific disabilities.
- (b) Reduction of Claims Processing Time: In carrying out this section, the Secretary shall ensure that a plan is developed that, not later than three years after implementation, includes information technology to the extent possible to reduce the processing time for each compensation and pension claim processed by the Veterans Benefits Administration. The performance for claims processing under this plan shall be adjusted for changes to the numbers of claims filed in a given period, the complexity of those claims, and any changes to the basic claims processing rules which occur during the assessment period.
- (c) Report to Congress: Not later than April 1, 2010, the Secretary shall submit to Congress a report on the review and comprehensive plan required under this section.

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**Section 228.** STUDY AND REPORT ON IMPROVING ACCESS TO MEDICAL ADVICE.

(a) Study: The Secretary of Veterans Affairs shall conduct a study

- (1) to assess the feasibility and advisability of various mechanisms to improve communication between the Veterans Benefits Administration and the Veterans Health Administration to provide Veterans Benefits Administration employees with access to medical advice from the Veterans Health Administration when needed by such employees to carry out their duties; and
- (2) to evaluate whether additional medical professionals are necessary to provide the access described in paragraph (1).

(b) Report to Congress--Not later than April 9, 2009, the Secretary shall submit to Congress a report on the study conducted under subsection (a).

**Section 333.** REPORT ON MEASURES TO ASSIST AND ENCOURAGE VETERANS IN COMPLETING VOCATIONAL REHABILITATION.

(a) Study Required: The Secretary of Veterans Affairs shall conduct a study on measures to assist and encourage veterans in completing their vocational rehabilitation plans.

(b) Report: Not later than 270 days after the commencement of the study required by subsection (a), the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the study.

**Section 334.** LONGITUDINAL STUDY OF DEPARTMENT OF VETERANS AFFAIRS VOCATIONAL REHABILITATION PROGRAMS.

(a) Study Required: Subject to the availability of appropriated funds, the Secretary shall conduct a longitudinal study of vocational rehabilitation programs.

(b) Annual Reports: By not later than July 1 of each year covered by the study required under subsection (a), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the study during the preceding year.

**Section 401.** REPORT ON INCLUSION OF SEVERE AND ACUTE POST-TRAUMATIC STRESS DISORDER AMONG CONDITIONS COVERED BY TRAUMATIC INJURY PROTECTION COVERAGE UNDER SERVICEMEMBERS' GROUP LIFE INSURANCE.

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Not later than April 9, 2009, the Secretary of Veterans Affairs shall, in consultation with the Secretary of Defense, submit to the appropriate committees of Congress a report setting forth the assessment of the Secretary of Veterans Affairs as to the feasibility and advisability of including severe and acute post-traumatic stress disorder (PTSD) among the conditions covered by traumatic injury protection coverage under Servicemembers' Group Life Insurance under 38 U.S.C. § 1980A.

**Section 502. REPORT ON IMPACT OF MORTGAGE FORECLOSURES ON VETERANS.**

Not later than December 31, 2009, the Secretary of Veterans Affairs shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the effects of mortgage foreclosures on veterans.

**Questions**

Questions regarding these changes should be submitted to the Q&A mailbox at VAVBAWAS/CO/21Q&A by the station Question Coordinator (see Fast Letter 02-04).

/S/

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Director  
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