



# **“Who is a Veteran?” — Basic Eligibility for Veterans’ Benefits**

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## Summary

A broad range of benefits are offered to veterans of the U.S. Armed Forces and to certain members of their families by the U.S. Department of Veterans Affairs (VA). Among these benefits are various types of financial assistance, including monthly cash payments to disabled veterans, health care, education, and housing benefits. Basic criteria must be met to be eligible to receive any of the benefits administered by the VA.

For a former servicemember to receive certain VA benefits, the person must have active U.S. military service for a minimum period of time and meet nature of discharge requirements. Some members of the National Guard and reserve components have difficulty meeting the active duty and length of service requirements. However, a member of the National Guard or reserve components who is activated for federal military service and serves the full period of activation is considered a veteran for purposes of VA benefits.

The GI Bill Improvement Act of 1977 (P.L. 95-202) recognized the service of one group of civilians, the Women's Air Forces Service Pilots, as active service for benefits administered by the VA, and it also established that the Secretary of Defense could determine that service for the Armed Forces by a group of civilians, or contractors, be considered active service for benefits administered by the VA.

This report examines the basic eligibility criteria for VA administered veterans' benefits, including the issue of eligibility of members of the National Guard and reserve components.

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## Introduction

A broad range of benefits are offered to veterans of the U.S. Armed Forces and to certain members of their families by the U.S. Department of Veterans Affairs (VA). Among these benefits are various types of financial assistance, including monthly cash payments to disabled veterans, health care, education, and housing benefits. Basic criteria must be met to be eligible to receive any of the benefits administered by the VA.

This report focuses upon the basic eligibility/entitlement requirements for former servicemembers for veterans’ benefits administered by the VA. Certain VA benefits are available to current servicemembers, and the eligibility requirements for those benefits are not a component of this report.

The VA uses a two-step process to evaluate claims for benefits. First, the claimant must demonstrate that he or she is *eligible*. That is, the claimant must prove that he or she is a bona fide *veteran* and verify certain related matters. In this sense, the eligibility relates to the veteran’s general qualification(s) for the benefit(s). Second, the veteran must prove *entitlement* to the particular benefit being sought.<sup>1</sup>

## Who is a Veteran?

To be eligible for most VA benefits, the claimant must be a veteran or, in some circumstances, the survivor or the dependent of a veteran. By statute, a “veteran” is defined as a “person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.”<sup>2</sup>

In evaluating the evidence to determine whether the applicant is a “veteran” for the purposes of VA benefits, the VA relies upon military department service records. The VA is bound by information that the service documents contain.<sup>3</sup> Generally speaking, the VA findings will be in accord with the information contained in the applicant’s military service records.<sup>4</sup>

Such records may include an original military service record; a copy issued by the military service with the certification that it is a true document; or a copy submitted by an accredited agent, attorney, or service representative with special training, who certifies that it is a copy of an original military service document or a copy of a copy of such a document.<sup>5</sup> In addition to meeting these criteria, the document must contain data regarding the length, time, and character of the service, and the VA must believe that the document is genuine and accurate.<sup>6</sup> If the

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<sup>1</sup> For example, to be entitled to receive disability compensation, a veteran must provide sufficient evidence of certain elements (e.g., current diagnosis, medical evidence of an in-service occurrence, and link between the in-service occurrence and the current disability).

<sup>2</sup> 38 U.S.C. § 101(2); 38 C.F.R. § 3.1(d).

<sup>3</sup> *Venturella v. Gober*, 10 Vet. App. 340, 341-342 (1977); *Duro v. Derwinski*, 2 Vet. App. 530, 532 (1992).

<sup>4</sup> 38 C.F.R. § 3.203.

<sup>5</sup> 38 C.F.R. § 3.203(a)(1). See CRS Report RS21282, *Military Service Records and Unit Histories: A Guide to Locating Sources*, by Julissa Gomez-Granger and Anne Leland.

<sup>6</sup> 38 C.F.R. § 3.203(a)(2), (3).

claimant does not provide the requisite documentation or other evidence, or the submitted documentation does not meet the requirements, the VA must seek to verify the applicant’s military service directly from the appropriate military service.<sup>7</sup>

## **Active Service**

An applicant must have “active military, naval, or air service” to be considered a veteran for most VA benefits.<sup>8</sup> However, not all types of service are considered active military service for this purpose.<sup>9</sup>

In general, active service means full-time service, other than active duty for training, 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 Science Services Administration or the National Oceanic and Atmospheric Administration, or its predecessor, the Coast and Geodetic Survey.

Active service also includes a period of active duty for training during which the person was disabled or died from an injury or disease incurred or aggravated in the line of duty<sup>10</sup> and any period of inactive duty for training during which the person was disabled or died from an injury incurred or aggravated in the line of duty or from certain health conditions incurred during the training.<sup>11</sup>

Additional circumstances of service, and whether they are deemed to be active military service, are set out in law.<sup>12</sup> For example, if on authorized travel to and from the performance of active duty training or inactive duty for training, a person is disabled or dies while proceeding directly to or returning from such duty, the duty will be considered to be active duty for training or inactive duty for training.<sup>13</sup>

The determination of whether a claimant has met the “active service” requirement may not be a simple process. It is possible that the claimant and the VA may have to scrutinize the claimant’s

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<sup>7</sup> Duro, 2 Vet. App. at 532.

<sup>8</sup> 38 U.S.C. § 101(2); 38 C.F.R. § 3.12(a).

<sup>9</sup> For example, National Guard and Reserve duty may not be considered active service unless an individual performing this duty was disabled or died from a disease or injury incurred or aggravated in the line of duty. (38 U.S.C. § 101(24); 38 C.F.R. § 3.6(a)).

<sup>10</sup> Active duty for training is a tour of active duty that is used for training members of reserve and other components to fill the Armed Forces during time of war or national emergency. Active duty for training has been determined to mean (1) full-time duty for training performed by Reservists (38 U.S.C. § 101(22)(A); 38 C.F.R. § 3.6(c)(1)); (2) full-time duty for training purposes as a commissioned officer in the Reserved Corps of the Public Health Service (38 U.S.C. § 101(22)(B); 38 C.F.R. § 3.6(c)(2)); (3) full-time training duty by members of the Air or Army National Guard of any state (38 U.S.C. § 101(22)(C); 38 C.F.R. § 3.6(c)(3)); (4) duty by members of the Senior ROTC program on field training or a practice cruise (38 U.S.C. § 101(22)(D); 38 C.F.R. § 3.6(c)(4)); and (5) authorized travel to and from duty for training (38 U.S.C. § 101(22)(E); 38 C.F.R. § 3.6(c)(6)).

<sup>11</sup> 38 U.S.C. § 101(24). Inactive duty for training has been defined to mean (1) duty, other than full-time duty, for Reservists (38 U.S.C. § 101(23)(A); 38 C.F.R. § 3.6(d)(1)); (2) other duties authorized for Reservists performed on a voluntary basis (38 U.S.C. § 101(23)(B); 38 C.F.R. § 3.6(d)(2)); (3) training (other than active duty for training) by a member of, or applicant for membership in, Senior ROTC (38 U.S.C. § 101(23)(C); 38 C.F.R. § 3.6(d)(3)); and (4) for the members of the Air or Army National Guard of any state, such training means duty other than full-time duty (38 U.S.C. § 101(23); 38 C.F.R. § 3.6(d)(4)).

<sup>12</sup> 38 U.S.C. §§ 101, 106.

<sup>13</sup> 38 U.S.C. § 106(d); 38 C.F.R. § 3.6(e).

service record(s) to determine whether the claimant’s service fits into one of the many categories of active service, or whether an exception has been made for his or her service, so that it is considered to be active service for the purposes of veterans’ benefits. In addition, a claimant may have more than one period of service, which may further complicate the determination.

## **Length of Service**

Prior to September 8, 1980, there was no minimum length of service necessary to be considered a veteran for most VA benefits. However, for an individual who enlisted after September 8, 1980, there are now certain minimum length of service requirements. The general requirement is either 24 months of continuous active duty or the “full period” for which the servicemember was called or ordered to active duty.<sup>14</sup>

Several exceptions exist to this general rule. For example, service-connected disability compensation benefits are exempt from the minimum active duty requirements. Thus, a veteran with a disease or injury incurred during active service should almost always be able to receive service-connected compensation for his or her condition or disability.<sup>15</sup> Other exceptions to the minimum service requirements include claims for VA life insurance benefits,<sup>16</sup> hardship discharges,<sup>17</sup> and persons retired or separated from service because of a service-related disability.<sup>18</sup>

If the former servicemember does not fall within the 24 months of active duty or the “full period” of active duty, or within one of the statutory exceptions, then the veteran has not completed a minimum period of active duty and is “not eligible for any benefit under Title 38, United States Code or under any law administered by the Department of Veterans Affairs based on that period of active service.”<sup>19</sup>

## **Discharge Criteria**

The statutory definition of “veteran” requires that the individual be discharged or released from military service “under conditions other than dishonorable.”<sup>20</sup> There are currently five types of discharges issued by the military services: (1) honorable discharge (HD), (2) discharge under honorable conditions (UHC) or general discharge (GD), (3) discharge under other than honorable conditions (UOTHC) or undesirable discharge (UD), (4) bad conduct discharge (BCD), and (5) dishonorable discharge (DD).<sup>21</sup>

The language of the statute does not precisely match the current categories of the discharges, and the VA often determines on a case-by-case basis whether the claimant’s discharge satisfies any of

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<sup>14</sup> 38 U.S.C. § 5303A(b); 38 C.F.R. § 3.12a(a)(1).

<sup>15</sup> 38 U.S.C. § 5303A(b)(3)(C); 38 C.F.R. § 3.12a(d)(4).

<sup>16</sup> 38 U.S.C. § 5303A(b)(3)(E); 38 C.F.R. § 3.12a(d)(5).

<sup>17</sup> 38 U.S.C. § 5303A(b)(3)(A); 38 C.F.R. § 3.12a(d)(1).

<sup>18</sup> 38 U.S.C. § 5303A(b)(3)(B); 38 C.F.R. § 3.12a(d)(2).

<sup>19</sup> 38 U.S.C. § 5303A(b)(1); 38 C.F.R. § 3.12a(b).

<sup>20</sup> 38 U.S.C. § 101(2); 38 C.F.R. § 3.12(a).

<sup>21</sup> Barton F. Stichman et al., *Veterans Benefits Manual*, at § 2.2.1 (Cited to afterward as “Veterans Benefits Manual”).

the criteria and which category of discharge applies. In most cases, the VA considers honorable discharges and discharges under honorable conditions to fall within the “conditions other than dishonorable” category, and will usually qualify the claimant as a veteran under the first step of the eligibility test.<sup>22</sup> Usually, honorable and general discharges qualify a veteran for most benefits.<sup>23</sup>

A bad conduct discharge from a special court-martial and other discharges made under other than honorable conditions may or may not disqualify the claimant from being considered a veteran for purposes of benefits eligibility.<sup>24</sup> In the case of such a discharge, the VA will make a special “character of service determination,” based on the particular facts in the claimant’s case. On this basis, the VA will determine whether the veteran was separated from service under “dishonorable conditions” or under “other than dishonorable conditions.” The VA will review the entire period of the claimant’s enlistment(s) to assess the quality of the service and to determine whether it is sufficient to deserve the award of veterans’ benefits.<sup>25</sup> If a claimant has served more than one period of enlistment, he or she may have two or more different discharge categories.

Dishonorable and bad conduct discharges issued by general courts-martial may bar VA benefits. Veterans in prison and parolees may be eligible for certain VA benefits and must contact the VA to determine eligibility. VA benefits will not be provided to any veteran or dependent wanted for an outstanding felony warrant.

Certain exceptions permit the award of VA benefits, even if the character of the discharge would ordinarily bar VA benefits. For example, if it is determined that the claimant was insane at the time of the offense leading up to the discharge, the claimant may be granted VA benefits. There does not need to be a direct connection between the insanity and the misconduct.<sup>26</sup>

## **Whether the Military Service Was During a Time of War<sup>27</sup>**

All military service is classified as either wartime or peacetime service. Whether a veteran has served during a time of war may impact his or her potential VA benefits. For example, the Improved Pension benefit for low-income veterans who are either elderly or non-service-connected disabled veterans, is only for veterans with wartime service.<sup>28</sup>

Congress has set out the periods of “wartime” for the purposes of veterans’ benefits.<sup>29</sup> To be considered to have “served during wartime” by the VA, a veteran does not have to have served in an actual combat zone, but during the specified periods of war set out below. Those time periods not designated by Congress as “wartime” are considered to be “peacetime.” If a veteran served his or her duty partly during wartime and partly during peacetime, the veteran would meet the

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> 38 U.S.C. § 5303(b).

<sup>27</sup> See CRS Report RS21405, *U.S. Periods of War and Dates of Current Conflicts*, by Barbara Salazar Torreon.

<sup>28</sup> 38 U.S.C. § 1521(j).

<sup>29</sup> 38 U.S.C. § 101 (6)-(11); 38 C.F.R. § 3.2.

“wartime” criteria if he or she served 90 consecutive days, at least one day of which occurred during a period designated as wartime.

Following is a list of those periods of “wartime” designated by Congress:

- *Indian Wars*—January 1, 1817, through December 31, 1898<sup>30</sup>
- *Spanish-American War*—April 21, 1898, through July 4, 1902<sup>31</sup>
- *Mexican Border Period*—May 19, 1916, though April 5, 1917<sup>32</sup>
- *World War I*—April 6, 1917, through November 11, 1918; extended to April 1, 1920; by regulation extended to July 1, 1921, under certain specific conditions<sup>33</sup>
- *World War II*—December 7, 1941, through December 31, 1946; extended to July 25, 1947<sup>34</sup>
- *Korean Conflict*—June 27, 1950, through January 31, 1955<sup>35</sup>
- *Vietnam Era*—August 5, 1964, through May 7, 1975<sup>36</sup>
- *Persian Gulf War*—August 2, 1990, through a date to be prescribed by Presidential proclamation or law<sup>37</sup>

## National Guard and Reserve

Two particular elements of the criteria to be a veteran—“active duty” and “length of service”—are often difficult for members of the National Guard and the reserve components to meet. As a result, these servicemembers, having not met the statutory threshold criteria for “veteran,” are often not eligible for VA benefits.

In many cases, members of the Guard and the reserves may not have fulfilled the “active duty” requirement. Members of the Guard and reserves who have never been activated for federal active duty military service, and consequently have not served on regular federal active duty, do not meet the active duty requirement for the definition of a veteran for VA benefits.

For other National Guard and reserve members, the two requirements may be met at the same time. An example of this situation would be a Guard or reserve member who was activated for federal military service and served in the Persian Gulf for 12 months. At the end of the activation period, the servicemember would be considered to have served on active duty for that period of

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<sup>30</sup> See 38 C.F.R. § 3.2(a).

<sup>31</sup> 38 U.S.C. § 101(6); 38 C.F.R. § 3.2(b).

<sup>32</sup> 38 U.S.C. § 101(30); 38 C.F.R. § 3.2(h).

<sup>33</sup> 38 U.S.C. § 101(7); 38 C.F.R. § 3.2(c).

<sup>34</sup> 38 U.S.C. § 101(8); 38 C.F.R. § 3.2(d).

<sup>35</sup> 38 U.S.C. § 101(9); 38 C.F.R. § 3.2(e).

<sup>36</sup> 38 U.S.C. § 101(29); 38 C.F.R. § 3.2(f). Military personnel who served in the Republic of Vietnam between February 28, 1961, and May 7, 1975, are also considered to have served during the Vietnam Era.

<sup>37</sup> 38 U.S.C. §§ 101(33), 1501(4); 38 C.F.R. §§ 3.2(i), 3.3(a)(3), 3.17, 3.54(a)(3)(viii). At the present time, no termination date has been established.

time. Serving for the full period of activation also meets the minimum length of service requirement to be a veteran. Otherwise, Guard and reserve duty may not be considered “active duty” for benefits unless the servicemember performing this duty was disabled or died from a disease or injury incurred or aggravated in the line of duty.<sup>38</sup>

Although many National Guard and reserve members may not appear to be eligible “veterans” for the purposes of VA benefits, certain exceptions and special circumstances may exist, which add to the complexity of the eligibility determination. For example, under certain conditions Guard and reserve members may be eligible for education benefits (through the Reserve Educational Program or the Post-9/11 GI Bill) and home loans from the VA (with six years of service in the Selected Reserves or National Guard). As each servicemember’s military service may be different, and therefore may fit within certain case categories or exceptions, eligibility is usually determined by the VA on a case-by-case basis after reviewing the individual servicemember’s military service records.

## Civilian Groups

The GI Bill Improvement Act of 1977 (P.L. 95-202) recognized the service of one group of civilians, the Women’s Air Forces Service Pilots, as active service for benefits administered by the U.S. Department of Veterans Affairs. In addition, P.L. 95-202 provided that the Secretary of Defense could determine that service for the Armed Forces by a group of civilians, or contractors, be considered active service for benefits administered by the VA.

Based on the provisions of P.L. 95-202,<sup>39</sup> the Secretary of Defense established that the Secretary of the Air Force would develop and maintain the process to determine if the wartime employment of certain groups of individuals is considered “active duty” military service for the purpose of receiving certain veterans benefits. If these groups of individuals are considered to be “active duty” by the Secretary, they are eligible to receive certain benefits, including health care.<sup>40</sup>

Regulations implementing P.L. 95-202 specify which groups the Secretary has determined were employed in “active duty” service.<sup>41</sup> The regulations also established the Department of Defense Civilian/Military Service Review Board and Advisory Panel to review each application for “active duty” status.<sup>42</sup> Following its review, the board issues a written recommendation to the Secretary as to whether the applicant group should be considered “active duty” for the purposes of the act. The Secretary makes the final decision, based upon the recommendation of the board. Pursuant to this procedure, various groups of persons have been accorded “active duty” status. Among the successful applicants were Women’s Air Forces Service Pilots (WASPs), Signal Corps Female Telephone Operators Unit (World War I), Engineer Field Clerks (World War I), Male Civilian Ferry Pilots (World War II), and other groups of employees with war-related

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<sup>38</sup> 38 U.S.C. § 101(21)(A); 38 C.F.R. § 3.6(a). Inactive duty would include duty other than full-time duty, such as weekend assignments or part-time details.

<sup>39</sup> 38 U.S.C. § 106 note.

<sup>40</sup> See 38 C.F.R. § 3.7.

<sup>41</sup> 32 C.F.R. § 47. See 38 C.F.R. § 3.7 for those groups that have been so designated.

<sup>42</sup> The applications are usually submitted by representatives of the employment group.

occupations.<sup>43</sup> At this time, all of the successful applicants have been civilian groups associated with World War I and World War II.

The regulations concerning the designation of “active duty” status have undergone revision over the years. Changes and clarification to the regulations implemented in 1989 “stem from a Federal Court determination [*Schumacher v. Aldridge*]<sup>44</sup> that the Department of Defense had failed to clarify factors and criteria in their implementing directive concerning P.L. 95-202.”<sup>45</sup> The 1989 regulations remain in effect.

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<sup>43</sup> 38 C.F.R. § 3.7.

<sup>44</sup> 665 F.Supp. 41 (D.D.C. 1987).

<sup>45</sup> 54 *Fed. Reg.* 39,991 (September 29, 1989).