



RECOUPMENT PROCESS

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Objectives

- Types of separation benefits
- Determining amount to recoup
- Rules of withholding
- Award action to withhold compensation

References:

- M21-1, Part III, Subpart v, Chapter 4, Section B
- 38 CFR 3.700
- 10 U.S.C.
- Rate Tables



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Duplication of Benefits

38 CFR 3.700 prohibits

- the Department of Veterans Affairs (VA)
- from paying compensation to a veteran
- who also received certain separation benefits from the Department of Defense (DoD).



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Types of Benefits

- Readjustment pay under former 10 U.S.C. 3814a and 687
- Non-disability severance pay under 10.U.S.C. 1174 (h)(2)
- Separation pay under 10 U.S.C. 1174
- Reservists' Involuntary Separation Pay (RISP)
- Special Separation Benefit (SSB) under 10 U.S.C. 1174a
- Voluntary Separation Pay (VSP) under 10 U.S.C. 1175a
- Disability severance pay under 10 U.S.C. 1212(c)



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Separation Benefits

10 U.S.C. 3814a	10 U.S.C. 687
<ul style="list-style-type: none"> • Paid to regular officers • below rank of major • who were discharged during a reduction in force • Expired at the end of 1977 	<ul style="list-style-type: none"> • Paid to reserve officers involuntarily released • Must have completed at least five years of active service • Not be qualified for retirement • Repealed effective September 15, 1981



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Non-Disability Severance Pay

- Awarded under former 10 U.S.C. 359, 360, 859 and 860
- Involuntary separation usually due to failure to meet standards of performance
- Is subject to recoupment *unless* the veteran established entitlement to VA compensation *before* September 15, 1981

Note: PL 96-513 repealed these codes eff. 9/15/1981.



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10 U.S.C. 1174

- Replaced readjustment pay effective 9/15/1981
- Paid to regular and reserve officers involuntarily separated
 - completed at least 5 years of active service
 - not eligible for retirement
- Paid to regular enlisted members (enacted 11/5/1990) involuntarily separated
 - After completing 6 years of active service
 - Not eligible for retirement



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RISP and RSSP

- RISP provided payment to certain reservists involuntarily released from the Selected Reserve
- Withhold disability compensation in order to recoup the amount of RISP provided:
 - compensation is for a disability incurred in or aggravated by service *prior* to the date of receipt of RISP
 - for award purposes treat RISP as separation pay



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RISP and RSSP

- RSSP provided payment to reservists with at least 20 years of service who are not yet old enough to retire. Payments are made annually for up to 5 years or until the reservist turns 60.
- **Not** required to withhold compensation for RSSP.



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SSB and VSI

- Separation benefits that are used to facilitate the downsizing of the armed forces.
- Exit-bonus incentive program that encouraged
 - service members
 - who might face involuntary separation or denial of reenlistment
 - to separate voluntarily.
- Must have separated before 9/30/1995
- Served
 - on active duty for more than 6 years but
 - fewer than 20 years as of 12/5/1991 and
 - at least 5 years of continuous active duty
 - immediately prior to separation and
 - agreed to serve in the Ready Reserve

SSB - 10 U.S.C.1174a
VSI - 10 U.S.C.1175



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Difference between SSB & VSI

The manner in which it is paid by DoD

Most important difference is that VA is **not** responsible for recouping VSI from a veteran's disability.

SSB	VSI
A lump sum amount equal to 15 percent of annual base pay, multiplied by years of active service	Annual installments equal to 2.5 percent of base pay, multiplied by years of service.
	Payments commence upon discharge and recur on each anniversary date of discharge thereafter.



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VSI Considerations

- In general, the total number of payments
 - equals twice the number of years of active service,
 - provided the veteran continues to serve in a reserve unit for the duration of the payments.
- Veteran receives compensation based on
 - the same period of service for which VSI is received
 - then DOD reduces the veterans VSI to offset the amount of VA compensation receiving.
- DoD does not offset for VA compensation that are based on an earlier period of service for which VSI is payable.
- VA takes **no** special actions, such as notifying DoD, when it awards compensation to a veteran who receives VSI.



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VSP – 10 U.S.C. 1175a

- o Payment for voluntarily separating from active duty due to restructuring or reduction in force
- o VA must recoup VSP **unless**:
 - *eligible to retire (20 or more years of active service), to include transfer to the Fleet Reserve or Fleet Marine Corps Reserve, at the time DoD awarded VSP.
 - *eligible to receive combat-related special compensation
 - *receives a waiver from the Secretary of their respective department.

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VRI

- Payment DoD offers to encourage
 - voluntary retirement by officers
 - who have served for more than 20 years.
- **Not** subject to recoupment from VA benefits

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Determining Amount to Recoup

VA must withhold

- some or all of the Veteran's monthly compensation
- until recoupment is complete
- to include compensation for dependents and special monthly compensation if applicable **unless**
 - Compensation based on period of service that *follows* the period of service that veteran receives separation pay
 - No apportionment allowed
 - Medal of Honor pension

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Factors to Consider

- Type of separation benefit
- Date of entitlement to VA compensation
- Date of receipt of the separation benefit

*See table next slide



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Type of Separation Benefit	Date of Entitlement To VA Compensation	Date of Receipt of the Separation Benefit	Amount of Pay VA Recoups
<ul style="list-style-type: none"> • Readjustment pay former 10 U.S.C. 3814a, or • Non-disability severance pay 	Prior to 9/15/1981	N/A	None
	On or after 9/15/1981	On or before 9/30/1996 After 9/30/1996	Pre-tax amount After-tax amount
Readjustment pay former 10U.S.C. 687	Prior to 9/15/1981	N/A	75% of pre-tax Pre-tax amount
	On or after 9/15/1981	On or before 9/30/1996 After 9/30/1996	Pre-tax amount After-tax amount
SSB	N/A	N/A	After-tax amount
<ul style="list-style-type: none"> • 10 U.S.C. 1174 • VSP • RISIP 	N/A	On or before 9/30/1996	Pre-tax amount
		After 9/30/1996	After-tax amount
Disability severance pay for a disability Rated at least 10%	N/A	On or before 9/30/1996	Pre-tax amount
		After 9/30/1996	After-tax amount



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Recoupment when Compensation Greater than Pension

Four conditions must apply:

- Veteran received separation benefits that have not yet been entirely recouped
- Veteran is receiving pension
- Eligible for compensation and it would be the *greater* benefit
- Compensation would actually be less than the amount of pension payable



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Calculating After-tax amount

- Determine which flat tax rate was in effect on the date the veteran received the benefit
- Multiply the gross amount of the separation benefit by the appropriate flat-tax rate
- Subtract the product from the gross amount of the separation benefit

Reference for flat-tax rate for supplemental income:
Internal Revenue Manual, Part 4, 23.8.4



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Flat rate tax

Effective Date	Flat-Tax Rate
December 31, 1993 and earlier	20 percent
January 1, 1994	28 percent
August 7, 2001	27.5 percent
January 1, 2002	27 percent
May 28, 2003	25 percent



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Military Retired and Separation Pay

- Veteran becomes entitled to military retirement pay after receiving separation benefits
- DoD recoups separation pay from military retirement pay
- If also subject to VA recoupment, VA and DoD become mutually responsible for their recoupment



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Exceptions

- DoD is **not** responsible
 - for recouping a retired veteran's separation benefits
 - if the veteran waives military pay in order to receive disability compensation.
- DoD does **not** recoup disability severance pay if
 - a veteran who received this benefit returns to active duty and
 - later becomes entitled to military retired pay.



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Multiple Periods of Service

- Veteran has one or more service-connected disabilities incurred during a period of service for which separation benefits were received and
- One or more service-connected disabilities the veteran incurred during a *subsequent* period of service.
- Only recoup for the period separation benefits were received



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Example

A veteran has a combined disability rating of 40% based on

- One disability, rated 20%, that the veteran incurred during a period of service for which separation benefit was paid
- Another disability, rated 30%, that the veteran incurred during a subsequent period of service

What actions will take place?



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Answer

- Award the veteran the monthly amount of compensation
 - payable for the disability rated 30%
 - to include any additional amounts for dependents and/or SMC associated with the disability
- Withhold the remaining amount until recoupment of the veteran's separation pay is complete



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General Policies Regarding Withholding

- Monthly withholdings may **never exceed** the monthly amount of compensation based on the **initial, compensable** rating that VA assigns
- Multiple, severance pay disabilities, each rated 0%, and VA assigns a 10% rating under 38 CFR 3.324, **no** withholding is necessary
- Initial compensable rating included bilateral factor and is based exclusively on severance pay disabilities



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Temporary 100%

- An exception is if VA **initially** assigns a severance pay disability a temp 100% under 38 CFR 4.28, 4.29, or 4.30
- VA must *withhold* all of the veteran's monthly compensation until entitlement to the 100% temp rating ends
- Withholding will then be based on the disability VA assigns *immediately after* entitlement to the temp 100% rating ends



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Examples

VA Initial Rating	And VA subsequently...	VA continues to withhold
20% disabling	Rates the same disability 30%	The amount payable for a 20% disability
50% disabling	Assigns temp 100% to the same disability	The amount payable for a 50% disability
0 percent disabling	Assigns a temp 100% to the same disability	Nothing, until it assigns the disability a compensable rating



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Initial, Compensable Disability Rating

- First disability rating VA assigns to a disability that is 10% or higher, **except** 100 percent temporary
- If VA assigns an initial rating that is subsequently increased with same effective date, the first rating is still considered *initial*
- Unless VA increases with same effective date and initial is based on *clear and unmistakable error*, new rating replaces the old as initial



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Example

VA assigns the veteran's service connected back disorder a 10% disability rating, effective 4/21/2011.
The veteran appeals the decision and VA later increases the rating to 20% effective the same date it assigned the 10%.

RESULT: The initial, compensable disability rating in this example is 10%.



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Reduced Disability Ratings

If VA reduces disability it initially assigned to a severance pay disability, recoupment will be adjusted to reflect the new rating.

Example:

- VA assigns an initial disability rating of 30% to a severance pay disability eff. 4/21/2006
- Two years later improvement is noted
- VA reduces to 10% eff. 12/2008 thus reducing withholding to correspond to new rating
- In August 2010 VA increases the disability for severance pay to 50%. It concurrently increases withholding to 30%, the initial disability rating.

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Combat Zone/Combat Related Operations

38CFR 3.700(a)(3) prohibits recoupment of disability severance pay if veteran:

- Separated on or after 1/28/2008 *and*
- Incurred the disability for which received disability severance pay in the line of duty in a combat zone or during combat-related operations

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Exceptions

Veteran who separated from service prior to 1/28/2008 if

- Veteran incurred disability in the line of duty in a combat zone and
- DOD subsequently
 - Placed veteran on the Temporary Disability Retirement List
 - Later removed the veteran from TDRL on or after 1/28/2008 and
 - Awarded veteran disability severance pay for the same disability

DoD not VA decides combat-related entitlement

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Severance and Non Severance Disabilities

- Veteran awarded both severance and non- severance disabilities
- VA may **not** withhold an amount greater than the entitlement based on the non-severance pay disability(ies)
- Includes any additional compensation for dependents and/or SMC based solely on non-severance pay disabilities *alone*



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Example

Scenario: A veteran is awarded service connection for

- A severance pay disability rated 50% and
- A non-severance pay disability rated 100%

Result: VA may **not** withhold any compensation to recoup the veteran's disability severance pay while the non-severance pay disability is rated 100%

Same regardless if VA assigned temp 100%



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Withhold amount most advantageous

- Always use the withholding that pays the veteran the higher rate of compensation
- Two methods to calculate withholding

Example:

VA Assigns combined rating of 70% to a married veteran based on

- a severance disability rated 50%
- a non-severance disability rated 40%



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Method 1

Withhold the amount of compensation payable for the severance pay disability, to include the additional amount for a spouse

$$\begin{array}{r}
 \$1447.71 \text{ (Combine rating 70%/married)} \\
 - \underline{917.13} \text{ (Severance pay for 50%/married)} \\
 \hline
 \mathbf{\$476.58} \text{ Pay this amount to the veteran}
 \end{array}$$


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Method 2

Pay the veteran the amount payable for the non-severance pay disability, to include the additional amount for a spouse, and withhold everything else.

$$\begin{array}{r}
 \$1447.71 \text{ (Combine rating 70%/married)} \\
 - \underline{651.36} \text{ (Pay the 40% non-severance amount)} \\
 \hline
 \$796.35 \text{ Withhold the difference}
 \end{array}$$


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Rating Changes for Multiple Severance Pay Disabilities

- If two or more severance pay disabilities change, compare the combined disability rating VA initially assigned to the severance pay disabilities with the current combined rating.
- If the initial, combined rating is *less than or equal to* the current combined rating for the same disabilities, withhold compensation at the rate payable for the initial combined disability



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EXAMPLE

Initial Disability Rating	Current Disability Rating Example #1	Current Disability Rating Example #2
Disability A – 20%	Disability A – 10%	Disability A – 10%
Disability B – 10%	Disability B – 30%	Disability B – 30%
Disability C – 10%	Disability C – 0%	Disability C – 20%
Combined – 40%	Combined – 40%	Combined – 50%

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Award Action to Withhold

- Determine date to begin recouping separation benefits

Type of Award	Date to begin Recoupment
Original or reopened	Effective date of compensation award
running	Date of last payment

- Decision notice to inform the veteran:
 - of pre-tax amount of separation benefits received
 - of gross amount of monthly compensation
 - amount VA is withholding
 - Net amount of monthly award expected
 - VA will continue withholding compensation until recoupment is complete

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