### Section C. Compensation for Certain Paired Organs and Extremities Under 38 CFR 3.383

#### Overview

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| In This Section | This section contains the following topics |

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| **Topic** | **Topic Name** |
| 1 (old 8) | Special Consideration for Certain Paired Organs and Extremities |
| 2 (old 9) | The Prohibition Against Duplication of Benefits |
| 3 (old 10) | Preparation of Awards Under 38 CFR 3.383 |

**1. Special Consideration for Certain Paired Organs and Extremities**

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| Change Date | May 8, 2015 |

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| a. Considering Paired Organs and Extremities | In certain cases* compensation may be paid for the non-service-connected (NSC) loss, or loss of use (L/LOU), of a paired organ or extremity *if* the loss of the other organ or extremity is service-connected (SC) under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160), and
* evaluations of these paired organs or extremities are combined as if both were SC.

***Example***: Each set of ears, eyes, and kidneys is considered a set of paired organs.***Note***: The L/LOU of the NSC organ or extremity sometimes leads to legal action by the claimant. If such action is successful and monetary damages are awarded, the Department of Veterans Affairs (VA) ***must*** undertake offset action per M21-1, Part IV, Subpart ii, 3.C.2.b.***Reference***: For more information on the criteria for establishing entitlement, see* [38 CFR 3.383](http://www.ecfr.gov/cgi-bin/text-idx?SID=aa7229fedf2acc3b5190e6df4fb8deb5&node=se38.1.3_1383&rgn=div8)
* M21-1, Part III, Subpart iv, 6.B.3, and
* M21-1, Part IV, Subpart ii, 2.K.2.
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#### 2. The Prohibition Against Duplication of Benefits

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| Introduction | This topic contains information on the prohibition against duplication of benefits, including* when to provide special consideration under 38 U.S.C. 1160
* offsetting benefits under 38 U.S.C. 1160 due to damage recovery
* when the offset provisions apply
* damage recoveries involving non-service-connected (NSC) organs or extremities, and
* the Veteran’s duty to notify VA of damages recovered.
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| Change Date | December 13, 2005 |

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| a. When to Provide Special Consideration Under 38 U.S.C. 1160 | Special consideration under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160) is provided if a Veteran has L/LOU of * an organ or extremity due to SC disability, and
* a paired organ or extremity due to NSC disability.
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| b. Offsetting Benefits Under 38 U.S.C. 1160 Due to Damage Recovery | If the L/LOU of the NSC organ or extremity results from circumstances that could give rise to legal liability, the Veteran *may* seek to recover damages by lawsuit or other means. If the Veteran *does* successfully recover damages, the amount of damages received (for the NSC disability only) ***must*** be offset against the additional benefit payable under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160). |

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| c. When the Offset Provisions Apply | Offset provisions involving the paired extremities of the hands or feet only have long been in effect, and continue to be in effect, while the offset provisions concerning the remaining paired organs or extremities listed in M21-1, Part III, Subpart iv, 6.B.3 apply ***only*** to cases in which compensation was awarded or increased *after* October 27, 1986. |

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| d. Damage Recoveries Involving NSC Organs or Extremities | Benefits received under Social Security or workers’ compensation are ***not*** subject to recoupment, even though the benefits may have been awarded pursuant to a judicial proceeding.All other recoveries related to the NSC organ or extremity ***are*** subject to offset, regardless of whether the payment to the Veteran is characterized as a * tort award
* settlement
* compromise, or
* administrative award or judgment.

***Rationale***: The prohibition against duplication of benefits applies whenever the Veteran receives a sum of money or property to extinguish a legal claim arising from injury to the affected NSC organ or extremity. |

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| e. Veteran’s Duty to Notify VA of Damages Recovered | If the Veteran is receiving, or files a claim for, compensation for L/LOU of a paired organ due to NSC disability under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160), he/she is required to notify VA of any damages recovered, involving the paired organ or extremity, as the result of a* lawsuit
* compromise
* settlement, or
* other recovery.

The Veteran should report to VA the total amount of money received. ***Notes***: * If the Veteran refuses to provide the information required, and evidence essential for adjudication of the issue has been placed under a court seal, solicit the assistance of Regional Counsel in obtaining such evidence.
* Expenses incident to recovery, such as an attorney’s fees, may ***not*** be deducted from the amount to be reported.
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#### 3. Preparation of Awards Under 38 CFR 3.383

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| Introduction | This topic contains information on the preparation of awards under [38 CFR 3.383](http://www.ecfr.gov/cgi-bin/text-idx?SID=83b8731e58b5f2dd6d95c2ee0c1e1b13&mc=true&node=se38.1.3_1383&rgn=div8), including* action to take when it appears a tort claim may have been filed
* determining the amount to be recouped
* monthly withholding amount for NSC paired organs and extremities
* effective date of the withholding
* how to enter the offset amount
* example of offset retroactive compensation
* providing notice of the award, and
* considering entitlement to Dependents’ Educational Assistance (DEA) for NSC Disabilities Treated as SC Under [38 U.S.C 1160](https://www.law.cornell.edu/uscode/text/38/1160).
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| Change Date | May 8, 2015 |

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| a. Action to Take When It Appears a Tort Claim May Have Been Filed | Do ***not*** defer award action because there is reason to believe a tort claim for damages has been filed against any party (VA or otherwise) based on the injury to the NSC paired organ or extremity. ***Do*** defer award action and initiate development action to ascertain the date damages were received by the Veteran if there is reason to believe that a tort claim for damages has been finalized, but the date the Veteran recovered damages is not known. |

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| **b. Determining the Amount to Be Recouped** | The total amount to be recouped is the gross amount of the settlement or judgment. Attorney’s fees, court costs, and other expenses incident to the claim are ***not***deductible from the total amount awarded.  |

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| c. Monthly Withholding Amount for NSC Paired Organs and Extremities | Withhold only the additional compensation, including amounts for dependents, payable for the NSC paired organ or extremity.After withholding the additional compensation mentioned above, ***if*** the total payment is at a rate ***less*** than the combined evaluation of the SC disabilities * withhold the remaining balance, including amounts for dependents, and
* exclude withholding for NSC disabilities compensable under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160).
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| d. Effective Date of the Withholding | Commence withholding compensation effective the first of the month after the month during which the Veteran received damages as a result of injury to the NSC organ or extremity. If the Veteran receives payments in installments, start the withholding the first of the month after the month during which the first installment was received.  |

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| **e. How to Enter the Offset Amount** | When adjusting benefits in Veterans Service Network (VETSNET) or Veterans Benefits Management System Awards (VBMS-A), enter the following on the DISABILITY PAY tab of the AWARD ADJUSTMENTS screen* *Tort* in the PAYMENT TYPE field
* the offset amount in the ORIGINAL BALANCE field, and
* the effective date of the award adjustment in the AWARD EFFECTIVE DATE field.

***References***: For more information on entering offset amounts in * VETSNET, see [*VETSNET Awards User Guide*](http://vbaw.vba.va.gov/bl/21/Systems/awards.htm), and
* VBMS-A, see [*VBMS-Awards User Guide*](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp)*.*
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| f. Example of Offset Retroactive Compensation | Do not offset compensation payable for any period before the month following the date on which the settlement or judgment becomes final.***Example***: A judgment for an NSC extremity is final on June 15, 2005. The rating activity later awards Special Monthly Compensation (SMC) effective March 16, 2005, for the paired extremities under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160). ***Result***: Do ***not*** offset any portion of the compensation benefits prior to July 1, 2005, the month *following* the date the judgment became final. |

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| g. Providing Notice of the Award | Send a locally-generated letter, explaining the basis of the award, and* telling the Veteran to inform VA immediately if he/she recovers damages from any source because of injury to the NSC organ or extremity, or
* (if offset of the benefit is required) explaining the requirement for recoupment of an amount equal to the gross amount of any damages received.
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| h. Considering Entitlement to DEA for NSC Disabilities Treated as SC Under 38 U.S.C 1160 | A Veteran may be entitled to Dependents’ Educational Assistance (DEA), as established under [38 CFR 3.807(c](http://www.ecfr.gov/cgi-bin/text-idx?SID=97c9d34d899f31e34b432eaf3d01e099&mc=true&node=se38.1.3_1807&rgn=div8)), amended effective December 6, 1994, when disabilities are treated as if SC under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160).A veteran is ***not*** entitled to the following ancillary benefits *unless* entitlement is based on SC disabilities for which compensation is payable without regard to the provisions of [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160):* automobile or adapted equipment, per M21-1, Part IX, Subpart i, 2
* specially adapted housing, per M21-1, Part IX, Subpart i, 3, and
* the Civilian Health and Medical Program of VA (CHAMPVA), per [38 U.S.C. 1781](https://www.law.cornell.edu/uscode/text/38/1781) and M21-1, Part IX, Subpart i, 4.

***Reference***: For more information on entitlement to DEA under [38 U.S.C. 1160](https://www.law.cornell.edu/uscode/text/38/1160), see [*Kimberlin v. Brown,* 5 Vet. App. 174 (1993)](http://vbaw.vba.va.gov/bl/21/advisory/CAVC/1993dec/Kimberli.doc). |