## Section C. Protected Ratings

#### Overview

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

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| Topic | Topic Name | See Page |
| [8](#Topic8) | Protected Evaluations Under 38 CFR 3.951 and 38 CFR 3.952 | 8-C-2 |
| [9](#Topic9) | Protected Service Connection Under 38 CFR 3.957 | 8-C-6 |
| [10](#Topic10) | Protected Pension Ratings Under 38 CFR 3.951(b) | 8-C-7 |

#### 8. Protected Evaluations Under 38 CFR 3.951 and 38 CFR 3.952

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| Introduction | This topic contains information about protected evaluations, including   * [protection under 38 CFR 3.951 and 38 CFR 3.952](#_a.__Protection_2) * [protection in the absence of a monetary award](#_b.__Protection) * [when protection does not accrue](#_c.__When) * [protection resulting from retroactive increases](#_d.__Protection) * [protected combined evaluations](#_e.__Protected) * [reduction and discontinuance under 38 CFR 3.552](#_f.__Reduction) * [protection against rating schedule changes](#_g.__Protection) * [reviewing evaluations after a rating schedule change](#_h.__Reviewing) * [effect of change in diagnostic code (DC)](#_i.__Effect), and * [effect of return to active duty](#_j.__Effect). |

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| Change Date | September 23, 2014 |

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| a. Protection Under 38 CFR 3.951 and 38 CFR 3.952 | Exercise care to avoid violation of the provisions of [38 CFR 3.951](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC) and [38 CFR 3.952](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_952.DOC) for compensation and pension disability benefits.  Do not reduce an individual disability evaluation that has been continuously rated at or above the current level for 20 years or more except in the case of fraud per [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC).  Measure the 20-year period of [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC) from the earliest effective date of the combined or individual evaluations.  ***Note***: For purposes of determining whether benefits were received for a continuous period of 20 years, include periods during which recoupment or deduction applied to an award. |

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| b. Protection in the Absence of a Monetary Award | The protective provisions of [38 U.S.C. 110](http://www.law.cornell.edu/uscode/text/38/110) and [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC) do not require a concurrent award of monetary benefits.  An evaluation for compensation purposes that has been continuously in effect for 20 or more years is protected whether or not the Veteran elects to receive the compensation. |

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8. Protected Evaluations Under 38 CFR 3.951 and 38 CFR 3.952, Continued

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| c. When Protection Does Not Accrue | Under [38 U.S.C. 110](http://www.law.cornell.edu/uscode/text/38/110) and [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC), protection does not accrue for   * a Veteran who renounces entitlement to disability benefits, or * ratings for other than compensation purposes, such as ancillary benefits. |

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| d. Protection Resulting From Retroactive Increases | If a retroactive increase under [38 CFR 3.105(a)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_105.DOC) results in a Veteran having been rated for 20 years or longer at a certain level, the evaluation is protected under [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC) and may *not* be reduced in the absence of a showing of fraud. |

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| e. Protected Combined Evaluations | Do *not* reduce benefits when a combined evaluation has been in effect for 20 years or more *except* in the case of fraud. Both the individual evaluations and the combined evaluation are protected under [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC), even if erroneously assigned.  ***Example***: No rating action is warranted to reduce the erroneous 50 percent combined evaluation to the proper 40 percent combined evaluation in a case where   * two compensable service-connected (SC) disabilities have been evaluated at 30 percent and 20 percent disabling, respectively, and * an improperly assigned combined degree of 50 percent has been in effect for 20 or more years. |

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| f. Reduction and Discontinuance Under 38 CFR 3.552 | Protection under the provisions of either [38 CFR 3.951](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC) or [38 CFR 3.952](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_952.DOC) of a total rating or disability evaluation does not preclude reduction to a hospital rate under [38 CFR 3.552](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_552.DOC). |

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8. Protected Evaluations Under 38 CFR 3.951 and 38 CFR 3.952, Continued

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| g. Protection Against Rating Schedule Changes | *Public Law (PL) 102-86* states that a rating evaluation cannot be reduced solely because of a change to the rating schedule subsequent to August 13, 1991.  However, [38 CFR 3.952](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_952.DOC) protects rating evaluations under the 1925 rating schedule which were the basis of compensation on April 1, 1946.  ***Note***: Evaluations in effect when previous changes to the 1945 rating schedule occurred are *not* protected by *PL 102-86*.  ***Reference***: For more information on the preservation of disability evaluations after rating schedule changes, see   * [38 CFR 3.951(a)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC), and * [38 U.S.C. 1155](http://www.law.cornell.edu/uscode/text/38/1155). |

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| h. Reviewing Evaluations After a Rating Schedule Change | When reviewing a disability evaluation after a change in the rating schedule, determine whether the current evaluation would be continued or decreased under the prior schedule.  ***Note***: The disability evaluation cannot be reduced unless you can show the Veteran’s condition improved enough to have warranted reduction under the prior schedule. |

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| i. Effect of Change in DC | When manifestations of a disability have been evaluated at a particular level for 20 years or more, Rating Veterans Service Representatives (RVSRs) should exercise caution when assigning a new diagnostic code (DC) for symptoms of that disability. RVSRs should consider whether the new DC includes the symptoms protected under the current evaluation or whether the new DC considers separate and distinct symptoms. VA is not prohibited from changing the DC for a protected evaluation if it does not result in a reduced rating for that disability. |

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| (continued) | * ***Example***: A Vietnam Veteran has been SC for a through-and-through gunshot wound (GSW) to the right leg (MG XI) evaluated at 10 percent under [DC 5311](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKC/PART4/S4_73.DOC) effective November 21, 1968. The Service Treatment Records specifically indicate that the nerves were not affected. Over 40 years later, the Veteran is granted SC for type II diabetes mellitus. The GSW to the right leg has remained static; however, the medical records indicate that he has diabetic neuropathy with right foot drop. Since both the GSW and the peripheral nerve paralysis (foot drop) affect propulsion of the right lower extremity, separate ratings cannot be granted without pyramiding. However, a single 40 percent evaluation may be granted under [DC 8521](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKC/PART4/S4_124a.DOC), which would consider both the symptoms of the GSW as well as the new diabetic neuropathy with foot drop.   ***Reference***: For more information on   * protection of evaluations and DC codes, see [*Murray v. Shinseki*](http://vbaw.vba.va.gov/bl/21/Advisory/CAVCDAD.htm#bmm), 24 Vet. App. 420 (2011) * pyramiding, see * [38 CFR 4.14](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKC/PART4/S4_14.DOC), and * [*Esteban v. Brown*](http://vbaw.vba.va.gov/bl/21/advisory/CAVCDAD.htm#bme), 6 Vet.App. 259 (1994). |

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| j. Effect of Return to Active Duty | The statute prohibits payment of compensation for a period in which an individual receives active service pay. Therefore, where compensation is discontinued following reentry into active service   * continuity of the rating is interrupted for the purposes of achieving the protection offered by [38 U.S.C. 110](http://www.law.cornell.edu/uscode/text/38/110), and * the disability cannot be considered to have been continuously rated during the period in which compensation is discontinued.   ***Reference***: For more information on the effects of reentry in active duty on disability evaluations, see [VAOPGCREC 5-95](http://www.va.gov/ogc/docs/2009/PREC5_1995.doc). |

#### 9. Protected Service Connection Under 38 CFR 3.957

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| Introduction | This topic contains information about the protection of service connection under 38 CFR 3.957, including   * [protection under 38 CFR 3.957](#_a.__Protection_1) * [the provisions of VAOPGCPREC 6-2002](#_b.__Provisions), and * [determining the ten-year period](#_c.__Determining). |

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| Change Date | December 13, 2005 |

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| a. Protection Under 38 CFR 3.957 | Under [38 CFR 3.957](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_954.DOC), if service connection for disability or cause of death has been in effect ten or more years, propose severance only if   * the original grant was based on fraud, or * it is clearly shown that the person concerned did not have the requisite service or character of discharge. |

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| b. Provisions of VAOPGCPREC 6-2002 | [VAOPGCPREC 6-2002](http://www.va.gov/ogc/docs/2009/PREC6_2002.doc) held that   * the restriction relating to severance includes awards where service connection was recently and erroneously awarded, but with an effective date more than ten years prior to the decision awarding service connection, and * in the absence of the Veteran’s own willful misconduct or abuse of alcohol or drugs, Department of Veterans Affairs (VA) must pay compensation otherwise in order for a disability that was erroneously established as service connected, where service connection is protected from severance. |

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| c. Determining the Ten-Year Period | Measure the ten-year period from the effective date of service connection, *not* the date of the rating, to the effective date of the actual or prospective reduction. |

#### 10. Protected Pension Ratings Under 38 CFR 3.951(b)

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| Introduction | This topic contains information about protected pension entitlement, including   * [protection under 38 CFR 3.951(b)](#_a.__Protection), and * [limits of protection](#_b.__Limits). |

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| Change Date | December 13, 2005 |

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| a. Protection Under 38 CFR 3.951(b) | Under [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC), do not discontinue a rating of permanent total disability for pension purposes which has been in force for 20 or more years *except* in the case of fraud. |

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| b. Limits of Protection | The protection of pension entitlement under [38 CFR 3.951(b)](http://www.benefits.va.gov/warms/docs/regs/38CFR/BOOKB/PART3/S3_950.DOC) does not extend to Special Monthly Pension (SMP). |