



US DEPARTMENT OF VETERANS AFFAIRS **OFFICE OF INSPECTOR GENERAL**

Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

VBA Did Not Always Properly Implement Compensation Cost-of-Living Adjustments

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The Office of Inspector General (OIG) has released this management advisory memorandum to provide information on matters of concern that the OIG has gathered as part of its oversight mission. The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation for independence, competence, evidence collection and analysis, and quality control.

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DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL
WASHINGTON, DC 20001



May 14, 2024¹

MANAGEMENT ADVISORY MEMORANDUM

TO: Joshua Jacobs, Under Secretary for Benefits
Veterans Benefits Administration

FROM: Larry Reinkemeyer, Assistant Inspector General
VA Office of Inspector General's Office of Audits and Evaluations

SUBJECT: The Veterans Benefits Administration (VBA) Did Not Always Properly
Implement Compensation Cost-of-Living Adjustments

VBA administers a wide range of benefits to veterans, including VA's disability compensation program. VA provides tax-free monthly compensation payments to veterans in recognition of the effects of disabilities incurred or aggravated during active military service, referred to as "service-connected" disabilities.² As part of its ongoing oversight of VBA operations, the VA Office of Inspector General (OIG) team identified instances where VBA did not properly implement annual disability compensation cost-of-living adjustments (COLA).³ The OIG team met with representatives from VBA's Compensation Service in November 2023 and notified them that it appeared certain compensation payment amounts had been calculated incorrectly for each annual COLA since December 1, 2016, and the chief of program implementation with VBA's Compensation Service agreed.⁴ These incorrect calculations resulted in some monthly payment amounts to veterans being slightly higher or lower than they should have been. The OIG team also notified the Compensation Service representatives that it appeared the increased amounts for disability compensation, additional compensation for dependents, and clothing allowance for the COLA effective December 1, 2022, were not published in the Federal Register, as required.⁵

¹ This memorandum was sent to the Veterans Benefits Administration on May 14, 2024, to provide the opportunity for review and comment.

² 38 U.S.C. § 101(13), (16).

³ VA periodically makes COLAs to compensation payments to ensure their purchasing power keeps up with inflation.

⁴ VBA's Compensation Service guides and supports the work of VBA's claims processing offices in administering disability compensation benefits and services. The Compensation Service coordinates legislative and regulatory changes and updates to VBA's programs that are used for claims processing.

⁵ Veterans' Compensation COLA Act of 2022, Pub. L. No. 117-191, 136 Stat. 2208. The Federal Register is the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as for executive orders and other presidential documents.

This memorandum is meant to formally and transparently convey the information provided to the Compensation Service representatives in November 2023 regarding VBA's improper implementation of these compensation COLAs so that VBA can determine if additional actions are warranted.⁶ The OIG is taking no additional steps at this time but encourages VBA to examine its controls and oversight mechanisms to help ensure these types of issues can be prevented or promptly addressed in the future.

VA Disability Compensation Payments and COLAs

Disability ratings for compensation payments vary from 0 to 100 percent, in increments of 10 percent, based on impaired earning capacity.⁷ In addition to these ratings, VBA awards payments called special monthly compensation (SMC) for certain serious disabilities or combinations of disabilities, such as the loss of an eye or limb, or for the need to rely on others for daily life activities like bathing or eating.⁸ Veterans with disability ratings of 30 percent or more are also entitled to additional compensation for their dependents.⁹ Further, veterans whose service-connected disability necessitates the use of a skin medicine, prosthetic, or orthopedic device, such as a wheelchair, that damages their clothing may be entitled to payment of a clothing allowance.¹⁰

The payment amounts for disability ratings, SMC, dependents, and clothing allowance are established by law.¹¹ Each year since 2016, VA has implemented COLAs for these benefits, with the new increased amounts effective on December 1 of each year. Each of these COLAs has been initiated by a public law that directed the VA Secretary to increase the amounts listed in the

⁶ This memorandum provides information that has been gleaned from OIG analyses and provided to VBA to determine if VBA should take additional action on compensation payment amounts that were calculated incorrectly or not published in the Federal Register. The OIG issues management advisory memoranda when exigent circumstances or areas of concern are identified by OIG hotline allegations or in the course of its oversight work. Memoranda are published unless otherwise prohibited from release or to safeguard protected information.

⁷ VBA Annual Benefits Report, Part 2—Compensation, Fiscal Year 2022, accessed November 28, 2023, <https://www.benefits.va.gov/REPORTS/abr/docs/2022-compensation.pdf>; 38 U.S.C. § 1155.

⁸ 38 C.F.R. § 3.350 (2023).

⁹ 38 U.S.C. § 1115.

¹⁰ 38 U.S.C. § 1162.

¹¹ 38 U.S.C. §§ 1114, 1115, and 1162.

corresponding laws by the same percentage that Social Security benefits were increased.¹² These public laws also required the VA Secretary to publish the new increased amounts in the Federal Register.

VBA Incorrectly Calculated Some SMC Payment Amounts since December 2016

SMC levels are generally referred to by the letters of the corresponding sections of the law establishing the payment amounts.¹³ Levels with payment amounts specifically listed in the law, such as SMC L, M, N, and O, are referred to as statutory levels. However, the law also includes SMC between these four statutory levels. The additional levels include SMC L½, M½, and N½, which are known as intermediate levels. There are several different combinations of disabilities that establish entitlement to these statutory and intermediate SMC levels. Figure 1 illustrates the hierarchy of statutory and intermediate SMC levels from L through O, with examples of qualifying disabilities for SMC L, L½, and M.

¹² Veterans' Compensation COLA Act of 2016, Pub. L. No. 114-197, 130 Stat. 694; Veterans' Compensation COLA Act of 2017, Pub. L. No. 115-75, 131 Stat. 1244; Veterans' Compensation COLA Act of 2018, Pub. L. No. 115-258, 132 Stat. 3662; Veterans' Compensation COLA Act of 2019, Pub. L. No. 116-58, 133 Stat. 1091; Veterans' Compensation COLA Act of 2020, Pub. L. No. 116-178, 134 Stat. 853; Veterans' Compensation COLA Act of 2021, Pub. L. No. 117-45, 135 Stat. 389; Veterans' Compensation COLA Act of 2022; Veterans' Compensation COLA Act of 2023, Pub. L. No. 118-6, 137 Stat. 50.

¹³ 38 U.S.C. § 1114(k)–(t).

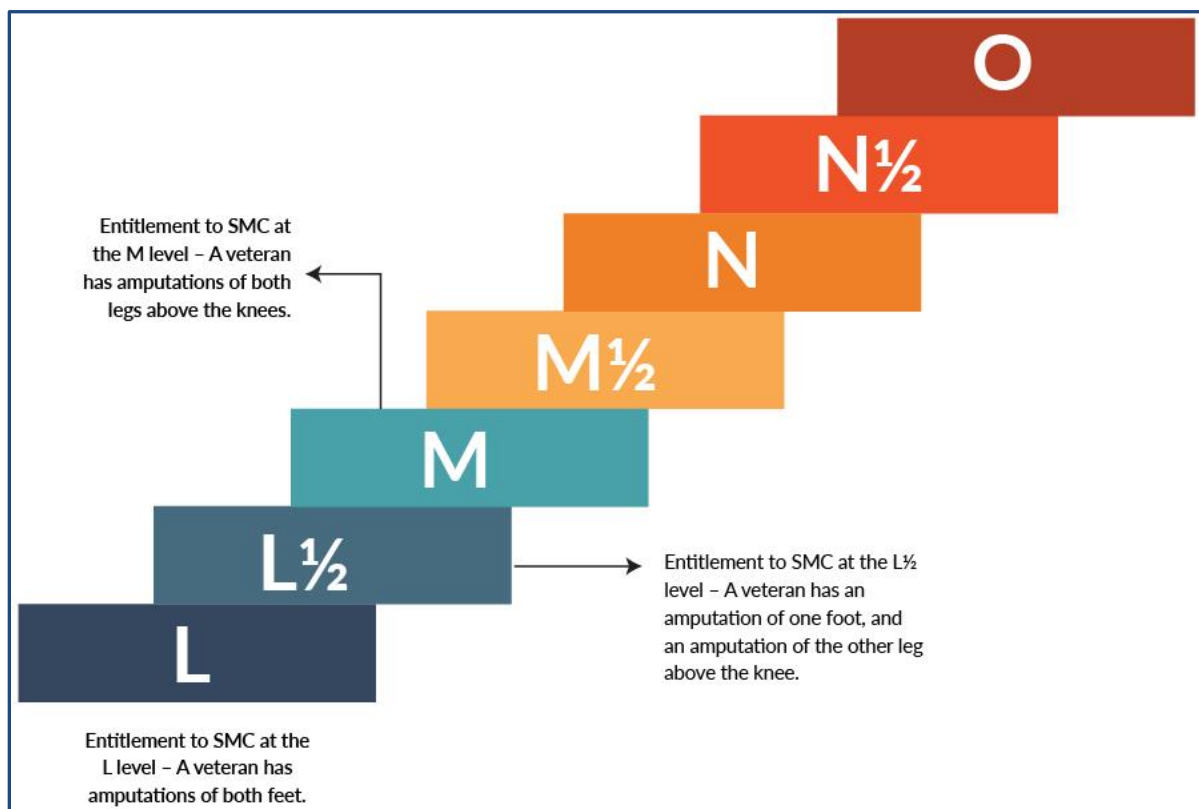


Figure 1. Hierarchy of statutory and intermediate SMC levels from L through O with examples of qualifying disabilities.

Source: VA OIG presentation of statutory and intermediate SMC levels under 38 C.F.R. § 3.350, *Special monthly compensation ratings*.

When implementing a COLA for disability compensation payments, VBA generally must increase the current amounts by the applicable percentage to calculate the new amounts. However, for intermediate SMC levels, the law states the payment amounts should be the average of the two applicable statutory payment amounts, rounded down to the nearest dollar.¹⁴ The OIG team determined that VBA had not calculated the payment amounts for intermediate SMC levels according to the law since December 2016. Instead, VBA had followed the general practice of simply increasing the current payment amount by the applicable COLA percentage to determine the new amounts. Figure 2 illustrates the correct calculation for the SMC L½ payment amount beginning December 1, 2023, compared to VBA’s calculation, which resulted in a monthly overpayment of 50 cents.

¹⁴ 38 U.S.C. § 1114(p).

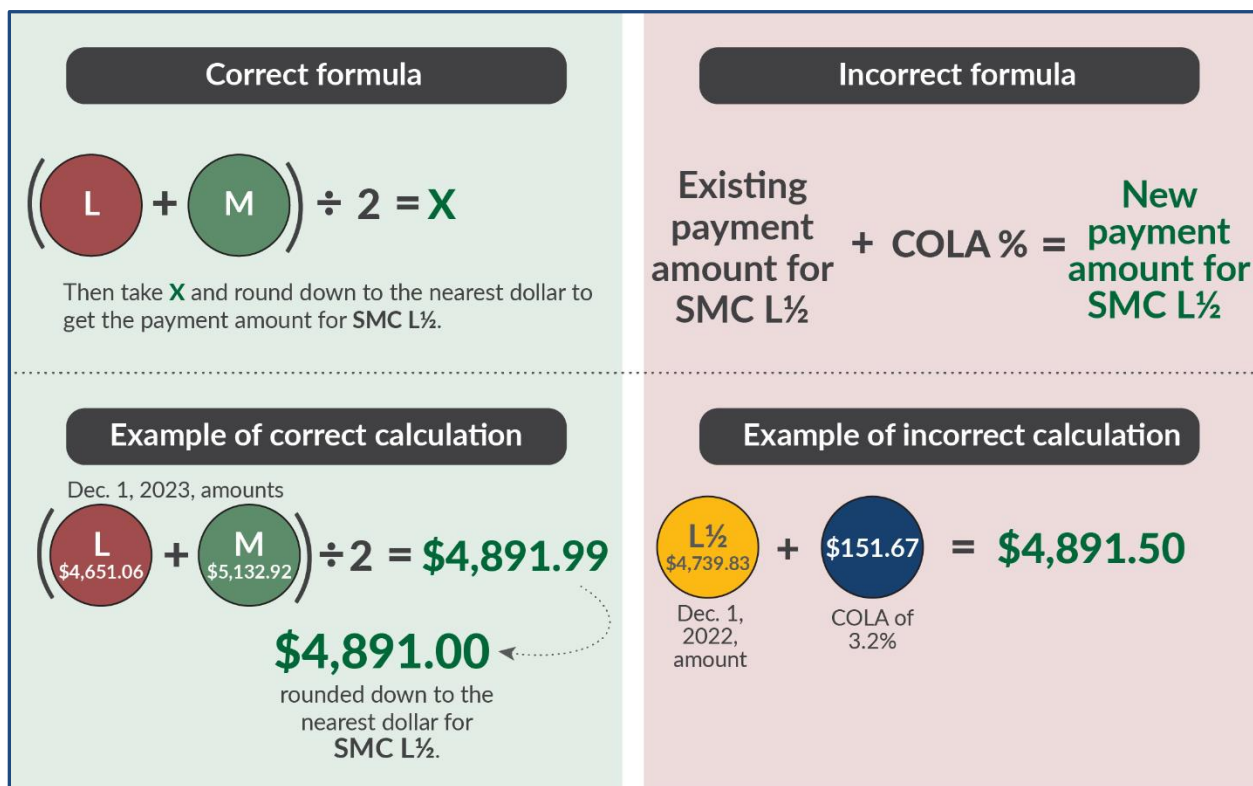


Figure 2. Correct versus incorrect formula and example calculation of SMC L½ payment amounts.

Source: VA OIG presentation of the formula for calculating intermediate SMC level payment amounts under 38 U.S.C. § 1114(p) compared to VBA's method.

These incorrect calculations caused VBA's payment amounts for intermediate SMC levels to be slightly higher or lower than they should have been. The effect was different for each intermediate SMC level and changed each time a new COLA was implemented. The largest overpayments of 63 cents per month involved SMC M½ effective December 1, 2020. The largest underpayments of 39 cents per month involved SMC M½ effective December 1, 2023. Figure 3 shows the amount of monthly overpayment or underpayment for each intermediate SMC level for payment amounts effective from December 1, 2016, through December 1, 2023.

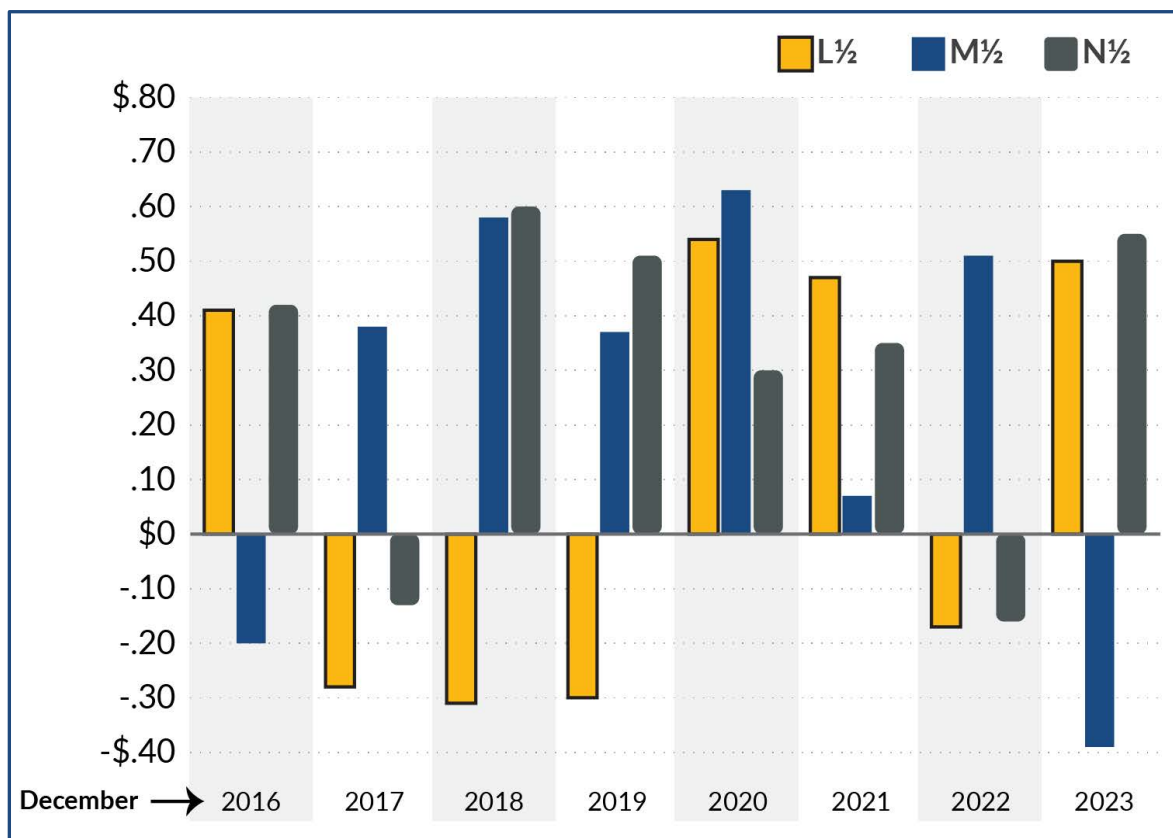


Figure 3. Amount of over- and underpayments for each intermediate SMC level effective December 2016 through December 2023.

Source: VA OIG analysis of VBA's incorrect intermediate SMC payment amounts compared to correct amounts.

The chief of program implementation with VBA's Compensation Service confirmed that VBA had been inaccurately calculating the payment amounts for intermediate SMC levels. Although the monthly overpayment or underpayment amounts were small, it is important for VBA to strengthen its controls to ensure veterans are paid correctly. The internal controls and risk management officer with Compensation Service stated that it was too late to make changes to the electronic system prior to implementing the COLA effective December 1, 2023, and that adjustments of any incorrect payment amounts would have to be made following implementation.

VBA Did Not Forward the Increased Disability Compensation Payment Amounts Effective December 1, 2022, to Be Published in the Federal Register

The Veterans' Compensation COLA Act of 2022 directed the VA Secretary to increase the payment amounts for disability compensation, additional compensation for dependents, and

clothing allowance, effective December 1, 2022.¹⁵ The act also required the VA Secretary to publish the new amounts in the Federal Register. The Compensation Service's internal controls and risk management officer confirmed that the increased amounts were not published in the Federal Register. The deputy director of VBA's Office of Executive Review told the review team that his office received the notice containing the increased amounts that was signed by the VA Secretary; however, they did not forward the notice to the next office for publication in the Federal Register.¹⁶ Although the increased amounts were available on VA's website, including them in the Federal Register is important because it is the official publication for notices of federal agencies and organizations.

Requested Actions

The OIG requested that VBA inform the OIG of what action, if any, VBA takes regarding the incorrect intermediate SMC payment amounts and the increased disability compensation payment amounts effective December 1, 2022, that were not published in the Federal Register.

VA Management Comments

The under secretary for benefits responded that VBA concurs with the OIG's findings in the management advisory memorandum. VBA's Compensation Service is in the process of identifying impacted cases, and VBA will ensure veterans who were underpaid are made whole. Furthermore, VBA is modifying its internal processes to avoid future calculation errors. Finally, VBA's Office of Executive Review updated its processes and procedures in September 2023 to ensure proper actions are taken on Federal Register notices. The full text of VBA's comments appears in appendix A.

¹⁵ Veterans' Compensation COLA Act of 2022.

¹⁶ VBA's Office of Executive Review coordinates VBA's congressional, legislative, and correspondence requests. The office also reviews all correspondence and other communications to maintain uniformity and consistency with administration and departmental policy, plans, and objectives.

Appendix A: VA Management Comments

Department of Veterans Affairs Memorandum

Date: June 6, 2024

From: Under Secretary for Benefits (20)

Subj: Office of Inspector General (OIG) Draft Management Advisory Memorandum –VBA Did Not Always Properly Implement Compensation Cost of Living Adjustments [Project No. 2024-00493-AE-0019]

To: Assistant Inspector General for Audits and Evaluations (52)

1. The Veterans Benefits Administration (VBA) has reviewed the OIG draft Management Advisory Memorandum — VBA Did Not Always Properly Implement Compensation Cost of Living Adjustments and provides the attached response.

<i>The OIG removed point of contact information prior to publication.</i>

(Original signed by)

Joshua Jacobs

Attachment

Veterans Benefits Administration Comments on OIG Management Advisory Memorandum VBA Did Not Always Properly Implement Compensation Cost of Living Adjustments

VBA provides the following comments in response to the OIG Management Advisory Memorandum:

VBA concurs with the findings in the OIG Management Advisory Memorandum. In September 2023, VBA's Office of Executive Review reviewed and updated its internal processes and procedures to ensure proper actions are taken on Federal Register Notices.

VBA's Compensation Service is currently in the process of identifying impacted cases for review, record reconciliation and rate correction as appropriate. VBA commits to ensuring that Veterans who were underpaid during this time will be made whole and is adjusting internal processes to ensure future calculations are completed according to statutory requirements.

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OIG Contact and Staff Acknowledgments

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