## Executive Summary

This comment opposes the Department of Veterans Affairs interim rule titled “Evaluative Rating: Impact of Medication” (RIN 2900–AS49; Docket VA–2026–VBA–0067) amending the disability rating framework under 38 C.F.R. Part 4.

The proposed regulatory approach permits disability evaluations to be based on a veteran’s functioning while under the effects of medication rather than on the underlying severity of the service–connected condition. This approach conflicts with the statutory structure of veterans disability compensation, established judicial precedent, and the public policy objectives of the veterans benefits system.

Specifically:

The rule conflicts with 38 U.S.C. §1155, which directs the VA to compensate

veterans based on the average impairment in earning capacity resulting from service-connected disability.

It contradicts the controlling precedent established in Jones v. Shinseki, which prohibits the VA from denying higher disability ratings based on the ameliorative effects of medication unless explicitly contemplated by the diagnostic code.

It creates dangerous incentives for veterans to avoid medically necessary treatment in order to preserve disability compensation.

It raises serious concerns under the Administrative Procedure Act (5 U.S.C. §706) for being arbitrary, capricious, and inconsistent with governing law.

For these reasons, the Department should withdraw the proposed rule.

Public Comment Opposing VA Disability Rating Rule
Docket: VA-2026-VBA-0067
RIN: 2900-AS49
Regulation: 38 C.F.R. Part 4 – Schedule for Rating Disabilities
Title: Evaluative Rating: Impact of Medication

Submitted by: Concerned Citizen

## I. Introduction

The Department of Veterans Affairs interim rule titled “Evaluative Rating: Impact of Medication” represents a significant change in how disability evaluations may be conducted under the VA Schedule for Rating Disabilities.
The rule would allow adjudicators to evaluate a veteran’s disability primarily

based on their functional presentation while medicated, rather than on the baseline severity of the service–connected condition.
This change risks fundamentally altering the structure of veterans disability compensation by allowing pharmacological symptom suppression to reduce disability ratings even where the underlying condition remains severe and chronic.
The disability compensation system exists to compensate veterans for the lasting impact of service–connected injuries and illnesses. It was not designed to penalize veterans for pursuing treatment that allows them to function day–to–day.

## II. Statutory Framework Governing Disability Compensation

Congress authorized the Department of

Veterans Affairs to adopt a disability rating schedule through 38 U.S.C. §1155, which provides that ratings shall be based on the average impairment in earning capacity resulting from service-connected disabilities.

This statutory framework recognizes that many service-connected conditions impose permanent functional limitations even when symptoms may be temporarily controlled through medication or therapy. Evaluating disability based primarily on medicated functioning risks distorting the measure of impairment by equating symptom suppression with recovery. Chronic medical conditions commonly affecting veterans—including psychiatric disorders, neurological conditions, and autoimmune diseases—often remain disabling even when medication partially stabilizes symptoms.

Accordingly, the statutory purpose of the disability rating schedule is best served by evaluating the underlying severity and functional limitations of the condition, not the degree to which those symptoms can be temporarily mitigated through ongoing medical intervention.

III. Conflict with Judicial Precedent

The United States Court of Appeals for Veterans Claims has directly addressed the issue of medication effects in disability ratings.

In Jones v. Shinseki, the court held that the VA may not deny a higher disability rating based on the ameliorative effects of medication unless the applicable diagnostic code specifically contemplates those effects.

The court explained that evaluating disabilities under medicated conditions

would otherwise distort the severity of the condition being evaluated.
This precedent reflects the long-standing principle that disability ratings measure the actual severity of the condition itself. The proposed rule effectively attempts to override this interpretation by administrative regulation rather than through statutory amendment. Administrative agencies cannot nullify controlling judicial interpretation of statutory provisions absent clear congressional authorization.

## IV. Perverse Incentives and Risks to Veteran Health

The proposed rule creates a troubling incentive structure that may discourage veterans from seeking or maintaining appropriate medical treatment.
If disability ratings are reduced based on

improved functioning while medicated, veterans may reasonably fear that compliance with treatment will reduce their earned benefits.

This dynamic could encourage veterans to:

discontinue medication before disability examinations

delay or avoid treatment

refuse medically recommended therapies

Such outcomes would directly undermine the VA's mission to promote the health and well-being of veterans.

The risks are particularly acute for conditions that require continuous pharmacological management, including PTSD, major depressive disorder, seizure disorders, chronic pain conditions, and traumatic brain injuries.

Public policy should encourage treatment compliance, not create financial incentives that discourage it.

V. Administrative Procedure Act Concerns
The proposed rule raises substantial concerns under the Administrative Procedure Act (APA), 5 U.S.C. §706. Agency action may be invalidated where it is:
arbitrary or capricious
contrary to statutory authority
unsupported by substantial evidence
procedurally deficient.
The interim rule introduces a major substantive change to the disability rating framework without demonstrating that medicated evaluations produce more accurate or equitable disability determinations.
Moreover, the rule conflicts with existing judicial precedent interpreting the governing statute.
Regulations inconsistent with statutory

mandates or controlling judicial decisions are subject to judicial review and invalidation.

## VI. Medical and Clinical Considerations

Medical research consistently demonstrates that pharmacological treatment often manages symptoms without eliminating the underlying disease process.

For example:

antidepressant and anti-anxiety medications may reduce PTSD symptoms without resolving trauma-related neurological changes

neuropathic pain medications frequently suppress pain perception without restoring nerve function

immunosuppressive medications may control autoimmune flare-ups while the underlying disease remains active

In these circumstances, medicated presentation does not reflect the true severity of the underlying condition. Evaluating disability based solely on medicated functioning therefore risks systematically underestimating the long-term impairment caused by service-connected conditions.

## VII. Economic and Policy Implications

Veterans disability compensation represents an earned benefit tied directly to military service.

Policies that appear to reduce disability ratings based on treatment compliance risk undermining trust in the benefits system.

Because millions of veterans receive disability compensation, changes to the rating methodology could affect a substantial number of beneficiaries.

Maintaining fairness, transparency, and consistency in disability evaluations is essential to preserving confidence in the VA benefits system.

## VIII. Oversight and Accountability Considerations

Because this rule may significantly affect disability compensation determinations nationwide, congressional oversight may be appropriate.

Relevant oversight bodies include:

U.S. Senate Committee on Veterans' Affairs
412 Russell Senate Office Building
Washington, DC 20510

U.S. House Committee on Veterans' Affairs
364 Cannon House Office Building
Washington, DC 20515

Congress retains ultimate authority over the statutory framework governing

veterans benefits and may wish to review whether regulatory changes of this magnitude align with legislative intent.

## IX. Litigation Preservation Statement

This comment also serves to preserve issues for potential judicial review under the Administrative Procedure Act (5 U.S.C. §706).

To the extent that the proposed rule conflicts with governing statutes, judicial precedent, or established principles of administrative law, its adoption may expose the regulation to legal challenge in federal court.

Ensuring that the disability compensation system operates consistently with congressional intent and veterans law precedent is essential to maintaining the legitimacy and fairness of the benefits system.

## X. Conclusion

The proposed rule allowing disability evaluations based on medicated functioning should be withdrawn.

The rule conflicts with the statutory framework governing veterans disability compensation, contradicts controlling judicial precedent, and risks creating incentives that discourage veterans from seeking medically necessary treatment.

The Department of Veterans Affairs should maintain the long-standing approach of evaluating disabilities based on the underlying severity and functional impact of service-connected conditions.

## Condensed Submission Version (for Regulations.gov)

The proposed VA rule allowing disability evaluations based on medicated functioning conflicts with 38 U.S.C. §1155,

established veterans law precedent including Jones v. Shinseki, and the public policy objectives of the veterans disability compensation system.

Disability compensation exists to compensate veterans for the average impairment in earning capacity caused by service-connected conditions, not to penalize veterans for seeking treatment that temporarily suppresses symptoms. Evaluating disability primarily under medicated conditions risks systematically underestimating the severity of chronic service-connected conditions and may incentivize veterans to avoid medically necessary treatment.

The rule also raises concerns under the Administrative Procedure Act (5 U.S.C. §706) for potentially being arbitrary, capricious, and inconsistent with governing law.

For these reasons, the Department of Veterans Affairs should withdraw the proposed rule.

Legal Citations

38 U.S.C. §1155

5 U.S.C. §706

Jones v. Shinseki, 26 Vet. App. 56 (2012)

Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837 (1984)

Loper Bright Enterprises v. Raimondo, 603 U.S. ____ (2024)

APA Research References

Friedman, M. J. et al. (2017). Pharmacotherapy for post–traumatic stress disorder. JAMA Psychiatry.

Dworkin, R. H. et al. (2010). Pharmacologic management of neuropathic pain. Neurology.

Smolen, J. S. et al. (2018). Rheumatoid arthritis treatment outcomes. The Lancet.